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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session (22 April–1 May 2014)

No. 10/2014 (Egypt)

Communication addressed to the Government on 22 January 2014

concerning 12 individuals

The Government has not responded.

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. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), 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 State concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

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(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 aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:

4. The present case concerns the arrest, detention and conviction of 12 persons for their participation in demonstrations against the deposing of Mohamed Morsi as president by the military on 3 July 2013.

5. The following eight individuals were reportedly arrested on 4 July 2013 in front of the Governorate of Suez building by the third battalion of the Field Army while they were demonstrating against the military takeover of 3 July 2013:

- Mohamed Essayed Ali Rasslan, who is an Egyptian national and usually lives in Suez;
- Mohamed Mohamed Abdo Abdullah, who is an Egyptian national and usually lives in Suez;
- Ahmed Hussein Ali, who is an Egyptian national and usually lives in Suez;
- Ahmed Mohamed Tohamy, who is an Egyptian national and usually lives in Suez;
- Motaz Ahmed Motwali, who is an Egyptian national and usually lives in Suez;
- Mohamed Mohamed Abduh, who is an Egyptian national and usually lives in Suez;
- Assayed Mohamed Ezzat Ahmed, who is an Egyptian national and usually lives in Suez;
- Assayed Saber Ahmed Suleiman, who is an Egyptian national and usually lives in Suez.

6. On 6 July 2013, the military prosecutor charged the eight above-mentioned individuals with the use of violence against members of the armed forces who were entrusted with guarding the building of the Governorate of Suez; throwing stones at the armed forces; pushing over iron fences; removing the barbed wires placed by the army, in an attempt to prevent military forces from carrying out their duties; and verbally insulting the armed forces present. According to the source, they were charged under the following legislative provisions:

- Article 133/1 of the Penal Code, which criminalizes insulting an employee of the public service verbally, with gestures or with threats, while the employee is carrying out his or her tasks, or because of his or her execution of such tasks;
- Article 137 bis A/1 of the Penal Code, which criminalizes using force, violence or threat thereof against a public employee to make him or her unlawfully commit an act or refrain from committing an act; and

- Article 7/A of the Code of Military Justice, which creates jurisdiction over crimes committed against military personnel carrying out their official duties.

7. The eight men were each sentenced to a one-year term of imprisonment by the Military Court of Suez on 24 July 2013.

8. The following four individuals were reportedly arrested on 14 August 2013 in front of the Governorate of Suez building by the third battalion of the Field Army while they were demonstrating against the dispersal of the Rabaa' Al-Adawiya sit-in, which was taking place on the same day:

- Ahmed Hassan Fawaz Atta, aged 25, who is an Egyptian national and usually lives in Massaken El Hayaat;
- Mohamed Abdel Hamid Abdel Fattah Abdel Hamid, aged 36, who is an Egyptian national and lives in Suez;
- Sayyed Ali Abdel Zaher, who is an Egyptian national and lives in Suez;
- Mahmoud Abdel Fattah Abbas, who is an Egyptian national and lives in Suez.

9. On 15 August 2013, the military prosecutor charged the four above-mentioned individuals with violence against public employees entrusted with carrying out a public service; throwing stones and Molotov cocktails at the armed forces to prevent them from carrying out their duties; and stealing equipment from the armed forces. In addition to the legislative provisions applied to the eight individuals, these four individuals were also charged under the following provisions:

- Article 311 of the Penal Code, which deems a thief whoever steals a movable that he or she does not own; and
- 316 bis of the Penal Code, which makes stealing at night by two or more persons carrying weapons an aggravated offence.

10. On 3 September 2013, the Military Court of Suez reportedly sentenced Mr. Atta to life imprisonment, and the other three, Mr. Abdel Hamid, Mr. Abdel Zaher and Mr. Abbas, to 15 years of imprisonment.

11. All of the 12 persons denied the charges and maintained that they had been fabricated. Following their conviction, they were imprisoned in Jalaal Prison and were then transferred to Burj Al Arab prison on 27 October 2013, where they currently remain in detention.

12. The source submits that the detention of the 12 persons is arbitrary, and that the trial of civilians by military courts constitutes per se a gross violation of article 14 of the Covenant, which guarantees the right to "a fair and public hearing by a competent, independent and impartial tribunal established by law".

Communication to the Government

13. The Working Group addressed a communication to the Government on 22 January 2014, requesting it to respond to the allegations made by the source. The Working Group requested the Government to provide it with detailed information about the current situation of the 12 individuals and to clarify the legal provisions justifying their continued detention. The Working Group stated that it would also appreciate the Government providing details regarding the conformity of its trials with international law.

14. The Government has not responded to the communication from the Working Group.

Discussion

15. The Working Group regrets that the Government has not responded to the allegations transmitted to it. Nevertheless, the Working Group considers that it is in a position to render its opinion in accordance with paragraph 16 of its methods of work and its constant jurisprudence.¹

16. The case concerns the arrest, detention and conviction of 12 persons for their participation in demonstrations against the deposing of Mohamed Morsi as president by the military on 3 July 2013. Eight individuals reportedly were arrested by military forces while demonstrating in front of a public building on 4 July 2013, were charged by a military prosecutor with various offences and were sentenced by a military court to a one-year term of imprisonment. Four individuals reportedly were arrested on 14 August 2013, also while demonstrating in front of a public building, and charged by a military prosecutor with the same offences and two further property offences. Of those four individuals, one was sentenced to life imprisonment, and the other three to 15 years of imprisonment.

17. All of the 12 persons denied the charges and maintained that they had been fabricated. The source further submitted that their detention was arbitrary.

