

**Opinion No. 35/2008 (Egypt)**

**Communication addressed to the Government on 6 December 2007**

**Concerning Mr. Abdul Kareem Nabil Suliman Amer (also known in the Internet community as Karim Amer)**

**The State is a party to the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. The Working Group conveys its appreciation to the Government for having forwarded the requested information.
3. (Same text as paragraph 3 of Opinion No. 17/2008.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto as well as the observations by the source.
5. According to the source, Mr. Abdul Kareem Nabil Suliman Amer (also known in the Internet as Karim Amer), an Egyptian writer, and former Al-Azhar University student, was arrested in October 2005 because of his writings on his blog (karam903.blogspot.com) about the sectarian riots which took place in the same month in Alexandria's Maharram Bek District. These riots followed reports that the video of a play believed to be anti-Islamic was being screened in a Coptic Church in the district. Mr. Amer was detained for 12 days and was released without charge.
6. After his release, al-Azhar University took disciplinary measures against him. Mr. Amer was dismissed in March 2006 following a decision of the University's disciplinary board who found him guilty of blasphemy. The University filed also a judicial complaint against him before the Public Prosecutor of Maharram Bek District. Mr. Amer was summoned to appear before the Public Prosecutor, who ordered his detention for four days on 7 November 2006.
7. The detention term was extended for a further 15-days period, to allow the Public Prosecutor's Office further time for investigation. Mr. Amer's detention periods were further extended until 22 February 2007. On that day, he was sentenced to four years' imprisonment by Maharram Bek Misdemeanor Court in Alexandria, North Egypt (Case No. 887 of 2007).
8. Mr. Karim Amer's trial appeared intended as a warning by the authorities to other bloggers who dare criticize the Government or use their blogs to spread information considered harmful to the country's reputation. Given the repression suffered by media's journalists, the Internet has become an increasingly important forum for Egyptians issuing personal opinions and views.
9. Mr. Amer was sentenced to three years' imprisonment for the first offence and one year imprisonment for the second. The sentences were based on articles 171, 176 and 179 of the Egyptian Penal Code. On 12 March 2007, the Court of Appeal confirmed the sentence.
10. On 21 April 2007, Mr. Amer brought the case before the Court of Cassation. On 12 May 2007, the defense lawyers made public their memorandum to the Court of Cassation. The court has not yet fixed a date for a session. According to the defense lawyers, there is no legal obligation for the Court of Cassation to set a date within a certain time frame.
11. On 4 March 2007, the director of Borg Al-Arab Prison in Alexandria ordered that Mr. Amer be put in solitary confinement. Following a visit to the prison by the Alexandria public prosecution on 8 May 2007, Karim Amer was put back with the other prisoners, after having spent 65 days in solitary confinement. Karim Amer is serving his four-year prison sentence. His mother and one of his two brothers were authorized to visit him once.
12. On 24 October 2007, Mr. Amer was beaten by punches and kicks by a prison guard and a prisoner, acting under the supervision of a prison investigations officer. As a result, his upper right canine tooth was broken and he sustained numerous bruises on his body. This came to pass after Mr. Amer uncovered some corruption acts in the prison. He was then taken to a disciplinary cell where he was handcuffed and his legs tied up before being beaten again by the same two individuals upon the orders of the prison investigations officer. During this period he was given only one meal and one bottle of water a day and not allowed to send letters.

13. Subsequently and in the same cell, a prisoner unknown to Karim Amer was brought to the cell where he was held, stripped naked and beaten by the same individuals in Karim Amer's presence. Karim Amer was then threatened that he would receive the same treatment if he intervened in the prison's affairs. Mr. Amer was examined by the prison's doctor but there was no mention of his broken tooth in the medical report. He was not allowed to file a complaint about what happened.

14. After his release from solitary confinement, Karim Amer was held for five days in an individual cell in the prison section that is usually occupied by dangerous prisoners and those with psychological problems. On 7 November 2007, he was moved back to the prison section where he was initially detained and held in an individual cell. In spite of articles 126, 127 and 129 of the Penal Code, no administrative or judicial investigation was opened on the torture suffered by Mr. Amer while in prison. He continues to be subjected to acts of ill-treatment and discriminatory practice on the hands of the prison's officers.

