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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-eighth session, 13–17 November 2023

Opinion No. 57/2023 concerning Ahmad Abdulrazzak Basha Kazim (Iraq)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,¹ on 2 August 2023 the Working Group transmitted to the Government of Iraq a communication concerning Ahmad Abdulrazzak Basha Kazim. The Government did not reply to the communication within the established time frame. 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,

¹ [A/HRC/36/38](#).

or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

1. Submissions

(a) Communication from the source

4. Ahmad Abdulrazzak Basha Kazim is an Iraqi national born in 1984. He works in a restaurant and usually resides in Baqubah, Diyala Governorate.

(i) Arrest and detention

5. According to the source, at midnight on 28 September 2012, Mr. Kazim was arrested at his home by members of the Anti-Crime Directorate of the Ministry of the Interior. Some of the arresting forces were wearing civilian clothes, while others were in military uniform. The arresting forces did not present Mr. Kazim with an arrest warrant, nor did they inform him of the charges against him at the time of his arrest.

6. The source notes that Mr. Kazim's family believes that the initial reason for his arrest was information obtained by torturing another detainee. In 2020, both Mr. Kazim and the other detainee were sentenced in the same case on charges of setting up explosive devices. In addition, in 2007, Mr. Kazim was arrested by coalition forces during mass arrests in Iraq and released in 2010. After his release, he was not provided with a document stating that he had been released from the detention centre. His family believes that he still has a security record, which could be a reason for his arrest in 2012 in the present case.

7. Since his arrest in 2012, Mr. Kazim has reportedly been detained in the anti-crime office in Diyala, the al-Sharqi police station in Baqubah and the al-Taji prison in Baghdad, and was recently relocated to Nasiriyah prison in southern Iraq, where he is currently being held.

8. The source contends that during the first 30 days of Mr. Kazim detention, he was held incommunicado as no one, including his family and his lawyer, was allowed to visit him. He was also placed in solitary confinement. During that period, Mr. Kazim was held at the anti-crime office in Diyala. During the first three days of his detention, he was reportedly interrogated and subjected to torture by members of the anti-crime office. In 2016 and 2018, he was allegedly subjected to further acts of torture.

9. The source submits that members of the Diyala anti-crime office subjected Mr. Kazim to electric shocks, flogging with electric cables, hanging by the hands and severe beatings on the head, shoulders and feet. He was also kept in the toilet for a whole day. In order to stop the torture, Mr. Kazim was forced to sign a document confessing that he and others had set up explosive devices.

10. When Mr. Kazim's family visited him for the first time in late October 2012, they saw that he had dislocated shoulders and a perforated eardrum. When his family visited him in 2016 in the al-Sharqi police station in Baqubah, they again noticed signs of torture on his body, such as scars on his left femur and on his right forearm. They reported their observations to the Baghdad office of the Iraqi High Commission for Human Rights. A delegate from the High Commission was able to visit Mr. Kazim while he was detained in the al-Sharqi police station. However, for fear of reprisals, Mr. Kazim did not speak about the torture to which he was being subjected. Currently, Mr. Kazim suffers from inflammation of the kidneys and from hearing loss. During his imprisonment, he has reportedly not been provided with appropriate medical treatment.

11. As reported by the source, on 29 November 2016 at his request, Mr. Kazim's allegations of torture were examined by an official forensic body, the Detainees' Examination Committee. On 4 December 2016, the Committee presented the results of the examination to the al-Sharqi police station, which included the following signs of torture: (a) traces of colour changes on the left and right forearm, the sides of the left foot and the side of the right leg; and (b) a small scar on the left femur and the right forearm. In the report, the Committee estimated that the signs identified dated back more than three months.

12. Following another request by Mr. Kazim, he was examined again by the Detainees' Examination Committee on 16 April 2018. On 24 April 2018, the Committee presented the results of its examination to the Directorate of Intelligence and Counter-Terrorism in Diyala, which showed irregular circular colour changes spread over most parts of the body. In the report, the Committee estimated that the signs identified dated back more than two months.

13. The source notes that on 3 April 2023, one of the investigative officers was sentenced to seven years' imprisonment on the basis of accusations related to intimidating detainees, extracting confessions by force and intimidating the families of detainees.

(ii) *Trial proceedings*

14. The source states that three days after his arrest, Mr. Kazim was brought before an investigating judge in Diyala for the first time. He was also informed for the first time of the charges against him and was subsequently placed in pretrial detention. His lawyer was able to attend the first hearing before the judge, but Mr. Kazim was not allowed to speak to the lawyer and could therefore not tell him about the torture to which he had been subjected.

15. According to the source, the officer accompanying Mr. Kazim to the hearing made threats to him not to speak about the violations he had suffered. For fear of being tortured again, Mr. Kazim confirmed the truth of all the accusations made against him. After the first session, the lawyer apologized to Mr. Kazim's family and informed them that he was not able to do anything further on the case because Mr. Kazim had accepted all the prosecutorial charges in court. After the session, it is reported that no lawyer was able to meet Mr. Kazim in the various detention centres and prisons where he was detained. In addition, his legal counsel, later appointed by the court, did not have access to his case file and was not able to speak to Mr. Kazim alone.

