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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-third session, 30 April–4 May 2012

No. 1/2012 (Egypt)

Communication addressed to the Government on 12 September 2011

Concerning Wael Aly Ahmed Aly

The Government replied to the communication on 10 November 2011.

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its working methods, the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Wael Aly Ahmed Aly is the director of a travel agency in Cairo – Albatross Tours.
4. The source reports that Mr. Aly took active part in the protests on Tahrir Square and following former President Hosni Mubarak's resignation. According to the source, on 9 April 2011, Mr. Aly was arrested by the military authorities and placed in Hayekstep military prison pursuant to an arrest warrant issued against him by the Supreme Council of the Armed Forces. Mr. Aly was accused of violence and vandalism, including damaging cars during protests. Allegedly, he led protesters who called for the resignation of Defence Minister and Head of the ruling Supreme Council of the Armed Forces Field and demanded the prosecution of the former President Hosni Mubarak.
5. On 11 May 2011, the Military Court acquitted Mr. Aly of the charges of vandalism. However, the Egyptian authorities did not release him, transferring him instead to the Tora prison on 13 May 2011. A criminal case was then filed against Mr. Aly.
6. The source reports that Mr. Aly was then charged with "belonging to a banned organization". The source submits that this charge is politically motivated and is due to Mr. Aly's activities relating to the protests following nomination of the new Government in Egypt in February 2011. According to the source, Mr. Aly had assisted families of individuals killed in connection with the protests and had spread information about new protests taking place following the resignation of former President Hosni Mubarak.
7. According to the information received from the source, Mr. Aly has been subject of intense interrogations conducted by the public prosecutor. Some of these interrogations, which have taken place at the Ministry of Justice, allegedly last up to six hours. His detention has been renewed every 15 days. The last renewal of his detention dates to 27 July 2011 on the alleged grounds that an investigating judge is waiting for the police report.
8. The source further indicates that after four months in detention there is as yet no formal indictment against Mr. Aly. While the alleged charges relate to establishing an organization to counter the revolution, the source contends that to date no other member of this organization has been identified.
9. The source argues that Mr. Aly's deprivation of liberty is arbitrary since it is a direct consequence of his peaceful exercise of the right to freedom of opinion and expression and his freedom of assembly. According to the source, Mr. Aly's detention is solely due to his active participation during the protests on Tahrir Square following the resignation of former President Hosni Mubarak.
10. Moreover, the source contends that Mr. Aly's lawyer has encountered a number of obstacles in effectively defending his client. According to the information received, Mr. Aly's lawyer was not allowed access to the file against Mr. Aly until the day before a witness in the case was heard. At that point, Mr. Aly's lawyer was able to consult the file in

the clerk's office, but was not allowed to photocopy any documents. According to the source, the file against Mr. Aly contains fake testimonies and witnesses have allegedly been pressured to make false declarations.

11. According to the information received, there is no date fixed for Mr. Aly's trial. Nevertheless, his family has allegedly been informed that his trial will be transmitted on State television. In the source's view, this further substantiates the political nature of his case.

12. In conclusion, the source submits that Mr. Aly's deprivation of liberty is arbitrary, as it is a direct consequence of his peaceful exercise of the right to freedom of opinion and expression and freedom of assembly. Moreover, the source contends that Mr. Aly's deprivation of liberty is arbitrary on the grounds that it is in violation with minimum guarantees enshrined in his right to a fair trial.

Response from the Government

13. According to the response, Mr. Aly is the main defendant in case No. 3443 of 2011 at the Qasr al-Nile Criminal Court. The case relates to incidents which took place on Tahrir Square on 8 and 9 April 2011.

14. Investigations were conducted by the investigating judge appointed by the Ministry of Justice. He issued an order on 27 July 2011 to refer the above-named defendant and others to the Criminal Court's Chamber of Cairo Appeal Court. A hearing was scheduled to take place on 25 September 2011 at the Fourth Chamber of South Cairo Criminal Court. A second session was scheduled on 24 October 2011 in order for documents to be submitted.

Further comments from the source

15. The source submits that the Government did not reply to the allegation it made in the communication sent to the Working Group on 16 June 2011.

16. In particular, the Government refers to the case against Mr. Aly before the Qasr al-Nile Criminal Court which is related to the "incidents which took place on Tahrir Square on 8 and 9 April 2011". Indeed, as was submitted by the source, Mr. Aly had been initially charged before the Military Court with acts of vandalism allegedly committed during the protests that took place in Tahrir Square on 8 April 2011 and was acquitted of these charges on 11 May 2011.

17. Moreover, the source notes that the Government did not clarify why, after being acquitted, Mr. Aly was not released and why, on the contrary, the Ministry of Justice appointed an investigating judge to conduct more investigations and reopened the case.

18. Instead of being released, Mr. Aly had his case transferred to the Qasr al-Nile Criminal Court, an ordinary criminal court in Cairo, which allegedly accused him of belonging to an unlawful organization. Mr. Aly declared that he was member of the National Democratic Party, and not to the Muslim Brotherhood, which is usually the target of such accusation.

19. According to the source, a hearing in the Mr. Aly's case had been scheduled for 26 December 2011, postponed to 25 March 2012, and then postponed again to 27 May 2012. During this time, Mr. Aly has continued to be detained.

20. The source reiterates its concern about Mr. Aly's ongoing detention and current trial, despite his acquittal by the Military Court, which is in violation of the international norms relating to the right to a fair trial, namely the principle of ne bis in idem and thereby gives his detention an arbitrary nature falling into category III of applicable categories.

21. Additionally, the source reaffirms that the alleged charge of “belonging to a banned organization” is aimed at targeting Mr. Aly merely for his active involvement to the protests on Tahrir Square, thereby failing to respect his freedom of expression.

Discussion

22. Pursuant to article 9, paragraph 3, of the International Covenant on Civil and Political Rights, anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or to release.

23. The Government does not refute the fact that Mr. Aly was acquitted of the charges for which he was arrested in April 2011. However, he was not released upon acquittal like others who were arrested on the same charges. Mr. Aly remains in custody and the Government does not refer to any new formal charges against him.

24. Mr. Aly has been in detention for more than a year without any court hearings. The Government confirms the repeated postponements of the hearing in his case. The commencement of the hearing was postponed in September 2011 until October, then December, then March 2012, and then again until May 2012.

25. The proceedings stalled for a long time for reasons attributable to the judicial and law enforcement bodies, and the Government has failed to justify such delay, in violation of the provisions of articles 9, paragraph 3, and 14, paragraph 3, of the International Covenant on Civil and Political Rights. While Mr. Aly has been kept in custody for more than a year, the court still, according to the Government, is waiting “for documents to be submitted”.

26. The continued detention after acquittal of Mr. Aly with postponements of the commencement of the hearing is in gross violation of his right to be tried or released as provided for in article 9 of the Covenant. Thus, the case falls into categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

Disposition

27. In the light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Aly is arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls into categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

28. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Aly and bring it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

29. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release of Mr. Aly and accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

[Adopted on 30 April 2012]