Advance Edited Version

Distr.: General
6 July 2017

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session, 19-28 April 2017

Opinion No. 17/2017 concerning Ghassan Mohammed Salim Duar (Jordan)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 23 December 2016 the Working Group transmitted to the Government of Jordan a communication concerning Ghassan Mohammed Salim Duar. The Government replied to the communication on 6 February 2017. The State is a party to the International Covenant on Civil and Political Rights.

3. 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 him or her) (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 Covenant (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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Ghassan Mohammed Salim Duar, born on 14 December 1959, is a civil engineer and a member of the Jordanian Engineers Association. He is married and lives in the Arjan neighbourhood in Amman.

5. Mr. Duar was arrested on 29 October 2014 at his house during a night raid by members of the security services, including the General Intelligence Directorate. Security forces personnel searched his house and confiscated some of his publications, his personal computer and a significant amount of money.

6. Following his arrest, Mr. Duar was brought to the premises of the General Intelligence Directorate, located in, Jandawil district, Wadi Sir, Amman, where he was put in solitary confinement.

7. During the first 15 days of his detention at the General Intelligence Directorate he was not allowed access to a lawyer or his family. In addition, while he was interrogated he was subjected to beatings, threats, deprivation of sleep and food as well as psychological pressure. He was then coerced into signing documents, including statements extracted under torture, which he was not allowed to read beforehand.

8. On 11 November 2014, Mr. Duar was first brought before the General Prosecutor of the State Security Court, at the headquarters of the General Intelligence Directorate, who reportedly informally accused him of "manufacturing explosive materials and threatening public order and the regime".

9. In December 2014, he was transferred to Jweida prison, where his family was allowed to visit him three times a week for a maximum of 10 minutes each time. He was also allowed to receive visits from his lawyer.

10. On 26 February 2015, the prosecutor of the State Security Court issued an indictment against him, charging him with "threat to public order, joining an armed group and recruitment of people into an armed group", under article 3 of anti-terrorism law No. 55 of 2006, amended in 2014.

11. On 23 March 2015, the State Security Court held its first hearing on Mr. Duar's case. It was adjourned and postponed twice, first to 30 March and then to 5 April 2015.

12. During the trial, Mr. Duar's lawyer indicated that the statements made by his client had been extracted under torture; he also pointed out that the documents that he had been forced to sign were the sole piece of evidence against him. Nevertheless, the allegations of torture raised by Mr. Duar and his lawyer were dismissed without any investigation. In addition, the testimonies of the witnesses testifying in Mr. Duar's defence were all dismissed by the judge.

13. On 29 July 2015, the State Security Court sentenced Mr. Duar to five years of imprisonment. On 8 March 2016, the Cassation Court confirmed Mr. Duar's sentence on appeal.

14. Mr. Duar remains in detention in Jweida prison to date.

15. The source submits that the deprivation of liberty of Mr. Duar is arbitrary and falls within categories I and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. With regard to category I, according to the source, the detention of Mr. Duar from the time of his arrest on 29 October 2014 until 26 February 2015, when he was indicted, is devoid of any legal basis, as until that moment no legal basis was invoked by the judicial authority to justify his arrest and detention. Thus, it is in violation of article 9 (1) of the International Covenant on Civil and Political Rights and could fall under category I of the Working Group's defined categories of arbitrary detention. In addition, the source adds that Mr. Duar was arrested without a warrant and detained incommunicado for 15 days at the premises of the General Intelligence Directorate, thus being placed outside the protection of the law and deprived of all legal safeguards.

16. Furthermore, the source submits that Mr. Duar has not been guaranteed the international norms relating to the right to a fair trial during the period of his deprivation of liberty, in violation of 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. Mr. Duar was arrested without an arrest warrant and was not informed of the reasons for his arrest. During the initial 15 days of his detention, Mr. Duar was held incommunicado, subjected to threats and deprived of food and sleep. He was also subjected to solitary confinement and forced to sign documents that he was prevented from reading beforehand and which were subsequently used as the sole piece of evidence against him during his trial. Allegations of torture raised during the trail were dismissed and no investigation has been opened in this regard, in violation of articles 9 (2) and 14 (3) (a) (b) (c) and (g) of the Covenant. The source thus argues that the detention of Mr. Duar is arbitrary and falls under category III of the Working Group's defined categories of arbitrary detention.

17. In addition, the source adds that Mr. Duar was prosecuted by the State Security Court. Concerns have been raised by the source about the independence and impartiality of the Court. The source argues that the Court lacks independence as its members are nominated by the Prime Minister himself; there are two military judges and one civilian judge, and the General Prosecutor is a military officer. The source argues that the Court is essentially a military court and should thus not be allowed to try civilians. Furthermore, concerns have been raised that owing to the broad definition of terrorism provided in the amended anti-terrorism laws, trials before the State Security Court are sometimes used as means to suppress dissidents, including political activists, critics of the Government and journalists. The source adds that the flaws in the administration of justice evidenced by the Court are worrying since the Court can impose heavy sentences for crimes of terrorism, such as life imprisonment or even the death penalty.