16. The source reports that on 21 November 2017, Mr. Kazim was acquitted of terrorism charges by the second chamber of the Diyala Criminal Court (case 1). However, because of the confessions he had made under torture, he reportedly faced charges on other grounds and was not released.

17. On 20 February 2020, Mr. Kazim was allegedly sentenced by the first chamber of the Diyala Criminal Court (case 2), pursuant to articles 2 (1) and (7) and 4 (1) of the Anti-Terrorism Act, to life imprisonment (20 years) plus a further 15 years, pursuant to articles 87 (1) and 132 (1) of the Penal Code. During his trial before the first chamber, Mr. Kazim alleged that he had been subjected to torture and asked that his confessions obtained under torture be annulled. The court considered the annulment of the confessions, but only with regard to one accusation, which related to setting up an explosive device in Baqubah district on 11 September 2011. Mr. Kazim was nevertheless sentenced for setting up explosive devices near the reform prison in Baqubah on 21 July 2011 and a police patrol in Baqubah on 25 May 2012.

18. The source argues that the only evidence that formed the basis of Mr. Kazim's conviction were statements he gave under torture, a confession by another detainee, who was reportedly also subjected to torture, and a statement by the legal representative of the Diyala Police Directorate.

19. According to the source, on 8 April 2021, Mr. Kazim's lawyer submitted a request for a retrial, pursuant to the General Amnesty Act No. 27 of 2016. On 25 May 2021, the first central committee that deals with the implementation of the General Amnesty Act found the lawyer's request admissible but rejected it on the merits, finding that the legal evidence against Mr. Kazim was sufficient to preclude a retrial.

20. The source notes that on 8 August 2021, Mr. Kazim was acquitted of terrorism charges by the third chamber of the Karkh Criminal Court (case 3). In 2023, investigative judges reportedly ordered that two new cases be opened against Mr. Kazim for terrorism offences (cases 4 and 5). To date, he has not been tried for those two cases, nor has he been informed of the full list of charges against him.

(iii) *Legal analysis*

a. Category I

21. According to the source, Mr. Kazim was not presented with a warrant upon his arrest, nor was he arrested in flagrante delicto, which might have obviated the need for a warrant. In addition, he did not have immediate access to legal counsel, nor was he permitted to promptly inform his family of his arrest and detention.

22. As such, the source submits that the deprivation of Mr. Kazim's liberty was not grounded in law, in breach of articles 3 and 9 of the Universal Declaration of Human Rights, article 9 of the Covenant, article 14 of the Arab Charter on Human Rights and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

23. According to the source, Mr. Kazim was not given prompt access to an independent, objective and impartial authority to review the legality of his pretrial detention. The source recalls that persons held in pretrial detention must be brought promptly before a judge or another official authorized by law to exercise judicial control over pretrial detention. "Promptly" is understood as not exceeding a few days and ideally within 48 hours.

24. The source argues that the Iraqi Code of Criminal Procedure provides that the primary responsibility for the interrogation of suspects is either with the investigating judge or with a judicial investigator under the supervision of an investigative judge. It also provides that the interrogation must happen within 24 hours of the arrest.² As Mr. Kazim was presented before the investigative judge for the first time three days after his arrest, the source argues that his right to be brought promptly before a judge was violated.

25. The source further submits that the authority reviewing the detention must be independent, objective and impartial in relation to the issues with which it is dealing. The right of the detainee to have access to an authority which is independent, objective and impartial cannot effectively be guaranteed if the reviewing authority is the investigative judge. Given the fact that Mr. Kazim was set to appear before the investigative judge for his detention to be reviewed, the source argues that this requirement was equally undermined.

26. In the light of the above, the source submits that the authorities violated Mr. Kazim's right to promptly access an independent, objective and impartial authority to review his pretrial detention, in violation of articles 51 and 123 of the Iraqi Code of Criminal Procedure, article 9 (3) of the Covenant, article 14 (5) of the Arab Charter on Human Rights and principles 11 (1) and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

27. According to the source, Mr. Kazim was held in incommunicado detention. The source recalls principle 15 of the Body of Principles and rules 41 (5), 54, 58, 61 and 119 of the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and submits that persons deprived of their liberty have a right to communicate with and be visited by their family, friends, medical staff and lawyers, based on the conditions established by law.

28. The source submits that Mr. Kazim was held incommunicado for the first 30 days of his arrest, during which he was subjected to acts of torture and ill-treatment. The source argues that he did not have access to legal counsel, which also violated his right to challenge the legality of his detention (habeas corpus). The source recalls that unlawful restrictions on the right to contact with the outside world, particularly when prolonged, may constitute ill-treatment or even torture.