15. The source concludes that Mr. Karim Amer has been solely detained on account of the peaceful expression of his views on the Internet criticizing al-Azhar authorities, religious personalities and the Government. Mr. Amer is the first blogger condemned to a long imprisonment term for articles published on his web page.

16. The Government, in its reply, reported that Mr. Abdul Karim Suliman Amer is housed in a cell in the prisoner accommodation section in accordance with the rules, not in solitary confinement. He received the visit to which he is entitled during this period as well as an exceptional visit on the occasion of the Prophet's birthday on 31 March 2007, a special visit on 3 April 2007 and a visit from his lawyer on 17 April 2007.

17. On 24 October 2007, the said prisoner engaged in a brawl at lunch time with another prisoner, Mr. Wissam Tal'at Fahmi al-Sayyid, resulting in injuries to both parties. Both prisoners were taken to the prison hospital and underwent a medical examination which established that Mr. Amer had sustained a contusion on the left side of the forehead in addition to numerous abrasions and contusions on the chest and needed treatment for less than 21 days, in order to avoid complications. The examination also established that the other prisoner had sustained abrasions on the right upper arm, the back of the left shoulder and the left forearm. In his statement Mr. Amer did not indicate that he had been assaulted by guards or at the instigation of officers. The said prisoners were sent to the public prosecution and placed in solitary confinement until 2 November 2007, as an administrative penalty. A trial in absentia had handed down a sentence of imprisonment with labour for one month and bail of 300 Egyptian pounds (LE) for each prisoner, to which both objected.

18. Mr. Amer made the visit with his lawyer in the visiting area and was allowed the period of time allocated for visits in accordance with the rules and regulations. The visit was not limited to three minutes and neither he nor his lawyer brought any complaint in this regard after the visit.

19. The allegation that Mr. Amer witnessed a guard assaulting another prisoner (whom he was unable to identify) after removing his clothing, and that the guard threatened him with the same treatment, is unsubstantiated. Mr. Amer has not identified either the prisoner who was beaten or the guard in question. Mr. Amer was put in a room in the prisoner accommodation section, not in solitary confinement.

20. The prison doctor signed a medical report on 10 February 2008 stating that the vital signs of Mr. Amer were within normal ranges, the chest, heart and abdomen were clinically sound and that there were no apparent recent injuries. The dentist signed a medical report on 27 February 2008 stating that the prisoner was missing four upper incisors (12/12) and that these had probably been lost as the result of chronic gum inflammation due to poor oral hygiene. There was nothing to indicate that it was long-term, and there was no sign of injury to the tissues inside the mouth or on the face or jaws. The report on the incident with

his fellow prisoner, Wissam Tal'at, was released to Mr. Amer, containing his detailed statement concerning the incident and the statement concerning the injuries that he sustained. The prisoner was taken to the prison hospital, where a detailed medical report of his injuries was made. The report did not mention any injury to the prisoner's teeth and his statement did not refer to any such injury.

21. The Government adds that Mr. Amer had previously incurred a signed penalty requiring him to be placed in solitary confinement for a period of three days, from 27 to 30 April 2008, for individual disorder. He was also placed in solitary confinement from 24 October to 2 November 2007 on the basis of a report. Article 847 of the Manual of Egyptian Prisons Working Procedures stipulates that a prisoner found guilty after investigation shall be disciplined in solitary confinement for the period stipulated in the report, provided that this period does not exceed 15 days. Mr. Amer was disciplined in solitary confinement for no longer than 10 days.

22. Mr. Amer received the same treatment as other prisoners, within the framework of the rules and regulations. He was referred to the prison hospital at his request and received treatment, most recently on 10 March 2008, for a fungal skin infection. He was allowed to correspond and to bring in books brought to him during visits. His postal orders from outside the prison were delivered to him. Mr. Amer has not been subjected to any form of assault or torture.

23. The Government adds that Mr. Amer was imprisoned on the basis of a legal judgment made by an independent, just body, in accordance with the Penal Code, for having committed prior criminal acts. He exercised his constitutional rights throughout the litigation process and enjoyed all the legal guarantees of a fair trial at all stages thereof, including the right to legal representation and communication with legal counsel, the right to a presumption of innocence and the right to appeal, through two levels of litigation. He was not subject to any form of discrimination.

