



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. 12/2012 (Egypt)****Communication addressed to the Government on 1 March 2012****Concerning Ouda Seliman Tarabin**

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 case summarized hereafter has been reported to the Working Group on Arbitrary Detention as follows:

4. Ouda Seliman Tarabin is a national of Israel. He was 10 years old when his family moved from Egypt to Israel, and was subsequently granted Israeli citizenship.

5. It is reported that in September 1999, Mr. Tarabin and his mother travelled to Egypt on their Israeli passports to visit Mr. Tarabin's sisters who were residing in El-Arish, Egypt. They returned to Israel at the end of their visit. On 3 December 2000, while on another visit to Egypt, Mr. Tarabin was arrested by the local police at his sister's home in El-Arish, allegedly for illegally crossing the border and for espionage. The arrest took place two days after Mr. Tarabin had arrived in Egypt.

6. Following his arrest, Mr. Tarabin was taken for interrogation by the Egyptian Military Intelligence and told that he was being sentenced to 15 years' imprisonment. He was informed that his cousin had confessed to the allegation that Mr. Tarabin and his father were connected to the Israeli Army. According to the information received from the source, Mr. Tarabin did not have access to a lawyer or legal assistance during his interrogation or thereafter. The source submits that the cousin had been interrogated about whom he had visited when he crossed the border into Israel. Reportedly, he responded that he had gone to visit his uncle, Mr. Tarabin's father.

7. At no time was Mr. Tarabin presented with an indictment stating the alleged offence for which he was arrested, nor the charges of which he was convicted.

8. The source reports that Mr. Tarabin has never served in the Israeli Army and in fact had only finished high school at the time of his arrest.

9. Since the time of his arrest, Mr. Tarabin has been detained in several prisons. In 2004, the State Security Office in Egypt allegedly sent a letter to the Israeli Embassy in Cairo confirming that Mr. Tarabin was being held in detention at the Liman-Tora prison in Cairo.

10. Mr. Tarabin was allegedly sentenced to 15 years' imprisonment by a military court in Sinai in March 2000. We have been informed that Mr. Tarabin's prisoner card indicates that he was arrested on 3 December 2000. Therefore, it seems that he was tried and sentenced by the court, prior to his arrest.

11. The source contends that Mr. Tarabin was not present at the trial and upon arrest he was not given the opportunity to be promptly brought before a competent tribunal. The source further reports that the Egyptian State Security Office stated that his trial took place in March 2000. At that time, Mr. Tarabin was not in Egypt; he had not received a summons from any court and he was not aware of any charges against him.

12. The source points that it is unclear what the exact charges justifying Mr. Tarabin's arrest and detention were. In addition to the allegation that Mr. Tarabin was never presented with a proper indictment, his trial and sentence took place in absentia, prior to his arrest. According to the source, this constitutes a breach of article 14, paragraph 3 (d), of the International Covenant on Civil and Political Rights which states that the defendant shall be tried in his presence and shall be entitled to defend himself in person. The source emphasizes that at the time of the alleged trial in March 2000, Mr. Tarabin was not in Egypt and had not received any prior notification or summons to appear before the court or about any charges pressed against him. Moreover, the source contends that Mr. Tarabin has not had access to a lawyer or any legal assistance, which constitutes a breach of article 14, paragraph 3 (b) and (d), of the International Covenant on Civil and Political Rights.

13. The source further argues that Mr. Tarabin is a civilian and should not have been tried by a military court. He has also allegedly not been allowed to appeal his sentence, which violates article 14, paragraph 5, of the Covenant.

14. In the light of the foregoing, the source submits that Mr. Tarabin's detention is arbitrary as it is the result of grave breaches of his right to a fair trial.

Response from the Government

15. The Working Group transmitted the above allegations to the Government of Egypt, requesting it to provide detailed information about the current situation of Ouda Seliman Tarabin and to clarify the legal provisions justifying his continued detention. The Working Group regrets that it has not received a response from the Government.

Discussion

16. In the absence of a response from the Government and based on its Methods of work, the Working Group may render an opinion based on the information available to it.

17. The Working Group has consistently held the firm view that due process of law must be adhered to in all circumstances, no matter who the detainee is nor what the charges may be. Mr. Tarabin is an Israeli citizen who was allegedly arrested by Egyptian authorities due to lack of documentation on his person and suspected of espionage for Israel. These serious charges required serious responses in accordance with the law.

18. Analysing the material available to the Working Group in the present case, it appears that a number of oversights and procedural lapses have occurred. Upon arrest and detention, Ouda Seliman Tarabin was informed of the charges against him and that he had been sentenced to 15 years' imprisonment.

19. Mr. Tarabin appears to have been tried in absentia, with no possibility of defending himself or engaging legal counsel to defend him or producing evidence to prove his innocence. This procedure is a violation of Mr. Tarabin's right to a fair trial under article 14 of the Covenant.

20. In the absence of evidence to the contrary, the Working Group assumes that Mr. Tarabin is a civilian who was tried in absentia by a military court. In its opinion 27/2008 (Egypt),¹ the Working Group considered 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, provided for in article 14 of the International Covenant on Civil and Political Rights (see CCPR/CO/76/EGY, para. 16).

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

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.

21. On the issue of trial in absentia, the Working Group refers to article 14, paragraph 3 (d), of the International Covenant on Civil and Political Rights which states that “everyone charged with a criminal offence shall have the right to be presumed innocent [...]; to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.” Furthermore, in its general comment No. 32 (2007),² the Human Rights Committee recalls that notwithstanding the absence of the accused, all due steps have to be taken to inform accused persons of the charges against them and to notify them of the proceedings.

Disposition

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

The detention of Ouda Seliman Tarabin is arbitrary, being in contravention of article 14 of the International Covenant on Civil and Political Rights, and falling under category III of the categories applicable to cases submitted for consideration to the Working Group.

23. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Ouda Seliman Tarabin 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.

24. Taking into account all the circumstances of the case, the Working Group considers that adequate remedy would be immediate release 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]

² See Human Rights Committee, general comment No. 32 (2007) on the Right to equality before courts and tribunals and to a fair trial, para. 31.