29. The source therefore submits that the incommunicado detention of Mr. Kazim for a period of 30 days violated the prohibition of ill-treatment under article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and possibly also violated the prohibition against torture under article 2 of the Convention. The source contends that the authorities also violated Mr. Kazim's right to have contact with the

² Articles 51 and 123 of the Code of Criminal Procedure.

outside world and, consequently, his right to challenge the legality of his detention pursuant to article 9 (4) of the Covenant, article 14 (6) of the Arab Charter on Human Rights and principles 11 (1) and 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

30. According to the source, article 109 of the Iraqi Code of Criminal Procedure provides that the investigative judge is empowered to take decisions on the necessity of pretrial detention in order to prevent flight and interference with justice. The decisions must be reviewed every 15 days and pretrial detention should not exceed six months. The investigative judge may submit an application to the felony court to extend the maximum period, which must not exceed one quarter of the permissible sentence. The source reports that in the present case, Mr. Kazim was held in pretrial detention for the first case from 28 September 2012 until he was acquitted on 21 November 2017. He was also held in pretrial detention for the second case from 21 November 2017 until he was sentenced on 20 February 2020.

31. The source submits that because the maximum penalty under article 4 (1) of the Anti-Terrorism Act of 2005, read together with articles 87 (1) and 132 (1) of the Penal Code, amounts to 25 years, it cannot be argued that Mr. Kazim's sentence exceeded one quarter of the permissible sentence. However, the source notes that it is not clear whether the investigative judge submitted an application to the felony court to extend the maximum period and whether he had substantial reasons for believing that, if released, Mr. Kazim would abscond, commit a serious offence, interfere with the investigation or the course of justice, or pose a serious threat to public order. According to the source, it is also unclear whether there were possible alternative measures to address those concerns.

32. The source submits that, unless proven otherwise, less restrictive measures pending trial were not examined by the investigative judge in the present case, contrary to the principle of necessity of detention.

33. The source claims that in the present case there is also a violation of the *lex certa* principle, as the Anti-Terrorism Act, on which Mr. Kazim's sentence is based, relies on a broad, overly vague definition of terrorism. The source explains that although article 1 of the Act was not mentioned in Mr. Kazim's sentence, that provision is the normative reference for the other provisions set forth in the law.

34. The source argues that article 1 of the Anti-Terrorism Act is not in line with the provisions of the International Convention for the Suppression of the Financing of Terrorism, which Iraq ratified in 2012, as it encompasses serious and petty crimes, ranging from mass killings to vandalism.³

35. The source further recalls that, rather than precisely defining the necessary criminal intent, article 1 of the Anti-Terrorism Act refers in a circular manner to acts committed to achieve "terrorist goals". The source recalls the concerns expressed by the Human Rights Committee that the Act provides for a broad definition of terrorism that is susceptible to wide interpretation and that the death penalty is mandatory for a wide range of activities defined as terrorist acts.⁴

36. The source notes that Mr. Kazim was sentenced to a total of 35 years' imprisonment pursuant to articles 2 (1) and (7) and article 4 (1) of the Anti-Terrorism Act, read together with articles 87 (1) and 132 (1) of the Penal Code. The source recalls that article 2 (1) of the Act appears to cover all acts of violence or threats to persons or property committed during the execution of a terrorist act. However, it also states that this applies regardless of motive. As a result, an individual can be imprisoned for life for a simple act of vandalism perpetrated without any intent to terrorize the population or compel government action, or with any knowledge of such activities.

37. The source submits that the death penalty for Mr. Kazim was replaced by life imprisonment pursuant to article 132 (1) of the Penal Code.

³ A/HRC/38/44/Add.1, para. 47.

⁴ CCPR/C/IRQ/CO/5, para 9.

38. The source further submits that the criminalization of organizing, leading or participating in an armed terrorist gang could potentially sweep within its broad ambit legitimate activities or activities conducted without criminal intent. Similarly, the source considers that the reference to acts committed with terrorist motives in article 2 (7) of the Anti-Terrorism Act is ambiguous, because no clear definition of terrorism is provided. The source submits that in the absence of a clear definition of terrorism and terrorist motives, the distinction between acts proscribed by this law and less serious crimes cannot be established.

39. In the light of the above, the source submits that articles 2 (1) and (7) of the Anti-Terrorism Act do not conform with the principle of the legality of offences and penalties, enshrined in article 11 (2) of the Universal Declaration of Human Rights, article 15 of the Covenant, and article 15 of the Arab Charter on Human Rights.

b. Category III

40. The source recalls that every person deprived of their liberty has the right to communicate with a counsel of their own choosing within 48 hours of their arrest at the latest,⁵ and at all stages of the procedure.⁶ It adds that anyone charged with a criminal offence has the right to adequate time and facilities for the preparation of their defence and the accused must be able to communicate privately with counsel.⁷ Furthermore, it is the duty of the competent authorities to ensure that lawyers have access to the appropriate information, files and documents in their possession or control in due time.⁸

41. The source reports that the Iraqi authorities systematically delay access to a lawyer until after the interrogation of a suspect. It further reports that detainees often have no contact with court-appointed lawyers prior to or during their trial and that such lawyers regularly show no noticeable substantive involvement, which leaves defendants de facto without legal representation.

42. The source submits that some detainees believe that requesting a lawyer might negatively impact their case during the investigation, which the source argues indicates a climate of intimidation.