24. Penal institutions are obliged to use necessary force to maintain order. Punishment and the establishment of security are covered by a predetermined legal framework which is in accordance with international principles. The public prosecution is the authority competent to monitor the practices of the administrative authority in its administration of penal institutions and to receive complaints from prisoners. It conducts its work independently, freely and confidentially.

25. The Government considers that the details mentioned in the complaint are groundless. Mr. Amer received a fair and independent trial during which he enjoyed all substantive and procedural guarantees, in accordance with the principles of international law. He was sentenced to imprisonment for the period of one year for insulting the President of the Republic and for three years on a charge of contempt for religion.

26. With regard to the charge of insulting the President of the Republic, Egyptian law distinguishes between responsible and proper media and newspaper coverage based on facts and information, and use of the right to expression in order to harm the honour and reputation of other individuals who are protected under Egyptian law. The law criminalizes and punishes only the latter form of expression, in accordance with the provision which affirms the right of individuals to the protection of the law against attacks on their honour and reputation.

27. With regard to the charge of contempt for religion, it is necessary to distinguish between freedom of thought and the right to hold an opinion, on the one hand, and freedom to express this thought or opinion, on the other hand. The former is an absolute right and cannot be derogated, whereas freedom of expression entails special duties and responsibilities and is, therefore, subject to certain restrictions, but only such as are provided by law and are necessary for respect of the rights and reputation of others and for

the protection of national security or public order, or of public health or morals. Numerous United Nations reports refer to these duties and responsibilities. Freedom of expression should be limited in some instances, in order to protect freedom of belief and avoid inciting hatred and discrimination against a group of people. In order not to discriminate between citizens on the basis of creed, Egyptian law criminalizes contempt for all the religions and creeds of particular sanctity to any group of citizens. Mr. Amer did not bring any complaints in this regard to the public prosecution, which is the national mechanism competent to receive and investigate complaints in such cases.

28. After the original submission of the case, the source provided the Working Group with updated information, according to which Mr. Amer was able to file a complaint before the Public Prosecutor about the ill-treatment he has been suffering in Borg al-Arab prison on 24 October 2007. The complaint was registered at the Public Prosecutor's Office under complaint number 18564 on 14 November 2007. It was referred on the same day for investigation by Alexandria prosecution under number 15005, and presented before the Alexandria prosecution under number 712 on 21 November 2007. It was then registered in West Alexandria Prosecution as number 5003 on 24 November 2007. To date, however, there has still been no official investigation of the complaint carried out by the Public Prosecutor's Office. The Borg al-Arab prison administration opened their own administrative investigation, and considered that Mr. Amer and the prisoner who he alleges had beaten him were responsible of assaulting another prisoner.

29. On 19 March 2008, Mr. Amer was acquitted of the charge of assaulting another prisoner by the Borg al-Arab Misdemeanour Court in Alexandria. The other accused prisoner was sentenced to one additional month of imprisonment.

30. The Working Group considers that, according to information received, the Internet has become an increasingly important forum for Egyptians issuing personal opinions and views. Mr. Amer's case is the first in which an Internet blogger has been condemned to an imprisonment term for his published material. In its previous reports, the Working Group has observed that freedom to impart information on the Internet is protected under international law the same way as any other form of expression of opinions, ideas or convictions. Unless restrictions on the exercise of the freedom of opinion and expression comply with the conditions prescribed by international law, such restrictions are arbitrary, hence unlawful (E/CN.4/2006/7, para. 39).

31. Article 17 of the International Covenant on Civil and Political Rights establishes that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, or to unlawful attacks on his honour and reputation" and that "Everyone has the right to the protection of the law against such interference or attacks". However, this article does not establish that the violation of privacy, honour or reputation must constitute a criminal act or a criminal offense which should be punished by a penal sanction.

32. It is well established in international human rights law that public officials should tolerate more criticism than private individuals. The Working Group observes that the above-quoted article 17 does not allow one to conclude that a person with a political or prominent position in society should be given a higher level of protection regarding his or her privacy, honour or reputation in his or her institutional role than that which should be given to an anonymous private person. On the contrary, defamation laws should not afford special protection to the Heads of States, Presidents of the Republic and other senior political figures.