18. Although the 12 persons are civilians, they were prosecuted and tried in the military justice system. The Working Group has ruled on the trial of civilians in military tribunals in several cases. In its opinion No. 27/2008 (Egypt),² the Working Group stated that “in principle, military tribunals should not try civilians”. In opinion No. 11/2012 (Egypt),³ it stated that, as far as civilians participating in a demonstration were concerned, “a civil court would be the appropriate court to try and sentence the offenders following the due process of the law”. In that opinion, the Working Group referred to the concerns of the Human Rights Committee that those tribunals, as well as the State Security Courts, showed no guarantees of independence and that their decisions were not subject to appeal before a higher court, contrary to article 14 of the Covenant.⁴ The Working Group went on, in the same opinion, to state that it “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”. The Working Group thus held, in opinion No. 11/2012 (Egypt), that the detainee had been denied the right to a fair trial, as guaranteed under article 14 of the Covenant, because he had been tried by a military court.⁵

19. In its opinions, annual reports, and other documents in which it has addressed the issue, the Working Group has relied on the report on the issue of the administration of justice through military tribunals, which was submitted to the sixty-second session of the Commission on Human Rights, in 2006.⁶ Principle No. 5, which deals with the functional jurisdiction of military courts, states: “Military courts should, in principle, have no jurisdiction to try civilians. In all circumstances, the State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts.”

20. The African Commission on Human and Peoples’ Rights has interpreted articles 7 and 26 of the African Charter on Human and Peoples’ Rights, on fair trial, so that military courts can never have jurisdiction over civilians, stating that “the only purpose of military courts shall be to determine offences of a purely military nature committed by military

¹ A/HRC/WGAD/2013/57.

² A/HRC/13/30/Add.1.

³ A/HRC/WGAD/2012/11, para. 18.

⁴ CCPR/CO/76/EGY, para. 16.

⁵ A/HRC/WGAD/2012/11, para. 19.

⁶ E/CN.4/2006/58.

personnel” and that “military courts should not in any circumstances whatsoever have jurisdiction over civilians”.⁷ The right to a fair trial is non-derogable in the African system.

21. The settled case law of the Inter-American Court of Human Rights excludes civilians from the jurisdiction of military courts: “In a democratic Government of Laws the penal military jurisdiction shall have a restrictive and exceptional scope and shall lead to the protection of special juridical interests, related to the functions assigned by law to the military forces. Consequently, civilians must be excluded from the military jurisdiction scope and only the military shall be judged by commission of crime or offences that by its own nature attempt against legally protected interests of military order”.⁸

22. In *Ergin v. Turkey* (No. 6), the European Court of Human Rights stated that the existence of any military jurisdiction should be subjected to particularly careful scrutiny. The court analyses its own jurisprudence, holding that civilians cannot go before military courts that are composed, if only in part, of members of the armed forces. The Court also noted “developments over the last decade at international level, which confirm the existence of a trend towards excluding the criminal jurisdiction of military courts over civilians”.⁹ The European Court found support in the concluding observations of the Human Rights Committee, and the Working Group notes that the principle has subsequently been developed in the Committee’s jurisprudence.¹⁰

23. The Working Group takes note of these developments over the last fifteen years, which support the constant jurisprudence of the Working Group that the right to a fair trial under article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant excludes the criminal jurisdiction of military courts over civilians. The Working Group’s constant jurisprudence is based on, and reinforces, the development of customary international law.¹¹

24. The case before the Working Group is clear. The 12 individuals were tried before a military tribunal after taking part in public demonstrations, which amounts to violations not only of their right to freedom of opinion and expression but also of their right to a fair trial. The detention of the 12 persons in the present case is in breach of articles 9, 10 and 19 of the Universal Declaration of Human Rights, as well as articles 9, 14 and 19 of the Covenant. The Working Group thus holds that their detention falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

Disposition

25. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The detention of Mohamed Essayed Ali Rasslan, Mohamed Mohamed Abdo Abdullah, Ahmed Hussein Ali, Ahmed Mohamed Tohamy, Motaz Ahmed Motwali, Mohamed Mohamed Abduh, Assayed Mohamed Ezzat Ahmed, Assayed Saber Ahmed Suleiman, Ahmed Hassan Fawaz Atta, Mohamed Abdel Hamid Abdel

⁷ African Commission on Human and Peoples’ Rights, “Principles and guidelines on the right to a fair trial and legal assistance in Africa” (2003), principle L (a) and (c).

⁸ *Durand and Ugarte v. Peru*, 16 August 2000, § 117. See also *Cantoral-Benavides v. Peru*, 18 August 2000.

⁹ *Ergin v. Turkey* (No. 6), No. 47533/99, 2006, para. 45.

¹⁰ See, for example, Human Rights Committee communication No. 1813/2008, *Akwanga v. Cameroon*, Views adopted on 22 March 2011 (CCPR/C/101/D/1813/2008).

¹¹ See the Working Group’s deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law (A/HRC/22/44).

Fattah Abdel Hamid, Sayyed Ali Abdel Zaher and Mahmoud Abdel Fattah Abbas is in breach of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

26. Consequent upon the opinion rendered, the Working Group requests the Government of Egypt to remedy the situation of the 12 persons and to bring it into conformity with the standards and principles in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

27. Taking into account all the circumstances of the case, the adequate remedy is to immediately release the 12 persons and to accord them an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights. The duty to provide them with compensation for the violations of their rights rests upon the State and should be enforceable before the national courts.

[Adopted on 24 April 2014]