Response from the Government

18. On 23 December 2016, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure, requesting the Government to provide detailed information by 21 February 2017 about the current situation of Mr. Duar and any comments on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds justifying his continued detention and to provide details regarding the conformity of the relevant legal provisions and proceedings with international law, in particular the norms of international human rights law that are binding on Jordan. Moreover, the Working Group called upon the Government to ensure Mr. Duar's physical and mental integrity.

19. In its response dated 6 February 2017, the Government provided the Working Group with the information below.

20. According to the Government, Mr. Duar is now serving his sentence in Al-Zarqa reform centre. He was referred to the State Security Court on the following charges:

(a) Involvement in acts that would disturb the public order and endanger the safety and security of the society, in contravention of the provisions of the articles (2,7/T) of anti-terrorism law No. 55/2006 and the amendments thereto;

(b) Recruitment of individuals to join armed groups, in contravention of the provisions of articles (3/J, 7/J) of the same law;

(c) Joining armed groups, in contravention of the provisions of articles (3/J, 7/J) of the same law.

21. The Government states that the prosecutor of the State Security Court interrogated Mr. Duar, who confessed to the above charges. He was then sentenced to five years of imprisonment with hard labour.

Further comments from the source

22. The source acknowledged Mr. Duar's current detention in Al-Zarqa reform centre, but regretted that the Government's response merely stated that Mr. Duar was sentenced to five years of imprisonment for "disturbing public order" and "threat to public order, joining

an armed group and recruitment of people into an armed group" under anti-terrorism law No. 55 of 2006, as amended in 2014, based on his supposed confession, and did not comment on the alleged violations of his rights.

23. As argued in its original submission, the source maintained that Mr. Duar was forced to confess while being held incommunicado in solitary confinement during the first 15 days of his detention by the General Intelligence Directorate, where he was subjected to beatings, threats, sleep and food deprivation and psychological stress in the course of interrogation. According to the source, he was forced to sign documents, including statements extracted under torture, that he was not allowed to read beforehand.

24. The source also recalled that Mr. Duar's lawyer had stated during the trial that his client's statement had been extracted under torture and noted that it was the sole piece evidence against him. The source reiterated that the allegations of torture raised during the trial were dismissed by the judge without any investigation.

25. According to the source, as the Government failed to provide any counter-argument to the claims raised by the source in its original submission, Mr. Duar's detention falls under category I (for his detention from the date of his arrest on 29 October 2014 until 11 November 2014) and category III.

26. The source again requested the Working Group to issue an opinion that the detention of Mr. Duar was arbitrary and to call upon the Government to end his arbitrary detention by releasing him immediately. The Government should also be reminded that even in the application of anti-terrorism legislation, human rights standards must always be upheld and that extraordinary courts such as the State Security Court should not be used in a manner that is contrary to international obligations.

27. The source lastly stated that no statements made and/or signed under torture should be used as evidence in legal proceedings, in line with the obligations of Jordan under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Given the severity of the violations committed in terms of torture as well as violations of fair trial rules by the General Intelligence Directorate and the State Security Court, the source requested that the Working Group refer the torture allegations to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the allegations related to the General Intelligence Directorate and the State Security Court to the Special Rapporteur on the independence of judges and lawyers for appropriate action, including an independent and thorough investigation by the Government to identify and prosecute those responsible for the acts in question, in accordance with article 33 (a) of the revised methods of work of the Working Group.

Discussion

28. The Working Group thanks the source and the Government of Jordan for their submissions in relation to Mr. Duar's arrest, conviction and imprisonment as well as for their explanations of the political and legal context. It is evident that the manner of Mr. Duar's detention, in particular, whether it is arbitrary, is highly contested between the parties.

29. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68)

30. The Working Group considers that it is entitled to assess the proceedings of the court and the law itself to determine whether they meet international standards.[1] However, the Working Group also reiterates that it has consistently refrained from taking the place of

[1] See opinion No. 33/2015, para. 80.

the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of domestic law by the judiciary.[2]

31. The Working Group recalls that where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he or she was entitled, the burden of proof should rest with the public authority, because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.[3]

Category I

32. The Working Group will examine the relevant categories applicable to its consideration of this case, including category I which concerns deprivation of liberty without invoking any legal basis.