33. The use of criminal law is particularly inappropriate for alleged defamation against public officials in view of the fact that officials should be expected to tolerate more criticism than private citizens. Such criminal laws have an inhibiting effect on the exercise of the right to freedom of opinion and expression in discussions of matters of public

concern. The right to freedom of opinion and expression and the principles and fundamentals of the democratic system of governance involves the right to freely criticize political officials, public officers, public personalities and authorities. The fundamental right to freedom of opinion and expression, which is in the core basis of the human rights system, must prevail when it implies political criticism, even when this criticism is focussed in the activities of some concrete persons who have assumed high political responsibilities.

34. Restrictions to the exercise of the right to freedom of opinion and expression are required to respect three conditions, which must be enforced simultaneously: (a) restrictions must be provided by law; (b) they should pursue an aim recognized as lawful, and (c) be proportionate to the accomplishment of that aim. Article 19 of the International Covenant on Civil and Political Rights establishes in its paragraph 3 that the exercise of this right may be subject to certain restrictions: (a) For respect of the rights or reputations of others; (b) for the protection of national security or of public order (*ordre public*) and for protection of public health or morals. These restrictions shall be provided by law, must be necessary and should have a well-defined time limit. According to the information provided by the Government, none of the above-mentioned restrictions seems to be fully applicable in *strictu sensu* to Mr. Amer's case.

35. Restrictions on freedom of opinion and expression may be imposed only where they are necessary. In its general comment No. 22, the Human Rights Committee considered that the requirement of necessity implies that the particular interference in any particular instance must be proportionate to its intended legitimate objective. In its general comment No. 10, the Committee estimated that restrictions imposed on the exercise of freedom of expression, may not put in jeopardy the right itself. In all cases, the principle of proportionality must be strictly observed.

36. In his report to the Human Rights Council submitted in 2007 (A/HRC/4/27, para. 12), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Ambeyi Ligabo noted, as a positive trend, the adoption, by an increasing number of countries, of legislation concerning the decriminalization of charges related to defamation, libel and slander. Nonetheless, the slowness of this trend cruelly displays the difficulty of abandoning deleterious habits related to the preservation of political and economic influence. The Working Group coincides with the Special Rapporteur in his affirmation that "jail sentences and disproportionate fines should totally be excluded for offences such as defamation" (*ibid.*, para. 48). These offences should be dealt with under civil, not criminal, law. In the Working Group's view, prison sentences should be excluded.

37. To condemn journalists or bloggers to heavy terms of imprisonment on charges of defamation or insulting State authorities seems to be disproportionate and affects seriously freedom of opinion and expression. As noted by the Special Rapporteur, the Internet and the universal availability of new tools for communication and information may give a great impetus to social advancement and to the dissemination of knowledge, thus widening the scope of this fundamental right.

38. The Working Group reiterates that there is no contradiction between freedom of opinion and expression and freedom of religion. They are mutually reinforcing. The rights to freedom of thought, conscience and religion must coexist with the right to freedom of opinion and expression, in the sense that certain beliefs cannot limit the right of the persons with other beliefs or different opinions to express their ideas and views. Defamation of religions may offend people and hurt their feelings but it does not directly result in a violation of their rights to freedom of religion. International law does not permit restrictions on the expression of opinions or beliefs which diverge from the religious beliefs of the majority of the population or from the State-prescribed one.

39. In this connection, the Special Rapporteur on freedom of religion or belief, Asma Jahangir, stated in her 2006 report (A/HRC/2/3, para. 38) that “The right to freedom of religion or belief protects primarily the individual and, to some extent, the collective rights of the community concerned but it does not protect religions or beliefs per se”. Following the spirit of article 20 of the International Covenant on Civil and Political Rights, blasphemy should be decriminalized as an insult to a religion and, instead, statements that call for a group of persons to be subjected to hatred, discrimination or violence, should be penalized. More than a religion is the freedom of religion or belief which should be object of protection by the law, judges and prosecutors.

40. The Working Group considers that Mr. Amer has been condemned for his online criticisms and for the exercise of his rights to freedom of opinion and expression.

41. In the light of the foregoing the Working Group expresses the following Opinion:

The deprivation of liberty of Mr. Abdul Kareem Nabil Suliman Amer is arbitrary, being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 10, 14 and 19 of the International Covenant on Civil and Political Rights and falls within Category II of the categories applicable to the consideration of the cases submitted to the Working Group.

42. Consequent upon this Opinion, the Working Group requests the Government to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles enshrined in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 20 November 2008