

Opinion No. 22/2010 (Egypt)

Communication addressed to the Government on 2 February 2010

Concerning: Mr. Abdel Hakim Abdel Raouf Hassan Soliman

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

1. (Same text as paragraph 1 of Opinion No. 18/2009)
2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source.

3. (Same text as paragraph 3 of Opinion No. 18/2009)
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, and has received its comments.
5. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the case, in the light of the allegations made and the response of the Government thereto, as well as the observations by the source.
6. Mr. **Abdel Hakim Abdel Raouf Hassan Soliman**, born in 1965, a citizen of Egypt, resident in Abu Rish, Damanhur, Al Bahira Governorate, working as a cotton expert; was initially arrested on 17 May 2009, and according to the source remains detained to this day at Wadi Natroun Prison.
7. Mr. **Abdel Hakim Abdel Raouf Hassan Soliman** was initially arrested without a warrant on 17 May 2009 together with other 26 individuals at Mr. Ahmed Ali Hussein Eid's home by agents from the Special Security forces of the State Security Investigation (SSI), the General Intelligence and the General Security. Ten persons arrested have since then been released. The names of the 16 individuals presumed to still be in detention were given as follows:
 - (a) Emad Mohamed Fathi Abdelhafez;
 - (b) Ahmed Ali Hussein Eid;
 - (c) Hani Mohamed Gaber El Bakatouchi;
 - (d) Mohamed Abdel Nazir Mohamed Etman;
 - (e) Mohamed Ahmed Hakim Abdel Rashid Abdel Moawad; (f) Mohamed Ahmed Abdel Mawgoud Mohamed;
 - (g) Ashraf Mohamed Nagib El Kateb;
 - (h) Magdy Zaky Atya Oda;
 - (i) Mohamed Mamdouh Ali Salman;
 - (j) Mohamed El Esawi El Zahabi;
 - (k) Mohamed Hassan El Sayed Abou Hassan;
 - (l) Mohamed Abdel Monem Ibrahim Zeidan;
 - (m) Mohamed Hassan Mahmoud El Sakhawy;
 - (n) Aboul Fotouh Mohamed Abou El Yazid Aboulfoutouh;
 - (o) Osama Mohamed Ibrahim Soliman; and
 - (p) Amine Abdullah Ali Al Naggar.
8. On 18 May 2009, Mr. **Abdel Hakim Abdel Raouf Hassan Soliman** was accused of belonging to the "Muslim Brotherhood" in application of the Emergency Law No. 162 of 1958. Following his initial arrest, Mr. **Abdel Hakim Abdel Raouf Hassan Soliman** was detained at Sahrawi Prison 2 in Wadi al Natroun, with intermittent transfers to the cells of the Supreme State Security Prosecution in Cairo, until 27 July 2009.
9. On 27 July 2009, the Damanhur Criminal Court ordered Mr. **Abdel Hakim Abdel Raouf Hassan Soliman**'s release given the lack of evidence against him. However, he was immediately re-arrested upon an administrative detention order issued by the Ministry of the Interior by officers from the SSI and detained at their headquarters until 3 August 2009.

On that day, Mr. **Abdel Hakim Abdel Raouf Hassan Soliman** was transferred to Wadi Natroun Prison.

10. The source alleges that the detention of Mr. **Abdel Hakim Abdel Raouf Hassan Soliman** is arbitrary and his continuous detention is devoid of any legal basis as a release order was issued by a court. The source further argues that the lack of a foreseeable trial and the exceptional nature of possible future jurisdictions in Mr. **Abdel Hakim Abdel Raouf Hassan Soliman**'s case, the military court or the Supreme State Security Court, are in violation of article 14, para. 2 (c), and 14, para. 5, of the International Covenant on Civil and Political Rights.

11. In its response, the Government informs that the arrests of Mr. **Abdel Hakim Abdel Raouf Hassan Soliman** and 26 other people on 18 May 2009, were related to the charges of being members of an illegal organization, the Muslim Brotherhood, and possession of written material and publications which promote that organisation's beliefs. The response states that all 26 people were released between 12 July 2009 and 26 July 2009 on orders from the Office of the Public Prosecutor and the courts.

12. The Government refuted the allegations that these Muslim Brotherhood members were arrested to prevent them from standing in the forthcoming elections and considers these allegations to be without any basis in fact.

13. The Government does not provide any response to information received from the source about the immediate rearrest of Mr. **Abdel Hakim Abdel Raouf Hassan Soliman**, about his detention in the headquarters of the SSI, and his subsequent transfer to Wadi Natroun Prison.

