



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012****No. 20/2012 (Israel)****Communication addressed to the Government on 20 March 2012****Concerning Hana Yahya Shalabi****The Government did not reply.****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, 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. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), 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. Hana Yahya Shalabi, a Palestinian woman, usually resides in Al-Shuhada Street, Al-Maskamah neighbourhood, Barqin village, Janin governorate, West Bank.

4. On 16 February 2012, at approximately 1.30 a.m., Ms. Shalabi was arrested without a warrant by soldiers of the Israel Defence Forces, who allegedly broke into her home. Ms. Shalabi was blindfolded and taken in a military jeep to Salem Detention Centre in the West Bank village of Al-Jalamah. While at Salem Detention Centre, she was allegedly subjected to beatings and humiliating treatment.

5. On the morning of 16 February 2012, she was transferred to Hasharon prison in Israel. She was placed in solitary confinement for the first three days of her detention, in a section of the prison separate from where the other Palestinian women are being held. Ms. Shalabi went on a hunger strike in protest at her detention and ill-treatment.

6. On 19 February 2012, Ms. Shalabi was transferred to a different section of the Hasharon prison near the other Palestinian detainees but was placed in solitary confinement. On 21 February 2012, Ms. Shalabi was transferred back to Salem Detention Centre for interrogation.

7. On 23 February 2012, she was taken to Salem Military Court, where one of her lawyers informed her that she might be placed in administrative detention. Ms. Shalabi was then taken back to Hasharon prison and was not presented with a written administrative detention order. Her lawyers received a copy of the order, which reportedly stated that Ms. Shalabi was placed in administrative detention for a period of six months, until 16 August 2012.

8. On the same day, 23 February 2012, Ms. Shalabi was sentenced to seven days of solitary confinement as punishment for her hunger strike. The Israeli Prison Service allegedly threatened her with prolonged isolation or placing other female prisoners in isolation.

9. On 27 February 2012, Ms. Shalabi was taken out of solitary confinement and brought into the same section as the other Palestinian female prisoners.

10. The source reports that the hearing to consider the confirmation of her administrative detention order was to take place on 27 February 2012; however, it was postponed until 29 February 2012. During the hearing, the military judge announced that he would not take any decision and would first meet an Israeli intelligence officer on 4 March 2012. Neither Ms. Shalabi nor her lawyers were allowed to attend that meeting.

11. On 4 March 2012, a military judge decided to reduce Ms. Shalabi's six-month administrative detention order by two months. Her detention order was now to terminate on 16 June 2012, but could be renewed. Ms. Shalabi's lawyers appealed the four-month administrative detention order.

12. On 7 March 2012, during a session of the Military Court of Appeals, the military judge postponed a decision after the military prosecution objected to the request for Ms. Shalabi's release. In support, the military prosecution reportedly cited secret evidence justifying Ms. Shalabi's detention, which they refused to disclose for security reasons.

13. The source argues that Ms. Shalabi's ongoing administrative detention is in breach of article 3, 9 and 10 of the Universal Declaration of Human Rights and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights. The source emphasizes that Ms. Shalabi's detention has no legal basis and she has not benefited from her right to a fair and public hearing by a competent, independent and impartial tribunal established by law. The source further points that holding by Israel of Ms. Shalabi, a Palestinian detainee, in its internal prisons is in violation of article 76, paragraph 1, of the Fourth Geneva Convention. The latter requires that "protected persons accused of offences shall be detained in the occupied country, and if convicted shall serve their sentences therein".

14. The source stresses the debilitated state of health of Ms. Shalabi. Reportedly, a doctor from Physicians for Human Rights last visited Ms. Shalabi on 8 and 12 March 2012. The doctor reported that her muscles have begun to atrophy and that she is suffering from dizziness and loss of consciousness. She is not allowed family visits and her father was allegedly prevented from attending the military court hearing.

15. The source further recalls that, prior to the ongoing administrative detention, Ms. Shalabi had already been arrested and detained without charge in the past. She had been arrested without warrant on 14 September 2009 and released only under the terms of the exchange of prisoners on 28 October 2011.

Response from the Government

16. By letter dated 20 March 2012, the Working Group seized the Government with a view to obtaining its reaction in respect of the allegations from the source.

17. Upon the expiry of the 60-day period foreseen in paragraph 15 of the Working Group's methods of work, the Government did not react. Nor did it request an extension in accordance with the provisions contained in paragraph 16 of the Working Group's methods of work.