43. In line with the information set out above, the source submits that Mr. Kazim was not given prompt access to a legal counsel of his choice, nor was he able to have confidential communications with the court-appointed lawyer before and during the trial to prepare for his defence. Three days following his arrest, he was reportedly brought before an investigative judge accompanied by his lawyer. However, it is alleged that Mr. Kazim and his lawyer were not able to speak privately before the session. The source explains that Mr. Kazim could not speak freely about his time in detention and the acts of torture he had been subjected to, owing to the presence of one of the officials who had tortured him. According to the source, following that session, no lawyer was able to meet Mr. Kazim in the various detention centres and prisons where he was detained.

44. The source submits that the deprivation of Mr. Kazim's right to legal assistance by a counsel of his choice at any time during his detention and without delay violates article 14 (3) of the Covenant, article 16 (2) of the Arab Charter on Human Rights and principles 15, 17, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

45. The source further submits that the principle of equality of arms was violated by other circumstances, namely that his legal counsel, who was appointed by the court, allegedly did not have access to his case file and was not able to communicate with his client privately. Reportedly, neither Mr. Kazim nor his counsel were able to adduce and challenge evidence, or to cross-examine witnesses. According to the source, the precarious detention conditions to which Mr. Kazim was subjected to are, in addition, likely to have negatively affected and weakened his preparation for trial, which made it impossible to ensure a fair trial.

⁵ Basic Principles on the Role of Lawyers, principle 7.

⁶ *Ibid.*, principle 1.

⁷ *Ibid.*, principle 22.

⁸ *Ibid.*, principle 21.

46. The source submits that during the first days of his arrest and later in 2016 and 2018, Mr. Kazim was subjected to severe acts of torture and ill-treatment, which led him to sign statements under duress. Because of that, he reportedly requested to be examined in 2016 and 2018, and received medical reports that proved that he had been subjected to torture. Despite this, the source notes that the confessions were used as evidence against him in court, in addition to the confessions that were made by another detainee, allegedly under torture, in violation of the exclusionary rule enshrined in article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

47. According to the source, during his trial before the first chamber of the Diyala Criminal Court, Mr. Kazim alleged that he had been subjected to torture and asked for his confessions to be annulled. The court considered the annulment of the confessions, but only with regard to one accusation that related to setting up an explosive device in Baqubah district on 11 September 2011. The source explains that Mr. Kazim was nevertheless sentenced for setting up explosive devices on 21 July 2011 near the reform prison in Baqubah and a police patrol in Baqubah on 25 May 2012.

48. The source also submits that Mr. Kazim was recently held in al-Nasiriyah central prison where inmates are subjected to harsh conditions and exposed to circumstances that amount to torture and/or ill-treatment.

49. The source therefore submits that the treatment of Mr. Kazim violates the absolute prohibition of torture, as well as the prohibition against taking undue advantage of the situation of a detained person for the purpose of compelling them to confess, pursuant to article 5 of the Universal Declaration of Human Rights, articles 2, 15 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 8 of the Arab Charter on Human Rights and principles 6 and 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

50. The source recalls that a person accused of a criminal offence has the right to be tried without undue delay. The source notes that this guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should start, but also concerns the time that elapses until the final judgment on appeal is rendered, to avoid keeping individuals for too long in a state of uncertainty. The period that constitutes a “reasonable time” within the meaning of article 9 (3) of the Covenant must be assessed on a case-by-case basis.

51. The source further recalls that in cases involving serious charges, such as murder, and where the accused is denied bail, the individual must be tried in an expeditious manner to the extent possible. The source notes that in the case of a murder suspect held for more than three and a half years before acquittal, the Human Rights Committee has found that the delay between indictment and trial could not be justified.

52. The source submits that Mr. Kazim was initially detained for a period of five years and two months, without any justification. He was acquitted on 21 November 2017. The source argues that this constitutes an “undue delay” amounting to a violation of article 14 (3) (c) of the Covenant. Similarly, it submits that the detention of Mr. Kazim for a period of two years and three months between his arrest and sentence in the second case brought against him in 2020 also violates article 14 (3) (c).

53. In the light of the foregoing, the source submits that the prolonged delay in the treatment of Mr. Kazim’s cases constitutes a violation of his right to be tried without undue delay, as enshrined in articles 9 (4) and 14 (3) (c) of the Covenant, article 14 (6) of the Arab Charter on Human Rights and principles 32 (1) and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

54. The source underlines the serious flaws reportedly affecting the administration of justice in Iraq, including the independence and competence of the courts in charge.⁹

⁹ See communication IRQ 9/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25736>.

55. The source submits that Mr. Kazim was the victim of a “suggestion” made by another detainee under torture, given that the only evidence the Diyala Criminal Court looked into was the information provided by another detainee under torture, as well as the statements signed by Mr. Kazim under duress. Allegedly, Mr. Kazim was never presented with credible evidence related to the accusations brought against him.

56. The source therefore submits that Mr. Kazim was not tried before a competent, independent and impartial tribunal, in violation of article 10 of the Universal Declaration of Human Rights, article 14 of the Covenant and article 13 of the Arab Charter on Human Rights.

(b) Response from the Government

57. On 2 August 2023, the Working Group transmitted the allegations to the Government of Iraq under its regular communication procedure. The Working Group requested the Government to provide detailed information by 2 October 2023 about the current situation of Mr. Kazim and clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Iraq under international human rights law, in particular with regard to the treaties ratified by the State. The Working Group also called upon the Government to ensure Mr. Kazim’s physical and mental integrity.

