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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session, 18-27 April 2016

Opinion No. 20/2016 concerning Walid Yunis Ahmad (Iraq)

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. The Human Rights Council assumed the mandate in its decision 1/102 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.
2. In accordance with its methods of work (A/HRC/30/69), on 10 November 2015 the Working Group transmitted a communication to the Government of Iraq concerning Walid Yunis Ahmad. The Government has not replied to the communication. 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) (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);

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(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. Walid Yunis Ahmad, born on 10 February 1958, is a national of Iraq.
5. On 6 February 2000, Mr. Ahmad was offered a lift in a car in Erbil. The police stopped the car and found explosives in it. Although Mr. Ahmad denied any knowledge of the explosives, he was arrested and held without charge or trial until 2010.
6. The driver of the car, who was arrested with Mr. Ahmad, was released three months after the arrest.
7. According to the source, the arrest of Mr. Ahmad was related to the fact that he worked for a local television station that was affiliated to the Islamic Movement in Kurdistan, an Islamist opposition political party. Mr. Ahmad was attending a party meeting prior to the arrest.
8. The whereabouts of Mr. Ahmad were only known to his family three years after his arrest and he received a visit from his family for the first time in 2003, through the assistance of the International Committee of the Red Cross. Mr. Ahmad was reportedly held in solitary confinement and was also tortured.
9. According to the source, Mr. Ahmad was later held in solitary confinement again for eight months until April 2009.
10. In June 2010, when asked about the reasons of the detention of Mr. Ahmad, the Kurdistan Regional Government indicated that, despite having no formal charges against him, he could not be released because he was considered a “dangerous person”.
11. In August 2010, after having been detained for 10 years without charge or trial, Mr. Ahmad was officially charged under the 2006 Anti-Terrorism Law with “sending orders and instructions from prison to his followers in Kirkuk and Mosul to carry out terrorist attacks in Dohuk in 2009”. The charge was based on information provided by so-called secret informants who were not identified and who did not appear in court. No evidence was produced to support the charge or to prove that Mr. Ahmad had sent letters from prison.
12. Mr. Ahmad only learned about the charge against him in January 2011. He was then transferred to a prison in Dohuk.
13. On 17 March 2011, Mr. Ahmad was sentenced by the Criminal Court of Dohuk to five years’ imprisonment. The court only took into account Mr. Ahmad’s pretrial detention as from the moment that he was charged in 2010, which excluded the first 10 years of imprisonment that he had served without charge.
14. On 12 June 2011, Mr. Ahmad was transferred to Al-Mahata prison in Erbil, where he was held until early 2014 when he was transferred to Al-Zerka prison in Dohuk. Despite a written order received by Al-Mahata prison stating that Mr. Ahmad was eligible for early release, he nevertheless remained in prison. According to the prison authorities, Mr. Ahmad was not eligible for early release owing to the terrorism charge against him and the fact that he had to serve the remainder of his sentence.

15. On 19 September 2011, his sentence was upheld by the Court of Cassation.

16. Mr. Ahmad was due to be released in March 2015. However, at the time that the present communication was received, he was still in detention without being given a reason for the prolongation of his detention.

17. The source submits that the continued deprivation of liberty of Mr. Ahmad is arbitrary and falls under categories I, II and III of the arbitrary detention categories defined by the Working Group. In its view, Mr. Ahmad's imprisonment from 6 February 2000 to August 2010 without charge or trial and his continued detention after the completion of his sentence in March 2015 are without any legal basis and therefore in violation of article 9 (1) of the International Covenant on Civil and Political Rights and fall under category I of the arbitrary detention categories defined by the Working Group.

18. The source further submits that the arrest and deprivation of liberty of Mr. Ahmad result from his exercise of his right to freedom of peaceful assembly and association, as guaranteed by article 20 of the Universal Declaration of Human Rights and articles 21 and 22 of the Covenant. The arrest and deprivation of liberty of Mr. Ahmad are related to his association with the Islamic Movement in Kurdistan, a legal Islamist opposition political party.

19. The source argues that Mr. Ahmad was not guaranteed the international norms of due process and a fair trial during the period of the deprivation of his liberty, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant. It submits that Mr. Ahmad was held in pretrial detention for 10 years without charge or trial and that he was only informed of the charges against him five months after he had been officially charged, all of which are in violation of articles 9 (2)-(4) and 14 (3) (a) (c) of the Covenant.

Response from the Government

20. In the communication that it sent to the Government of Iraq on 10 November 2015, the Working Group requested detailed information about Mr. Ahmad's situation and the legal provisions justifying his continued detention. The Working Group also requested further details regarding the conformity of his trial with international law, in particular the norms of international human rights law, which Iraq has ratified.

21. The Working Group regrets that it did not receive a reply from the Government, nor did the Government request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group's methods of work. Further to paragraph 15 of its methods of work, if a reply is not received from the Government, the Working Group may render an opinion on the basis of the information obtained from the source.

Discussion

22. In its jurisprudence, the Working Group has 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 rests upon the Government if it wishes to refute the allegations.¹ In the present case, the Government has chosen not to challenge the prima facie credibility of the allegations made by the source.

¹ See, for example, A/HRC/19/57, para. 68; and opinion No. 52/2014.

23. The submissions in the present case demonstrate compelling evidence that the deprivation of Mr. Ahmad's liberty has been ongoing for a considerable period of time without any legal basis.

