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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventieth session (25–29 August 2014)

No. 35/2014 (Egypt)

Communication addressed to the Government on 18 June 2014

concerning Khaled Mohamed Hamza Abbas, Adel Mostafa Hamdan Qatamish, Ali Ezzedin Thabit, Zain El-Abidine Mahmoud and Tariq Ismail Ahmed

The Government has not replied to the communication.

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

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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 below was reported to the Working Group on Arbitrary Detention.

4. Khaled Mohamed Hamza Abbas is an Egyptian national, born in 1963. He is an engineer, journalist and human rights activist. He is a leading member of the Muslim Brotherhood in Egypt, who established and maintains the English version of the Muslim Brotherhood's website.

5. Adel Mostafa Hamdan Qatamish is a 53-year-old Egyptian national. He is the former Deputy Governor of Northern Sinai and an active member of the Muslim Brotherhood.

6. Ali Ezzedin Thabit is a 45-year-old Egyptian national. He is a professor of ophthalmology at the University of Asyut and an active member of the Muslim Brotherhood.

7. Zain El-Abidine Mahmoud is a 40-year-old Egyptian national. He is a professor and an active member of the Muslim Brotherhood.

8. Tariq Ismail Ahmed is a 42-year-old Egyptian national. He is a mechanical engineer and an active member of the Muslim Brotherhood.

9. On 25 February 2014, while travelling by car with two Sudanese nationals, the five men were arrested at the Egypt-Sudan border, near Wadi Al-Allaqi, by border guards. They were charged with the following offences:

(a) Possessing 685 9 mm ammunitions without authorization, with the intention of using them against the State security and general interest, as well as against the Constitution and the social and national unity of the State;

(b) Entering a military zone, located in Abu Mera (130 kilometres southwest of Aswan), pursuant to Presidential Decree No. 204-2010 and article 5 of the Code of Military Justice.

10. The source informs the Working Group that those charges were fabricated and that there is no evidence to prove the alleged charges. Their trial began on 17 March 2014 and it is unclear whether or not they were represented by a lawyer. On 7 May 2014, the Military Supreme Court of Qena convicted them and sentenced them to one year of imprisonment. They remain detained in Qena prison to date.

11. The source submits that the detention of the five individuals is arbitrary, as they were arrested and indirectly sentenced for their political activism as supporters of the Muslim Brotherhood. It points out that all of the five individuals have been active members

of the Muslim Brotherhood and were referred to as such when they were arrested. Consequently, the source believes that they have been arrested and detained because of their exercising their right to freedom of expression, which is guaranteed by article 19 of the International Covenant on Civil and Political Rights.

12. Furthermore, the source argues that the trial of civilians in military courts is, per se, a gross violation of the right to a fair trial, which is guaranteed under article 14 of the Covenant, as the structure and proceedings of military courts are such that they are unable to guarantee a fair trial in accordance with international norms and standards. Thus, in the source's view, any form of imprisonment of civilians which is an outcome of a trial in a military court amounts to arbitrary detention.

Response from the Government

13. The Working Group addressed a communication to the Government of Egypt on 18 June 2014, requesting detailed information about the current situation of Messrs. Khaled Mohamed Hamza Abbas, Adel Mostafa Qatamish, Ali Ezzedin Thabit, Zain El-Abidine Mahmoud and Tariq Ismail Ahmed, and the legal provisions justifying their continued detention and their compliance with international law. The Working Group regrets that the Government has not responded to the allegations transmitted to it.

Discussion

14. Despite the absence of any information from the Government, the Working Group considers that it is in the position to render its opinion on the detention of the five individuals in conformity with paragraph 16 of its methods of work.¹

15. The source has informed the Working Group that the charges against the five individuals were fabricated and without evidence, and that it is unclear whether or not they were represented by a lawyer. Those allegations have not been refuted by the Government.

16. The source has also indicated that the five individuals were arrested for their support of the Muslim Brotherhood. The source further points out that their trials before military courts are in violation of international law. The Government has chosen not to rebut those allegations.

17. The source has not provided much, in terms of precise information about the criminal proceedings, upon which the Working Group can base its opinion in the absence of a reply from the Government. The source has, however, informed the Working Group that the trial took place before a military court, and the Working Group has in several opinions considered the trial of civilians before Egyptian military tribunals. The Working Group underlines that the trial of civilians, or decisions placing civilians in preventive detention, by military courts are in breach of the fundamental requirements of independence and impartiality and of guarantees for a fair trial as required by article 10 of the Universal Declaration of Human Rights, article 14 of the International Covenant on Civil and Political Rights and customary international law, as confirmed by the constant jurisprudence of the Working Group.²

¹ See, for example, opinion No. 5/2014 (Iraq), para. 15.

² See A/HRC/27/48, para. 66, as well as opinions No. 20/2012 (Israel); No. 11/2012 (Egypt); No. 12/2012 (Egypt); No. 6/2012 (Bahrain); No. 3/2012 (Israel); No. 1/2012 (Egypt); No. 57/2011 (Egypt); No. 50/2011 (Egypt); No. 37/2011 (Syrian Arab Republic); No. 38/2011 (Syrian Arab Republic); No. 39/2011 (Syrian Arab Republic); No. 1/2011 (Syrian Arab Republic); No. 3/2011 (Egypt); No. 31/2010 (Venezuela (Bolivarian Republic of)); No. 32/2010 (Peru); No. 27/2010 (Syrian

18. The Working Group considers that the breaches of 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 are of such gravity as to give the deprivation of liberty of the five men an arbitrary character. Their deprivation of liberty falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

19. The Working Group recalls that this is only one of several opinions of the Working Group finding Egypt in violation of its international human rights obligations. The Working Group reminds Egypt of its duties to comply with international human rights obligations not to detain anyone arbitrarily; to release persons who are arbitrarily detained; and to provide them with compensation. The duty to comply with international human rights obligations rests not only on the Government, but on all officials of the State, including judges, the police, security officers and prison officers with relevant responsibilities. The Working Group emphasizes that no one person contributes to human rights violations. The Working Group also underlines that individual criminal responsibility can derive from arbitrary detention, in particular when such detention constitutes a crime against humanity under customary international law.

Disposition

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

The detention of Messrs. Khaled Mohamed Hamza Abbas, Adel Mostafa Qatamish, Ali Ezzedin Thabit, Zain El-Abidine Mahmoud and Tariq Ismail Ahmed is in breach of 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, and falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

21. Consequent upon the opinion rendered, the Working Group requests the Government of Egypt to remedy the situation of Messrs. Khaled Mohamed Hamza Abbas, Adel Mostafa Qatamish, Ali Ezzedin Thabit, Zain El-Abidine Mahmoud and Tariq Ismail Ahmed, and to bring it into conformity with the standards and principles set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and customary international law.

22. Taking into account all the circumstances of the case, the Working Group concludes that the adequate remedy would be to immediately release Messrs. Khaled Mohamed Hamza Abbas, Adel Mostafa Qatamish, Ali Ezzedin Thabit, Zain El-Abidine Mahmoud and Tariq Ismail Ahmed, 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 and customary international law. The duty to provide them with compensation for the violation of their rights rests upon the State and must be enforceable before the national courts.

[Adopted on 28 August 2014]

Arab Republic); No. 22/2010 (Egypt); No. 23/2010 (Myanmar); No. 13/2010 (Palestinian Authority); No. 9/2010 (Israel); No. 5/2010 (Israel).