18. Under these circumstances, the Working Group is in a position to render an opinion on the basis of the information available before it.

Further comments from the Source

19. The Working Group was informed by a source that Ms. Shalabi had been released in April 2012 after a 40-day hunger strike to protest against her administrative detention. However, it is not clear what is her current status or medical condition.

Discussion

20. In accordance with paragraph 17 (a) of its methods of work, notwithstanding the alleged release of Ms. Shalabi, the Working Group decides to render an opinion regarding her detention.

21. It will be recalled that Ms. Shalabi was detained on 16 February 2012, by military personnel without a warrant. She was taken to prison before an administrative detention order was issued on 23 February 2012. She was placed in detention for a period of six months. The order later reduced the period of detention to a four-month imprisonment.

22. In a similar case (opinion No. 3/2012 (Israel)), the Working Group recalled that 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 Given the nature of the sanctions applied to Ms. Shalabi, the provisions of article 14 of the Covenant relating to the right to a fair trial are applicable in her case, even though under domestic law her detention is qualified as administrative.

23. The Working Group refers in particular to the concluding observations of the Human Rights Committee on the second periodic report of Israel (CCPR/CO/78/ISR). In its paragraph 12, the Human Rights Committee noted that “as to measures derogating from article 9 itself, the Committee is concerned about the frequent use of various forms of administrative detention, particularly for Palestinians from the Occupied Territories, entailing restrictions on access to counsel and to the disclosure of full reasons of the detention. These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7 and derogating from article 9 more extensively than what in the Committee’s view is permissible pursuant to article 4. In this regard, the Committee refers to its earlier concluding observations on Israel and to its general comment No. 29”. Similarly, the Committee expressed concern that the use of prolonged detention without any access to a lawyer or other persons of the outside world violates articles 7, 9, 10 and 13, paragraph 3 (b) of the Covenant (see *ibid.*, para. 13).

24. Firstly, regarding Ms. Shalabi’s detention between 16 February and 23 February 2012, the Working Group finds that Ms. Shalabi was detained without any legal basis or administrative detention order. Therefore, this period of detention falls under category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

25. Secondly, Ms. Shalabi was not brought promptly before a judge in breach of article 9, paragraph 3, of the International Covenant on Civil and Political Rights. She was not allowed to challenge the legality of her detention before a competent, independent and impartial tribunal or benefit from legal assistance.

26. The Working Group notes that the hearing on the confirmation of her administrative detention order and the subsequent appeal proceedings were conducted before a military jurisdiction lacking transparency and adversarial procedure. Article 14, paragraph 3 (a), of the Covenant further guarantees the right to be informed promptly and in detail of the nature and cause of the charges brought against the person. Given the alleged secrecy of the evidence, Ms. Shalabi was prevented from her right to have access to material on which the charges are based as provided for in article 14, paragraph 3 (b), of the Covenant (the right to have adequate facilities for the preparation of defence).² Similarly, article 14, paragraph 3 (d), of the Covenant, provides for the right of the defendant to be tried in presence of her or his lawyer and to benefit from legal assistance.

27. In the case in hand, Ms. Shalabi was deprived of the aforementioned rights. This leads the Working Group to conclude that her detention is in breach of articles 9, 10 and 11 of the Universal Declaration of Human Rights and article 9 and 14, paragraph 3 (a), (b) and (d), of the Covenant.

¹ See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 15; communication No. 1015/2001, *Perterer v. Austria*, Views adopted on 20 July 2004, para. 9.2.

² See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 15.

Disposition

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

The detention of Ms. Hana Yahya Shalabi was arbitrary, being in contravention with articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14, paragraph 3 (a), (b) and (d), of the International Covenant on Civil and Political Rights. Her detention falls under category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. Moreover, Ms. Shalabi's detention between 16 and 23 February 2012, being without any legal basis, was in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, falling under category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

29. As a result of the opinion rendered, the Working Group requests the Government of Israel to guarantee that Ms. Shalabi can effectively enjoy of her freedom and her right to health. Specifically, the Working Group requests the Government of Israel to provide Ms. Shalabi with adequate reparation for the moral and material damage caused to her during the period of detention ongoing since 16 February 2012 as well as for the past periods she had spent in administrative detention. Finally, the Working Group invites the Government of Israel to cooperate with the Working Group in accordance with the relevant resolutions of the Human Rights Council.

[Adopted on 27 August 2012]