58. On 11 October 2023, the Government requested an extension of the deadline for its response. Given that the request was made after the initial deadline of 2 October 2023, the Working Group did not grant the extension. The Working Group regrets that the Government did not submit a response within the established time frame.¹⁰

2. Discussion

59. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

60. In determining whether the deprivation of liberty of Mr. Kazim is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for a breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.¹¹ In the present case, the Government has not, in a timely manner, challenged the prima facie credible allegations made by the source.

(a) Category I

61. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis.

62. In the absence of any response from the Government, the Working Group finds credible the source’s prima facie allegations that Mr. Kazim was not presented with an arrest warrant upon his arrest, nor was he arrested in flagrante delicto, which might have obviated the need for a warrant.

63. Pursuant to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. To establish a legal basis for deprivation of liberty, the authorities must invoke that legal basis and apply it to the circumstances of the case.¹² The international norms on detention include the right to be presented with an arrest warrant or the equivalent, except when arrests are made in flagrante delicto, in accordance with articles 3 and 9 of the Universal Declaration on Human Rights, article 9 (1) of the Covenant,¹³ and principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Any form of

¹⁰ The Government replied to the communication on 23 November 2023, after the present opinion had been adopted.

¹¹ [A/HRC/19/57](#), para. 68.

¹² See opinions No. 9/2019, No. 33/2019, No. 46/2019 and No. 59/2019.

¹³ Opinion No. 88/2017, para. 27.

detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles.

64. Further, in order to invoke a legal basis for the deprivation of liberty, the authorities should have informed Mr. Kazim of the reasons for his arrest at the time of the arrest and of the charges against him promptly, in accordance with article 9 (2) of the Covenant.¹⁴ Reportedly, this did not occur. Mr. Kazim was not informed of the reasons for his arrest at the time of the arrest and was only informed of the charges against him when he was brought before an investigative judge three days after his arrest. Without a response from the Government and relying on the source's prima facie credible submissions, the Working Group finds that Mr. Kazim's detention is contrary to article 9 (2) of the Covenant and principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

65. The Working Group also finds credible the source's allegations that there was no prompt access to an independent, objective and impartial authority to review the imposition of pretrial detention. According to the source's un rebutted allegations, Mr. Kazim was brought before an investigative judge and informed of the charges against him for the first time three days after his arrest, and was subsequently placed in pretrial detention. The Working Group considers that, contrary to article 9 (3) of the Covenant, Mr. Kazim was not brought promptly before a judge during his pretrial detention, namely within 48 hours of his arrest, barring absolutely exceptional circumstances, in accordance with the international standard set out in the Working Group's jurisprudence.¹⁵

66. Mr. Kazim was not afforded the right to bring proceedings before a court so that it could decide without delay on the lawfulness of his detention, in accordance with article 9 (4) of the Covenant. Paragraphs 2 and 3 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court affirm that the right to challenge the lawfulness of a detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and that it is essential to preserve legality in a democratic society. That right, which is in fact a peremptory norm of international law, applies to all forms and situations of deprivation of liberty.¹⁶

67. The source contends that during the first 30 days of Mr. Kazim's detention, he was held incommunicado as no one, including his family and his lawyer, was allowed to visit him. In addition, he was reportedly placed in solitary confinement. During this period, Mr. Kazim was reportedly held at the anti-crime office in Diyala. During the first three days of his detention, he was interrogated and subjected to torture by members of the anti-crime office. The Working Group notes the source's submission that Mr. Kazim was subjected to electric shocks, flogging with electric cables, hanging by the hands and severe beatings on the head, shoulders and feet by members of the Diyala anti-crime office. He was also kept in the toilet for a whole day. In order to stop the torture, he was reportedly forced to sign a document confessing that he and others had set up explosive devices. In 2016 and 2018, he was subjected to further acts of torture. It is reported that when Mr. Kazim's family visited him for the first time in late October 2012, he had dislocated shoulders and a perforated eardrum.

68. With regard to Mr. Kazim's incommunicado detention, as the Working Group and other human rights mechanisms have stated, holding persons incommunicado violates their right to challenge the lawfulness of their detention before a court under article 9 (3)¹⁷ and (4)

¹⁴ Opinion No. 10/2015, para. 34. See also opinions No. 45/2019, para. 51, and No. 46/2019, para. 51.

¹⁵ Opinions No. 56/2019, para. 80; No. 76/2019, para. 38; No. 82/2019, para. 76; and No. 78/2020, para. 49.

¹⁶ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 11, and annex, para. 47 (a), and opinion No. 39/2018, para. 35.