24. The factual elements and considerations that led to this observation include the following:

(a) On 6 February 2000, Mr. Ahmad was arrested and detained when explosives were found in the car of a person who had offered him a lift. Despite his denial of any knowledge of the presence of explosives in the car, he was arrested and held without charge or trial for about 10 years, until 2010;

(b) The duration, severity and the disproportional nature of the deprivation of his liberty, which was imposed without any legal proceedings is conclusive evidence that there was no legal basis for it. The court decision which excluded the 10 years of imprisonment already served in its computation of the sentence is also a matter of serious concern;

(c) In June 2010, after he had served 10 years in prison with no formal charge, the Kurdistan Regional Government indicated that he could never be released because he was a "dangerous" person, which strongly suggests that his detention derived from other than legal considerations;

(d) Despite a written order for his early release, Mr. Ahmad was still detained from 12 June 2011 to early 2014 by the authorities of Al-Mahata prison, who declined to release him because of the terrorist charges brought against him.

25. The overly broad provisions of the 2006 Anti-Terrorism Law and its excessive application may have contributed to making Mr. Ahmad's detention unlawful and devoid of a legal basis in the light of international norms on detention, including the International Covenant on Civil and Political Rights to which the Government of Iraq is a party, particularly given the obvious and grave miscarriage of justice that lasted throughout Mr. Ahmad's judicial process:

(a) The denial of an early release by the prison authorities, which was based on terrorism-related charges, has resulted in Mr. Ahmad being detained for an unknown period of time and without any legal basis;

(b) Although Mr. Ahmad was due to be released in March 2015, at the time that the present communication was received, he was still in detention without being informed of the reason.

26. In the light of the foregoing factual and legal considerations, the Working Group considers that the imprisonment of Mr. Ahmad from 6 February 2000 to August 2010, in particular, and his continued detention after the completion of his sentence in March 2015 are without any legal basis and thus in violation of article 9 (1) of the Covenant and fall under category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

27. Category I of the arbitrary detention categories defined by the Working Group refers to a situation where 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).

28. The Working Group recalls Human Rights Committee general comment No. 35 (2014) on liberty and security of person, in which the Committee states that arrest or detention that lacks any legal basis is arbitrary. It also states that unauthorized confinement of prisoners beyond the length of their sentences is arbitrary as well as unlawful and that continued confinement of detainees in defiance of a judicial order for their release is arbitrary as well as unlawful (para. 11).

29. With regard to category II of its arbitrary detention categories, the Working Group finds that the deprivation of Mr. Ahmad's liberty is linked to his association with a local television station that is affiliated to the Islamic Movement in Kurdistan, an Islamist opposition political party. It notes that Mr. Ahmad was arrested shortly after he had attended a party meeting.

30. In view of these circumstances, the Working Group confirms that the arrest and deprivation of liberty of Mr. Ahmad resulted from his exercise of his right to freedom of peaceful assembly and association guaranteed by article 20 of the Universal Declaration of Human Rights and articles 21, 22 and 25 of the International Covenant on Civil and Political Rights. It affirms that the deprivation of his liberty falls within category II of its arbitrary detention categories.

31. With regard to category III of its arbitrary detention categories, the Working Group considers that it is evident that Mr. Ahmad has not been treated in accordance with the international norms of due process and the guarantees to a fair trial during the period that he has been deprived of his liberty, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant. The relevant, but not exhaustive, factual considerations are set out below:

(a) Mr. Ahmad was held in pretrial detention for 10 years without charge or trial and was only informed of the charges against him five months after he had been officially charged;

(b) He was denied visits by his family for three years, placed in solitary confinement and subjected to torture. He was again placed in solitary confinement for eight months from September 2008 to April 2009;

(c) In August 2010, after 10 years' imprisonment, Mr. Ahmad was charged under the 2006 Anti-Terrorism Law with sending orders and instructions to his followers to carry out terrorist attacks in Dohuk in 2009. The charge was based solely on information provided by unidentifiable secret informants who did not appear in court. Moreover, the allegation that he sent letters from prison was not substantiated by any evidence;

(d) After being imprisoned for 11 years with no legal basis, Mr. Ahmad learned of the charges against him in January 2011 without being offered the opportunity to defend himself;

(e) Despite a written order for early release, the authorities of Al-Mahata prison continued to detain him, stating that he was a dangerous person;

(f) Furthermore, although Mr. Ahmad was due to be released in March 2015, he still remains in detention without being informed of the reason for his detention.

Disposition

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

The deprivation of liberty of Walid Yunis Ahmad since 6 February 2000 is arbitrary, being in contravention of articles 9, 10 and 20 of the Universal Declaration of Human Rights and articles 9 (1)-(4), 14 (3) (a) (c), 21, 22 and 25 of the International Covenant on Civil and Political Rights and falls within categories I, II and 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 Iraq to take the steps necessary to remedy the situation of Walid Yunis

Ahmad without delay and bring it into conformity with the standards and principles enshrined in the International Covenant on Civil and Political Rights.

34. Taking into account all the circumstances of the case, the Working Group considers that the appropriate remedy would be to immediately release Walid Yunis Ahmad and provide him with full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition in accordance with article 9 (5) of the International Covenant on Civil and Political Rights.

35. In accordance with paragraph 33 (a) of its methods of work (A/HRC/30/69), the Working Group considers it appropriate to refer the allegations of torture and other ill-treatment that was inflicted upon the detainee to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action

[Adopted on 27 April 2015]