33. The Working Group will address the following factual elements and considerations, which have been disputed by the Government:

(a) On 29 October 2014, Mr. Duar was arrested at his house by members of the security services, including the General Intelligence Directorate, without being informed of the reasons for his arrest or the charges against him;

(b) After his arrest, Mr. Duar was taken to the premises of the General Intelligence Directorate and put in solitary confinement;

(c) During the first 15 days of his detention, Mr. Duar was not allowed access to his family or lawyer.

34. The Government has failed to provide any legal basis for Mr. Duar's arrest and initial detention. The three-month delay between the informal notification of his charge and the formal indictment adds weight to the view that the General Intelligence Directorate initially deprived him of liberty without legal justification.

35. The Working Group also notes article 113 of the Criminal Procedure Code of Jordan, which provides that if the defendant is detained on the basis of a warrant and kept in a holding cell for more than 24 hours without being interrogated or brought before the public prosecutor, in accordance with in the provisions of the previous article, his detention shall be considered as an arbitrary act and the official responsible shall be prosecuted for the commission the crime of illegal detention stated in the Penal Code. The Working Group observes that the Government has failed to undertake the necessary formal procedures to establish the legal basis for Mr. Duar's continued detention in this regard as well. The Working Group further observes that Mr. Duar was detained incommunicado for 15 days at the premises of the General Intelligence Directorate, thus being placed outside the protection of the law and deprived of any legal safeguards.

36. The Working Group notes with concern a number of cases in recent years in which the General Intelligence Directorate subjected citizens and foreign nationals to secret or incommunicado detention to extract confessions under torture to convict the victims of terrorism-related charges at the State Security Court.[4] The Government has been found to hold its real or perceived opponents incommunicado in earlier cases as well.[5] Such a practice of detention effectively places the victims outside the protection of the law and deprives them of any legal safeguards.

37. The Working Group therefore considers that Mr. Duar's arrest and incommunicado detention between 29 October and 11 November 2014 lack a legal basis, in violation of article 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant on

[2] See opinion No. 40/2005.

[3] See International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 639, para. 55; and opinions No. 41/2013, para. 27 and No. 59/2016, para. 61.

[4] See opinions No. 39/2016 and No. 09/2016.

[5] See opinions No. 53/2013, No. 60/2011 and No. 18/2007.

Civil and Political Rights, falling under category I.[6] The Working Group also recalls that the Human Rights Committee, in its general comment No. 35 (2014) on liberty and security of person, stated that an arrest or detention that lacks any legal basis is arbitrary.[7]

Category III

38. With regard to category III, the Working Group will now consider whether there have been any violations of the international norms relating to the right to a fair trial during the period of Mr. Duar's deprivation of liberty. Notably, the Working Group addresses the following considerations, which have not been disputed by the Government:

(a) On 29 October 2014, Mr. Duar was arrested in violation of procedures established by law as no warrant was produced, in contravention of article 9 of the Universal Declaration of Human Rights and article 9 (1) of the International Covenant on Civil and Political Rights;

(b) On that date, Mr. Duar was neither informed of the reasons for his arrest nor promptly informed of any charges against him when he was arrested, in contravention of the article 9 of the Universal Declaration and article 9 (2) of the Covenant;

(c) Mr. Duar was not promptly brought before a judge. Instead, authorities held him incommunicado in solitary confinement for 15 days at General Intelligence Directorate premises, placing him outside the protection of the law, which effectively nullified his right to recognition everywhere as a person before the law, in contravention of articles 6 and 9 of the Universal Declaration and article 9 (3) and 16 of the Covenant;

(d) Mr. Duar was not treated with humanity and respect during his deprivation of liberty. Instead, his security of person was violated, as he was subjected to torture, in contravention of articles 3 and 5 of the Universal Declaration and articles 7, 9 (1) and 10 (1) of the Covenant;

(e) Adequate time and facilities for the preparation of his defence with the counsel of his choice was not available to Mr. Duar, as he was denied access to a lawyer during the interrogation that took place during the first 15 days of his detention,[8] in contravention of articles 10 and 11 (1) of the Universal Declaration and article 14 (1) and (3) (b) and (d) of the Covenant;

(f) Mr. Duar was forced to sign a confession extracted under severe torture, including beatings, threats, deprivation of sleep and food and psychological pressure. Moreover, he was unable to read the content of the document. This confession was presented and accepted as the sole piece of evidence at his trial by the State Security Court, in contravention of articles 5, 10 and 11 (1) of the Universal Declaration and articles 7 and 14 (1) and (3) (g) of the Covenant.

39. The Working Group therefore observes that international norms of due process and guarantees of a fair trial during the period of Mr. Duar's deprivation of liberty have not been respected, in violation of articles 3, 5, 6, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 7, 9, 10, 14 and 16 of the International Covenant on Civil and Political Rights.