¹⁷ Human Rights Committee, general comment No. 35 (2014), para. 35.

of the Covenant.¹⁸ The Working Group considers that the incommunicado detention of Mr. Kazim prevented him from having contact with the outside world, contrary to rules 43 (3) and 58 (1) of the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

69. The Working Group notes that prompt and regular access to family members, independent medical personnel and lawyers is an essential and necessary safeguard for the prevention of torture, as well as for protection against arbitrary detention and infringement of personal liberty,¹⁹ as Mr. Kazim's detention indicates. Given that Mr. Kazim was unable to challenge his detention before a court, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was violated. He was also placed outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

70. Incommunicado detention, especially during the early stages of an investigation, is an environment that is conducive to torture, cruel and inhuman treatment, as it may be used to coerce the individual to confess to the commission of the alleged crimes and admit guilt. The Working Group recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged incommunicado detention in a secret place may amount to torture under article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, noting that torture is most frequently practised during incommunicado detention.²⁰ In the present case, the source has raised further allegations of torture and ill-treatment, which are discussed below.

71. In relation to the allegations of solitary confinement, the Working Group notes that, according to rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible and must be subject to independent review and authorized by a competent authority. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b), 44 and 45 of the Nelson Mandela Rules. The Working Group recalls that the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment has deemed that prolonged solitary confinement in excess of 15 days, at which point some of the harmful psychological effects of isolation can become irreversible, may amount to torture under article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²¹

72. For those reasons, the Working Group finds that the Government failed to establish a legal basis for Mr. Kazim's arrest and detention. His detention is thus arbitrary under category I.

73. The source also claims that in the present case there is a violation of the *lex certa* principle, as the Anti-Terrorism Act on which Mr. Kazim's sentence is based relies on a broad, overly vague definition of terrorism. It is noted that although article 1 of the Act was not mentioned in Mr. Kazim's sentence, the provision in article 1 is the normative reference for the other provisions set forth in the law. The source argues that article 1 of the Act is not in line with the International Convention for the Suppression of the Financing of Terrorism, which Iraq ratified in 2012, and that it encompasses serious and petty crimes, ranging from mass killings to vandalism.²² The source further contends that rather than precisely defining the necessary criminal intent, article 1 refers in a circular manner to acts committed to achieve "terrorist goals".

74. The source also recalls concerns that the Anti-Terrorism Act provides for a broad definition of terrorism that is susceptible to wide interpretation and that the death penalty is

¹⁸ See opinions No. 9/2019, No. 44/2019, No. 45/2019, No. 25/2021 and No. 30/2021.

¹⁹ Opinion No. 34/2021, para. 77.

²⁰ A/56/156, paras. 14 and 39 (f); and Human Rights Committee, general comment No. 35 (2014), paras. 35 and 56. See also General Assembly resolution 68/156.

²¹ A/63/175, para. 56; A/66/268, para. 61; General Assembly resolution 68/156; A/56/156, paras. 14 and 39 (f); and Human Rights Committee, general comment No. 35 (2014), para. 35.

²² A/HRC/38/44/Add.1, para. 47.

mandatory for a wide range of activities defined as terrorist acts.²³ The source notes that Mr. Kazim was sentenced to a total of 35 years of imprisonment on the basis of articles 2 (1) and (7) and article 4 (1) of the Anti-Terrorism Act. It notes that article 2 (1) of the Act appears to cover all violence or threats to persons or property, committed during the execution of a terrorist act. However, the provision also states that this applies regardless of motive. As a result, an individual can be sentenced to life imprisonment for a simple act of vandalism perpetrated without any intent to terrorize the population or compel government action, or with any knowledge of such activities.

75. The source also submits that the criminalization of organizing, leading or participating in an armed terrorist gang could potentially sweep within its broad ambit legitimate activities or activities conducted without criminal intent, due to the vague definition of terrorism. Similarly, the reference to acts committed with terrorist motives in article 2 (7) of the Anti-Terrorism Act is ambiguous, because no clear definition of terrorism is provided. In the absence of a clear definition of terrorism and terrorist motives, the distinction between acts proscribed by the Act and less serious crimes cannot be established. In the light of the above, the source submits that article 2 (1) and (7) of the Anti-Terrorism Act violates the principle of legality of offences and penalties enshrined in article 11 (2) of the Universal Declaration of Human Rights, article 15 of the Covenant and article 15 of the Arab Charter on Human Rights.

76. The Working Group notes these arguments and refers the case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for appropriate action. In that regard, it recalls that according to the former Special Rapporteur on extrajudicial, summary or arbitrary executions, the Anti-Terrorism Act is both vague and overly broad and encompasses serious and petty crimes, ranging from killings to vandalism. Its definition of terrorism is not in line with the International Convention for the Suppression of the Financing of Terrorism that Iraq ratified in 2012.²⁴

(b) Category III

77. The Working Group will now consider the allegations put forward by the source in relation to violations of Mr. Kazim's rights to due process and a fair trial under category III.

78. The source submits that Mr. Kazim was not given prompt access to a legal counsel of his choice, nor was he able to have confidential communications with the court-appointed lawyer before and during the trial to prepare for his defence. Three days after his arrest, he was reportedly brought before an investigative judge, accompanied by his lawyer, although they were not able to speak privately before the session in front of the judge. According to the source, Mr. Kazim was precluded from speaking freely about the acts of torture he had been subjected to due to the presence of one of the officials who had tortured him earlier. Since then, no lawyer has reportedly been able to meet Mr. Kazim in the various detention centres and prisons where he has been detained. The source further submits that Mr. Kazim's right to equality of arms was violated by the fact that his court-appointed lawyer did not have access to his case file and was not able to speak to him privately.

