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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-first session (17–21 November 2014)

No. 43/2014 (Israel)

Communication addressed to the Government on 16 September 2014

concerning Ahmad Ishraq Rimawi

The Government has not replied to the communication.

The State is a party to the International Covenant on Civil and Political Rights, by accession on 3 October 1991.

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 2006/102 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. In accordance with its methods of work (A/HRC/16/47 and Corr.1, 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

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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. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:

4. Ahmad Ishraq Rimawi, a Palestinian student, born on 12 November 1994, was arrested on the evening of 17 November 2012 at the Atara military checkpoint in Israel by members of the Israeli army. Mr. Rimawi was travelling by taxi with two friends. Both of his friends were also arrested at the checkpoint. One of them, a citizen of the United States of America, of Palestinian descent, was deported to the United States. The other, also a citizen of the United States and a Palestinian Authority identity card holder, was released on bail a few days after his arrest.

5. According to the source, the military agents did not show any arrest warrant or other decision by a public authority. Upon his arrest, Mr. Rimawi was interrogated for two days and accused of “participating in military activities”, an accusation he denied.

6. A first six-month administrative detention order was issued on 17 December 2012. Mr. Rimawi was then transferred to Ofer prison.

7. The source reports that Mr. Rimawi’s father had been arrested on 15 June 2001 and is still in prison.

8. Mr. Rimawi was arrested in order to be interrogated, on the basis of articles 31 and 285 of Military Order 1651 (2009). Two additional six-month administrative detention orders were issued, which expired on 16 November 2013 and 15 May 2014, respectively. An Israeli intelligence agent (a member of Shabak) recommended a further six-month renewal on 15 May 2014. His request was accepted by a military judge. Mr. Rimawi’s current six-month administrative detention order is due to expire on 14 November 2014.

9. The source reports that all the appeals submitted to military courts have been rejected. Mr. Rimawi’s lawyer also filed two petitions to the Supreme Court, after the first and third administrative detention orders had been issued; they were also rejected. At the judicial review hearing concerning the first administrative detention order, the military court judge stated that “being a minor does not grant immunity from detention”. The courts have refused to take into account Mr. Rimawi’s age or the fact that his administrative detention is preventing him from continuing his education.

10. According to the source, the Israeli intelligence services have not provided substantial or concrete evidence against Mr. Rimawi. They have not provided new information, evidence or materials for the renewals of the administrative detention order. Mr. Rimawi’s case file includes only speculation about his alleged offences. Given that

Mr. Rimawi was arrested days after his eighteenth birthday, any evidence against him would have been collected when he was still a minor.

11. The source reports that Mr. Rimawi, together with 90 other Palestinian prisoners, started an open-ended hunger strike on 24 April 2014, in protest at the continued renewal of their administrative detention. Like all the other hunger strikers, Mr. Rimawi has faced harsh conditions and collective punishment since the start of his hunger strike. While he was in Ktziot prison, heavily armed members of the Israeli Special Forces routinely conducted violent searches and raids. The searches included transferring the hunger strikers into a cage while they were waiting to be searched by a machine. The searches typically lasted two hours, and the prisoners were handcuffed throughout. All of the hunger strikers were denied salt, which is an essential nutrient for survival during a hunger strike, for the first 15 days.

12. Mr. Rimawi is currently being held in the Deikel isolation cells which are reportedly small (2 x 3 metres), dirty, cramped and devoid of cleaning and personal hygiene products.

13. The source reports that administrative detention is a procedure that allows the Israeli military to hold detainees indefinitely on secret evidence without charging them or allowing them to stand trial. On 1 May 2010, Military Order 1651 (2009) came into effect, codifying a number of previously issued orders into what is now called the new Criminal Code. The Criminal Code is a consolidated version of 20 military orders issued since 1967 that relate to the arrest, detention and prosecution of an individual. Article 285 of Military Order 1651 has replaced Military Order No. 1591, which had previously formed the basis for administrative detention.

14. Military Order 1651 empowers military commanders to detain individuals for six-month renewable periods if they have “reasonable grounds to presume that the security of the area or public security require the detention”. According to the source, on or just before the expiry date, the detention order is frequently renewed. That process can be repeated indefinitely. There is no limit to the maximum amount of time an individual may be administratively detained.

15. According to the source, the grounds on which someone can be detained under Military Order 1651 are unclear, leaving it to the discretion of military commanders to decide what constitutes “public security” and “security of the area”. Detainees subject to administrative detention orders are rarely informed of the reasons for their detention, and neither are their lawyers. In most cases, administrative detention orders are confirmed for the periods requested by the military commander. The vast majority of appeals are, in practice, rejected. Although the administrative detention orders issued by Israeli military commanders are subject to review and further appeal to a military court, lawyers are not permitted to see the secret information against their clients, making that right of review illusory.

16. The source submits that, as the occupying Power in the West Bank, Israel is bound by the rules governing occupation, which require it to use administrative detention only for “imperative reasons of security” (Geneva Convention relative to the Protection of Civilian persons in Time of War, art. 78). Although international human rights law permits some limited use of administrative detention in emergency situations, the authorities are required to follow basic rules for detention, including a fair hearing at which the detainee can challenge the reasons for his or her detention, in accordance with article 9 of the International Covenant on Civil and Political Rights. Administrative detention should never be used as a substitute for criminal prosecution where there is insufficient evidence to obtain a conviction.