14. In the light of the foregoing, the Working Group reiterates the provisions set forth in the its previous Opinion 21/2010 (Egypt) concerning **Abdul Mohamed Gamal Ahmed Heshmat Abdalhamid, Hosni Omar Ali Omaar and 10 other persons**. The Working Group, furthermore, recalls its considerations in previous cases of detention within the territory of Egypt, such as Opinions 3/2007 and 27/2008, as well as the views of the Committee against Torture and the Committee on Economic, Social and Cultural Rights, on the situation caused by the declaration, on 6 October 1981, of the state of emergency in Egypt and renewed since then (documents CAT/C/CR/29/4, par. 5 and E/C.12/1/Add.44, para. 10).

15. In its Opinion 27/2008, paragraph 28, the Working Group recalled that pursuant to articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal. This shall be interpreted as meaning that if such independent and impartial judicial authority decides that a detention order issued by an administrative authority is not appropriate, those arrested should be immediately released. Consequently, if the police or the security forces arrest these individuals again under the same charges, the new arrest by the administrative authorities will have no legal basis.

16. The Working Group also concurs with the position taken by the Human Rights Committee in its general comment No. 29 of 2001, that the principles of legality and the rule of the law require that fundamental requirements of fair trial must be respected during the state of emergency and that, in order to protect non-derogable rights, the right to take proceedings before a court and to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant. Release orders of courts competent to exercise control over the legality of detention must be honored by the Government even in a state of emergency.

17. In its Opinion 21/2007, paragraph 19, as well as on earlier occasions set forth in Opinion 5/2005, paragraph 19, Decision 45/1995 (Egypt), paragraph 6, and Decision 61/1993 (Egypt), paragraph 6; the Working Group considered that maintaining a person in administrative detention once his release has been ordered by the court competent to exercise control over the legality of detention, renders the deprivation of liberty arbitrary.

18. The Working Group reiterates its view that, in such cases, no legal basis can be invoked to justify the detention, least of all an administrative order of the Executive issued to circumvent a judicial decision ordering a release.

19. The Working Group also refers to the report dated 14 October 2009 of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, on its mission to Egypt (from 17 to 21 April 2009). It is emphasized in the report (para. 20), that the lack of a clear indication in the Emergency Law as to what is considered to be a threat to public security and order, violates the principle of legality. When combined with the fact that SSI officers, in practice, enjoy a “carte blanche” in deciding to whom arrest or rearrest, and that terrorist suspects are in many cases detained without receiving sufficiently detailed information, if any, on the reasons for their detention, this results incompatible with article 9, paragraph 2, of the International Covenant on Civil and Political Rights and seriously diminishes any real possibility for the detainee to contest the legality of detention, as stipulated by article 9, paragraph 4. The Special Rapporteur expressed particular concern as to the widespread practice that persons are not actually released after a release order is given, but are instead transferred by SSI officers to non-official premises or police stations, where they are held illegally until a new detention order is given.

20. The Working Group notes that, in the current case, the Government has not refuted the information from the source about the immediate re-arrest and current administrative detention of Mr. **Abdel Hakim Abdel Raouf Hassan Soliman**.

21. This establishes a violation of article 9 of the International Covenant on Civil and Political Rights to which the Arab Republic of Egypt is a party, and an arbitrary deprivation of liberty where it is clearly impossible to invoke any legal basis justifying the deprivation of liberty, according to category I of the categories applicable to the cases submitted to the Working Group.

22. The Government’s reply to the allegations ‘that these Brotherhood members were arrested to prevent them from standing in the forthcoming elections’ as being “without any basis in fact”, does not assist the Working Group in its deliberation. The Government’s reply does not provide any support for this assertion. Thus, the Working Group has not been provided with clear reasons to question the allegation of the source that the detention of Mr. **Abdel Hakim Abdel Raouf Hassan Soliman** and others intends to limit their exercise of the right to freedom of opinion and expression as guaranteed by article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The arbitrary detention also falls within category II of the categories applicable to the cases submitted to the Working Group.

23. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Mr. **Abdel Hakim Abdel Raouf Hassan Soliman** is arbitrary, being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights and of articles 9 and 19 of the International Covenant on Civil and Political Rights, and falls within categories I and II of the categories applicable to the consideration of the cases submitted to the Working Group.

24. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, which, under the

circumstances of this case, would be the immediate release of Mr. **Abdel Hakim Abdel Raouf Hassan Soliman**.

Adopted on 2 September 2010