79. Based on the source's unrefuted submissions, the Working Group finds a violation of Mr. Kazim's right to legal assistance at all times, which is inherent in the right to liberty and security of person, and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, which is guaranteed by articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights, article 9 and article 14 of the Covenant and principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group recalls that persons deprived of their liberty should have the right to legal assistance by a counsel of their choice at any time during their detention, including immediately after the moment of apprehension. Upon apprehension, all persons should be promptly informed of this right. The right to communicate with counsel, as set out in article 14 (3) (b) of the Covenant, entails the

²³ CCPR/C/IRQ/CO/5, para. 9.

²⁴ A/HRC/38/44/Add.1, para. 47.

requirement that counsel should be able to meet clients in private and communicate with the accused in conditions that fully respect the confidentiality of their communications.²⁵ As this was not observed in the present case, the Working Group finds a violation of article 14 (3) (b) of the Covenant. The Working Group notes with concern a report of the United Nations Assistance Mission for Iraq (UNAMI) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) that sets out systematic violations of the right to access counsel, indicating a climate of intimidation.²⁶ In that regard, the Working Group recalls the source's submission that some detainees believe that requests for a lawyer might negatively impact their case during the investigation and that this belief indicates a climate of intimidation.

80. The source further submits that Mr. Kazim's court-appointed legal counsel did not have access to his case file. The Working Group recalls that, in principle, access to the case file must be provided from the outset.²⁷ Every individual deprived of liberty has the right to access material related to their detention.²⁸ However, that right is not absolute and the disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, and if the State has demonstrated that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.²⁹ Noting this and in the absence of a rebuttal from the Government, the Working Group finds that Mr. Kazim's rights under articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1) and (3) (b) and (e) of the Covenant to a fair hearing and to adequate time and facilities for the preparation of a defence were violated.³⁰

81. The source also submits that Mr. Kazim was denied the possibility to adduce or challenge evidence or cross-examine witnesses during his trial. As the Human Rights Committee states, in accordance with the right to equality before courts and tribunals and to a fair trial, there is a strict obligation to respect the right to have witnesses admitted that are relevant for the defence and for the accused to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.³¹ Noting the lack of any response from the Government refuting the source's claims, the Working Group considers that Mr. Kazim was denied such a right and that such a blanket refusal to allow any witnesses on behalf of the defence bears the hallmarks of serious denial of equality of arms in the proceedings and constitutes a violation of article 14 (3) (e) of the Covenant.³²

82. The source submits that the precarious detention conditions to which Mr. Kazim was subjected are likely to have negatively affected his preparation for the trial, making it impossible to ensure a fair trial. In that regard the Working Group recalls the detailed allegations of serious and prolonged torture and mistreatment made by the source, which are not refuted by the Government. Reportedly, in the first days of his arrest and later in 2016 and 2018, Mr. Kazim was subjected to severe acts of torture and ill-treatment. His confessions were reportedly signed under duress. Because of that, he requested to be examined in 2016 and 2018 and received medical reports that proved that he had been subjected to torture. The source argues that these confessions were nonetheless used in court as evidence against Mr. Kazim, in addition to the confessions that were made by another detainee under torture. According to the source, during his trial before the first chamber of the Diyala Criminal Court, Mr. Kazim alleged that he had been subjected to torture and asked

²⁵ Human Rights Committee, general comment No. 32 (2007), para. 34. See also *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997), para. 8.5; *Siragev v. Uzbekistan* (CCPR/C/85/D/907/2000), para. 6.3; *Khomidova v. Tajikistan* (CCPR/C/81/D/1117/2002), para. 6.4; and opinions No. 42/2018, No. 83/2018 and No. 67/2020.

²⁶ UNAMI and OHCHR, "Human rights in the administration of justice in Iraq: legal conditions and procedural safeguards to prevent torture and ill-treatment", pp. 12 and 13.

²⁷ See opinions No. 78/2019, No. 29/2020, No. 67/2020 and No. 77/2020.

²⁸ Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court, principle 12 and guidelines 11 and 13.

²⁹ *Ibid.*, guideline 13.

³⁰ Opinions No. 18/2018, para. 53; No. 78/2018, paras. 78 and 79; and No. 71/2021, para. 86.

³¹ Human Rights Committee, general comment No. 32 (2007), para. 39.

³² Opinion No. 71/2021, para. 87.

for his confessions to be annulled. The court considered the annulment of his confessions, but only with regard to one of the accusations he faced.