17. The source considers that Mr. Rimawi's imprisonment amounts to arbitrary detention and falls within categories I and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

18. The source argues that, if the Israeli authorities had evidence supporting Mr. Rimawi's administrative detention, he could have been charged under military orders and tried in a military court. The Israeli prosecuting authorities have provided no evidence that justifies Mr. Rimawi's detention, instead claiming that he poses an unspecified security risk. Mr. Rimawi's legal counsel has not been permitted to see any of the alleged evidence against his client and has had no means with which to challenge the detention effectively.

19. According to the source, the administrative detention courts cannot be viewed as independent or impartial as they are composed of military personnel who are subject to military discipline and are dependent on their superiors for promotion. Moreover, military court judges and prosecutors are colleagues in the same division in the Israeli army and report to the same commander.

20. The source maintains that Mr. Rimawi's friends who were arrested with him were released from custody shortly after their arrest, showing that they did not pose a threat to the life or security of the nation. The use of administrative detention orders under international law is strictly limited to situations of absolute necessity which threaten the life of the nation, in accordance with article 42 of the Geneva Convention relative to the Protection of Civilian persons in Time of War (1949) and article 4 of the International Covenant on Civil and Political Rights.

21. The source concludes that Mr. Rimawi has been arbitrarily denied his right to a fair trial, which is guaranteed under article 14 of the International Covenant on Civil and Political Rights. That right includes the right to be presumed innocent until proved guilty according to law, to have the matter determined without delay by a competent, independent and impartial authority or judicial body, in a fair hearing according to law, and to examine or have examined adverse witnesses.

22. According to the source, Mr. Rimawi has no means within the Israeli military court system to challenge his detention effectively, and his detention might continue indefinitely.

Response from the Government

23. The Working Group addressed a communication to the Government of Israel on 16 September 2014, requesting detailed information about the current situation of Mr. Rimawi, and the legal provisions justifying his continued detention and their compliance with international law. The Working Group regrets that the Government has not responded to the allegations transmitted by the Group.

24. Despite the absence of any information from the Government, the Working Group considers it is in a position to render its opinion on the detention of Mr. Rimawi, in conformity with paragraph 16 of its revised methods of work.

Discussion

25. As the Government chose not to rebut the prima facie reliable allegations submitted by the source, the Working Group accepts the information of the source as reliable.

26. The Working Group considers that, in cases concerning an excessive length of detention, the detained person shall enjoy the same guarantees as in criminal cases, even if the detention is qualified as administrative under national law. In that regard, the Working Group recalls that the provisions of article 14 of the International Covenant on Civil and Political Rights on the right to a fair trial are applicable where sanctions, because of their

purpose, character or severity, must be regarded as penal, even if, under domestic law, the detention is qualified as administrative.¹

27. The Working Group also reiterates that protective provisions contained in international human rights law must be given greater weight than arguments of *lex specialis* of international humanitarian law, especially given the circumstances in the Occupied Palestinian Territory, which has been under military occupation for more than 40 years.²

28. In its concluding observations on the third periodic report of Israel on the implementation of the International Covenant on Civil and Political Rights, the Human Rights Committee expressed concern about the “frequent and extensive use of administrative detention”. The Committee emphasized that “administrative detention infringes detainees’ rights to a fair trial, including their right to be informed promptly and in detail, in a language which they understand, of the nature and cause of the charge against them, to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing, to be tried in their presence, and to defend themselves in person or through legal assistance of their own choosing”. The Committee recommended that Israel “refrain from using administrative detention, in particular for children, and ensure that detainees’ rights to fair trial are upheld at all times” and “grant administrative detainees prompt access to counsel of their own choosing, inform them immediately, in a language which they understand, of the charges against them, provide them with information to prepare their defence, bring them promptly before a judge and try them in their own or their counsel’s presence” (CCPR/C/ISR/CO/3, para. 7).

29. In its concluding observations on the fourth periodic report of Israel, the Human Rights Committee reiterated that it “remains concerned at the continuing practice of administrative detention of Palestinians, at the fact that in many cases the detention order is based on secret evidence, and at the denial of access to counsel, independent doctors and family contacts”. The Committee requested Israel to “end the practice of administrative detention and the use of secret evidence in administrative detention proceedings, and ensure that individuals subject to administrative detention orders are either promptly charged with a criminal offence, or released” (CCPR/C/ISR/CO/4, para. 10).

30. Mr. Rimawi has never been informed in detail of the reasons for his detention and was deprived of the means to challenge the lawfulness of his detention. In particular, Mr. Rimawi has not been provided with access to any evidence regarding the grounds upon which he has been deprived of his liberty.

31. The Working Group considers that Mr. Rimawi has been denied the fundamental rights enshrined in articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. His deprivation of liberty, therefore, falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

32. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Rimawi is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14

¹ See Human Rights Committee, general comment No. 32 (2007) on article 14: Right to equality before courts and tribunals and to a fair trial, para. 15.

² See Working Group on Arbitrary Detention, opinions No. 58/2012 (Israel), para. 24, and No. 5/2010 (Israel), para. 33.

of the International Covenant on Civil and Political Rights. It falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

33. Consequent upon the opinion rendered, the Working Group requests the Government of Israel to take the necessary steps to remedy the situation of Mr. Rimawi and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

34. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release Mr. Rimawi and to accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

[Adopted on 19 November 2014]
