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Human Rights Council Working Group on Arbitrary Detention

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No. 11/2012 (Egypt)

Communication addressed to the Government on 8 February 2012

Concerning Sayed Mohammed Abdullah Nimr, Islam Abdullah Ali Tony and Ahmed Maher Hosni Saifuddin

No response has been received from the Government.

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 the 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. The cases summarized hereafter have been reported to the Working Group on Arbitrary Detention as follows:

4. Sayed Mohammed Abdullah Nimr, a national of Egypt, married, usually residing in Al Dakhlah city, Nout, New Valley, Egypt, is a farmer.

5. Islam Abdullah Ali Tony, a national of Egypt, usually residing in Al Dakhlah city, Nout, New Valley, Egypt, is a farmer.

6. Ahmed Maher Hosni Saifuddin, a national of Egypt, married, usually residing in Al Dakhlah city, Nout, New Valley, Egypt, is a farmer.

7. It is reported that on 16 June 2011, Messrs. Nimr, Tony and Saifuddin participated in a protest in front of Al Dakhlah City Council. They were allegedly protesting against corruption and policies adopted by the President of Al Dakhlah City Council. It is reported that clashes occurred between the protesters and Al Dakhlah City Council staff.

8. On 21 June 2011, Messrs. Nimr, Tony and Saifuddin were arrested at their respective homes by police officers from Al Dakhlah police station. The three men were taken to Al Dakhlah police station and charged with inciting people to assemble and attack the President of the City Council (criminal case No. 818 of 2011).

9. During their detention at Al Dakhlah police station, Messrs. Nimr, Tony and Saifuddin were allegedly subjected to ill-treatment by the police officers. They were reportedly beaten, prevented from eating, drinking or going to the toilet for a continuous period of 26 hours. According to the information received, they were forced to stand facing the wall for long hours and were not offered any medical care.

10. On 22 June 2011, Messrs. Nimr, Tony and Saifuddin were referred to the Military Prosecution of Asyout, where they were interrogated. The three defendants denied the charges against them, but the Prosecution referred their case to the Military Misdemeanor Court of Asyout (case No. 2854 of 2011).

11. On 3 August 2011, Messrs. Nimr, Tony and Saifuddin were found guilty as charged and sentenced by the Military Court of Asyout to two years' imprisonment. The three men are currently serving their sentence at New Valley Prison.

12. In the light of the foregoing, the source contends that the detention of Messrs. Nimr, Tony and Saifuddin is arbitrary as it is the outcome of their peaceful exercise of fundamental rights and freedoms as guaranteed, inter alia, under articles 19 and 21 of the International Covenant on Civil and Political Rights, and articles 19 and 20 of the Universal Declaration of Human Rights. The source states that accusations such as inciting people to assemble and attack the President of the City Council are now commonly used against protesters in Egypt.

13. Moreover, the source points to a set of grave violations of the defendants' right to a fair trial under article 14 of the International Covenant on Civil and Political Rights and article 10 of the Universal declaration of Human Rights. According to the information received, the Military Court of Asyout failed to observe the principle of equality of arms between the defence and the prosecution by refusing to hear the defence witnesses. This, according to the source, is a breach of article 14, paragraph 3 (e), of the Covenant. Similarly, the source alleges that the criminal case against the defendants lacked any material evidence showing that the defendants had incited the protesters to use violence.

Response from the Government

14. The Working Group transmitted the above allegations to the Government of Egypt on 8 February 2012, requesting it to provide detailed information about the current situation of Sayed Mohammed Abdullah Nimr, Islam Abdullah Ali Tony and Ahmed Maher Hosni Saifuddin, and to clarify the legal provisions justifying their continued detention. The Working Group regrets that it has not received a response from the Government.

Discussion

15. In the absence of a response from the Government, and in accordance with its Methods of work, the Working Group can render an opinion on the basis of the information available to it.

16. The Working Group notes that Messrs. Nimr, Tony and Saifuddin were ordinary citizens who in the exercise of their right to freedom of expression and opinion participated in a demonstration allegedly protesting against corruption and policies adopted by the President of Al Dakhlah City Council. The actions carried out by the detainees are guaranteed, inter alia, under articles 19 and 21 of the International Covenant on Civil and Political Rights, and articles 19 and 20 of the Universal Declaration of Human Rights.

17. During the course of the demonstrations, if any unruly behaviour on the part of the participants ensues that would incur proportionate measures in accordance with the law, including arrest and detention, the individuals arrested or detained should be informed of the charges against them and brought before a judicial authority, as well as afforded the right to a fair trial within a reasonable time.

18. As civilians participating in a demonstration, a civil court would be the appropriate court to try and sentence the offenders following the due process of the law. However, Messrs. Nimr, Tony and Saifuddin were tried in the Military Court of Asyout. In its opinion 27/2008 (Egypt),¹ the Working Group stated that "in principle, military tribunals should not try civilians." It further stated that the Human Rights Committee had expressed concern that these tribunals as well as State Security Courts showed no guarantees of independence and their decisions were not subject to appeal before a higher court, as provided for in article 14 of the International Covenant on Civil and Political Rights (see CCPR/CO/76/EGY, para. 16). The Working Group has consistently held the view that whatever the charges faced, civilians should not be tried by military courts, as such courts cannot be considered independent and impartial tribunals for civilians.

19. The Working Group also notes that given the military justice system in which they were tried, the detainees were denied the right to a fair trial, which violates their rights under article 14 of the Covenant.

¹ Adopted on 12 September 2008, concerning Khirat Al Shatar and others.

20. Furthermore, Messrs. Nimr, Tony and Saifuddin were ill-treated during their interrogation and detention in contradiction to established norms of international human rights law, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 37 of the Standard Minimum Rules for the Treatment of Prisoners.

Disposition

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

The detention of Sayed Mohammed Abdullah Nimr, Islam Abdullah Ali Tony and Ahmed Maher Hosni Saifuddin, being in contravention of articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 9, paragraph 3, 14, 21 and 22 of the International Covenant on Civil and Political Rights is arbitrary, falling under categories II and III of the categories applicable to cases submitted for consideration to the Working Group.

22. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Sayed Mohammed Abdullah Nimr, Islam Abdullah Ali Tony and Ahmed Maher Hosni Saifuddin and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;

23. Taking into account all the circumstances of the case, the Working Group considers that adequate remedy would be the immediate release of the detainees and an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

[Adopted on 3 May 2012]