83. The Working Group has consistently concluded in its opinions that when it is not possible for a person who is subjected to torture or other forms of ill-treatment or punishment to prepare an adequate defence for a trial that respects the equality of both parties before the judicial proceedings, that amounts to a violation of the right to a fair trial.³³ The Working Group expresses its gravest concern at the allegations of torture and ill-treatment, which appear to constitute a *prima facie* breach of the absolute prohibition of torture, a peremptory norm of international law.³⁴ The Working Group considers that the treatment to which Mr. Kazim was subjected substantially undermined his capacity to defend himself in any subsequent judicial proceedings, contrary to article 14 of the Covenant.³⁵

84. Further, the extraction of forced confessions violates rule 1 of the Nelson Mandela Rules, principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 5 of the Universal Declaration of Human Rights and the *jus cogens* norm that it enshrines. In the Working Group's view, torture or ill-treatment of detainees is not only a grave violation of human rights, but it also seriously undermines the fundamental principles of a fair trial, as it can compromise the ability to defend oneself, especially given the right not to be compelled to testify against oneself or to confess guilt.³⁶ The Working Group considers that confessions made in the absence of legal counsel, as was reportedly the case here, are inadmissible as evidence in criminal proceedings.³⁷

85. As a result, the Working Group finds that Mr. Kazim's right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights was violated. The use of a confession extracted through ill-treatment is also contrary to principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.³⁸ Moreover, the prosecutor was obliged to investigate and report on the allegations of torture and forced confessions, in accordance with guidelines 12 and 16 of the Guidelines on the Role of Prosecutors.³⁹ The Working Group recalls that according to article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, any statement that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.⁴⁰ It reiterates that the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders any trial proceedings inherently unfair, regardless of whether other evidence was available to support the verdict.⁴¹ The Working Group further recalls that the admission of evidence from third parties extracted through torture also violates article 14 (3) (g) of the Covenant.⁴² The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

86. The source notes that a person accused of a criminal offence has the right to be tried without undue delay. Allegedly, Mr. Kazim was initially detained for a period of five years and two months, without any explanation justifying the delay, and acquitted on 21 November 2017. The Government has not disputed this period, nor justified the delay. The reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and

³³ Opinions No. 32/2019, para. 42, and No. 34/2021, para. 87.

³⁴ Opinion No. 39/2018, para. 42.

³⁵ Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8.

³⁶ Opinions No. 22/2019, para. 78; No. 26/2019, para. 104; and No. 56/2019, para. 88.

³⁷ A/HRC/45/16, para. 53.

³⁸ Opinions No. 6/2017, para. 43; No. 29/2017, para. 64; and No. 39/2018, para. 42.

³⁹ Opinions No. 47/2017, para. 29, and No. 63/2020, para. 42.

⁴⁰ See also the Principles on Effective Interviewing for Investigations and Information Gathering, para. 220.

⁴¹ Opinions No. 41/2023, para. 78, and No. 43/2023, para. 55.

⁴² Opinion No. 34/1995, paras. 6–8 (a).

the manner in which the matter was dealt with by the authorities.⁴³ That guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment is delivered on appeal. All stages, whether in the court of first instance or on appeal, must take place without undue delay.⁴⁴ The Human Rights Committee has stated that “An important aspect of the fairness of a hearing is its expeditiousness” and “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible”.⁴⁵ Recalling its findings that Mr. Kazim’s pretrial detention was not reviewed by an independent judicial authority and he was denied bail, the Working Group finds that the delay in bringing Mr. Kazim to trial was unacceptably long, in violation of articles 9 (3) and 14 (3) (c) of the Covenant and contrary to principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

87. Given the above, the Working Group concludes that the violations of Mr. Kazim’s right to a fair trial and to due process are of such gravity as to give his deprivation of liberty an arbitrary character that falls within category III.

(c) Concluding remarks

88. The Working Group notes with grave concern the source’s allegations regarding Mr. Kazim’s physical condition and treatment while in detention. In that regard, the Working Group is obliged to remind the Government of article 10 (1) of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules, whereby all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity, including by being allowed to enjoy the same standards of health care that are available in the community. The Working Group calls upon the Government to immediately and unconditionally release Mr. Kazim and to ensure that he receives the necessary medical treatment as soon as possible.

89. The Working Group welcomes the steps taken to prosecute officials accused of intimidation and of using violence to extract confessions. It encourages the Government to continue in its efforts to investigate allegations of misconduct.

3. Disposition

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

The deprivation of liberty of Ahmad Abdulrazzak Basha Kazim, being in contravention of articles 3, 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 9, 14 and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

91. The Working Group requests the Government of Iraq to take the steps necessary to remedy the situation of Mr. Kazim 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.

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

93. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Kazim and to take appropriate measures against those responsible for the violation of his rights.

⁴³ Human Rights Committee, general comments No. 32 (2007), para. 35, and No. 35 (2014), para. 37. See also [CCPR/C/VNM/CO/3](#), paras. 35 and 36.

⁴⁴ Human Rights Committee, general comment No. 32 (2007), para. 35.

⁴⁵ *Ibid.*, paras. 27 and 35.

94. The Working Group requests the Government to bring its laws into conformity with the recommendations made in the present opinion and with the commitments made by Iraq under international human rights law.

95. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for appropriate action.

96. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

4. Follow-up procedure

97. 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. Kazim has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Kazim;
- (c) Whether an investigation has been conducted into the violation of Mr. Kazim'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 Iraq with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

98. 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.

99. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of 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.

100. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has 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.⁴⁶

[Adopted on 13 November 2023]

⁴⁶ Human Rights Council resolution 51/8, paras. 6 and 9.