40. The Working Group has consistently argued that holding persons incommunicado breaches the right to challenge the lawfulness of detention before a judge.[9] Furthermore, the Committee against Torture has made it clear that incommunicado detention creates conditions that lead to the violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see A/54/44, para. 182 (a)); the Special Rapporteur on torture has consistently argued that use of incommunicado detention is unlawful (see A/54/426. para. 42 and A/HRC/13/39/Add. 5, para. 156) and the Human

[6] See opinion No. 39/2016, para. 45.
[7] See opinion No. 20/2016, para. 28.
[8] See Human Rights Committee, communication No. 1769/2008, *Bondar v. Uzbekistan*, Views adopted on 25 March 2011, para. 7.4.
[9] See, e. g., opinions No. 53/2016 and No. 56/2016.

Rights Committee, in its general comment No. 35 (2014) on liberty and security of person has argued that incommunicado detention that prevents prompt presentation before a judge inherently violates paragraph 3 of article 9 of the Covenant. Moreover, incommunicado detention is a violation of the right to contact the outside world under applicable standards such as rules 58 and 61 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and principles 15, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

41. The Working Group is concerned about the allegations of torture, including for the extraction of confessions, made by the source. Those allegations have not been challenged by the Government of Jordan. The treatment described reveals a prima facie breach of the absolute prohibition of torture, which is a peremptory norm of international law,[10] of the Convention against Torture, of article 5 of the Universal Declaration of Human Rights and of articles 7 and 10 of the International Covenant on Civil and Political Rights.

42. The use of forced confession in the court proceedings against Mr. Duar raises particular concern, and is in violation of article 14 of the Covenant. The Working Group concurs with the Human Rights Committee, which states, in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial that:

> article 14, paragraph 3 (g), guarantees the right not to be compelled to testify against oneself or to confess guilt …. A fortiori, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. Domestic law must ensure that statements or confessions obtained in violation of article 7 of the Covenant are excluded from the evidence, except if such material is used as evidence that torture or other treatment prohibited by this provision occurred, and that in such cases the burden is on the State to prove that statements made by the accused have been given of their own free will.

43. Furthermore, the Working Group again notes with concern the source's allegations about the lack of independence and impartiality of the State Security Court.[11] In this regard, the Working Group reiterates its concerns about such special courts (see A/HRC/7/4, para. 59) and emphasizes that the provisions of article 14 apply to all courts and tribunals within the scope of that article, including ordinary or specialized, civilian or military courts.[12] The Working Group concurs with the repeated recommendations by the Human Rights Committee (see CCPR/C/JOR/CO/4, para. 12 and CCPR/C/79/Add.35, para. 16) and the Committee against Torture (see CAT/C/JOR/CO/3, para. 38) that Jordan abolish special courts such as the State Security Court.

44. Mr. Duar's experience, as recounted by the source, reinforces the Working Group's concerns[13] that the 2011 reform process and the decision taken by the Council of Ministers based on royal orders on 1 September 2013 have not brought the State Security Court rules into compliance with international law.

45. The Working Group again notes that the maintenance of the State Security Court does not satisfy the criteria set out for the narrow exception from a system of general courts. As such, it fails to uphold Mr. Duar's right to a fair and public hearing by a competent, independent and impartial tribunal in the determination of any criminal charge against him under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the International Covenant on Civil and Political Rights.

[10] See International Court of Justice, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), I.C.J. Reports 2012,* p. 422, in which the Court stated that the prohibition of torture is part of customary international law and it has become a peremptory norm (*jus cogens*) (para. 99).

[11] See opinion No. 39/2016, para. 27.

[12] See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 22.

[13] See opinion No. 53/2013.

46. The Working Group shall refer the present case to the Special Rapporteur on torture and the Special Rapporteur on the independence of judges and lawyers for their further consideration.

47. The Working Group consequently finds that the 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 ratified by Jordan is of such gravity as to give the deprivation of liberty of Mr. Duar an arbitrary character, falling within category III.

Disposition

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

> The deprivation of liberty of Ghassan Mohammed Salim. Duar, being in contravention of articles 3, 5, 6, 9, 10 and 11 of the Universal Declaration of Human Rights and of articles 6, 7, 9, 10, 14 and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

49. The Working Group requests the Government of Jordan to take the steps necessary to remedy the situation of Mr. Duar without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

50. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Duar immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

51. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and to the Special Rapporteur on the independence of judges and lawyers for appropriate actions.

Follow-up procedure

52. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Duar has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Duar;

(c) Whether an investigation has been conducted into the violation of Mr. Duar's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Jordan with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

53. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

54. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

55. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[14]

[*Adopted on 21 April 2017*]

[14] See Human Rights Council resolution 33/30, paras. 3 and 7.