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Human Rights Council Working Group on Arbitrary Detention

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No. 14/2015 (Egypt)

Communication addressed to the Government on 8 January 2015

concerning a minor (whose name is known by the Working Group)

The Government replied to the communication of 8 January 2015 on 18 February 2015.

The State is party to the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.*

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

* Egypt ratified the International Covenant on Civil and Political Rights on 14 January 1982 and the Convention on the Rights of the Child on 6 July 1990.



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

Submissions

Communication from the source

3. A minor, whose name is known by the Working Group (hereinafter “the minor”), is an Egyptian national and usually resides in Alexandria, Egypt, where he is a high-school student.

4. On 27 December 2014, the minor was arrested at his home at approximately 6 a.m. in the presence of his family members. It is reported that a large group of security forces belonging to the State Security Directorate conducted the arrest in the absence of a warrant. His home was later searched.

5. The minor was initially detained for approximately two hours at the El-Dekheila police station, Alexandria, and later transferred to the State Security Directorate, Smouha, Alexandria, where he remains detained to date. He has not been granted access to his family.

6. On 30 December 2014, the minor, along with a group of minors, was transported in handcuffs to the Prosecutor’s Office, as confirmed by his family, who saw him outside the building from a distance. It is reported that the minor was represented by legal counsel before the Prosecutor.

7. The minor was initially accused of destroying a police car on 10 December 2014, at approximately 6 p.m., which the source refutes, stating that the minor was in the company of one of his teachers at the time of the alleged act. He was later accused, along with a number of other minors, of taking part in a demonstration associated with support for the Muslim Brotherhood. That allegation is refuted by the source, which states that the minor had no political involvement.

8. According to the source, the Prosecutor initially decided to release the minor, along with a number of other minors, but later that same day reversed that decision and instead confirmed the minor’s detention pending trial.

9. The source says that as his family has had no contact with the minor since the date of his arrest or any information regarding his well-being, they fear for his health and safety.

Response from the Government

10. In the communication addressed to the Government on 8 January 2015 the Working Group transmitted the allegations made by the source. The Working Group stated that it

would appreciate if the Government could, in its reply, provide it with detailed information about the current situation of the minor and clarify the legal provisions justifying his continued detention. The Government replied to the communication of 8 January 2015 on 18 February 2015.

11. According to the Government, a number of leaders of the Muslim Brotherhood terrorist organization in western Alexandria had instructed some members of the organization, including the minor, to hire criminal elements, to purchase firearms and bladed weapons, and to prepare bombs and Molotov cocktails for use against the security forces and their vehicles and installations. The criminal group called itself “Ultras Freedom Eagles”.

12. The mandatory legal steps were taken and the Supreme State Security Prosecutor’s Office issued an arrest warrant for the parties concerned. The warrant was used to arrest the minor and 23 other members of the criminal group known as “Ultras Freedom Eagles”.

13. The arrested persons admitted during the investigations that they had been involved in setting fire to a police vehicle, attacking the security forces and seizing the belongings of one of the officers. The minor was found to have been involved in El-Dekheila administrative case No. 16981 of 2014 concerning an arson attack on a vehicle belonging to the Alexandria Traffic Department and assault on an officer. In the light of the foregoing, the Prosecutor’s Office decided to place him in pretrial detention for 15 days pending investigations and renewed the detention for the legally permitted period, in accordance with the relevant legal provisions.

14. The minor was detained far from any adult detainees in the Transfer Department of the Alexandria Security Directorate, since he could not be detained in the Directorate’s Juvenile Custody Division or in the General Juvenile Custody Department in Cairo until a final judgement had been handed down sentencing him to imprisonment, in accordance with the relevant legal procedures.

15. The minor was in good health and was not suffering from any chronic illness. He was visited by his father every Monday during official visiting hours.

Comments from the source

16. On 24 March 2015, the source submitted its comments to the response from the Government.

17. According to the source, the minor is assumed by the Government of Egypt to be involved in anti-government activities. There are, however, no exact dates, places or evidence provided. In this regard, the source claims that, in the response from the Government, mention is often made of the group, but never of the minor as an individual person.

18. The source claims that any imprisonment has to be based on a court order. The minor was arrested at home in the early morning of 27 December 2014 with the permission of the prosecution and was detained in the State Security Directorate in Alexandria. The source argues that the response of the Government shows its failure to demonstrate having undertaken any investigation into the legality and arbitrariness of the minor’s detention.

19. The minor is accused of political involvement in the Muslim Brotherhood group regardless of the fact that he was one of those who supported the President, Abdul Fattah al-Sisi, and all his family voted for Mr. Al-Sisi to be president. The Government’s statement concerning the minor’s political involvement is not based on any evidence and was, perhaps, created for the purpose of keeping the minor imprisoned.

20. Furthermore, the source refutes the statement by the Government that the minor pleaded guilty to all charges. The source points out that the minor was not recognized by the other detainees. The search, conducted in his family house, did not provide any evidence against him. As there was no evidence for imprisoning him he should be allowed to go free.

21. The source refutes the Government's statement concerning the health condition of the minor, and claims that he suffers from stuttering and has a worrying health condition.

22. The source also claims that because the minor is a high-school student, his detention has interrupted his studies. It has further had a devastating effect on him and the whole of his family.

Discussion

23. According to its methods of work, the Working Group is in a position to render an opinion on the case on the basis of the submissions that have been made.

24. Neither the source nor the Government has provided much in terms of precise information about the criminal proceedings upon which the Working Group can base its opinion. The main issues in the present case relate to the competence of the Supreme State Security Prosecutor's Office to render a decision on deprivation of liberty pending trial, as well as compliance with the pertinent international human rights norms of the minor's detention in the Transfer Department of the Alexandria Security Directorate.

25. The Working Group mentions that, according to the source, the minor is a 17-year-old high-school student, who has been detained since 27 December 2014 in the Transfer Department of the Alexandria Security Directorate. In its response, the Government confirmed that the minor was detained in that facility, since, in accordance with the relevant legal procedures, he could not be detained in the Directorate's Juvenile Custody Division or in the General Juvenile Custody Department in Cairo until a final judgement had been handed down sentencing him to imprisonment.

26. The Working Group points out that the Government submitted that the minor had been held for four months far from any adult detainees in the Transfer Department of the Alexandria Security Directorate. The Working Group considers that irregular detention for such a long period in a security agency facility is a grave violation of the requirements relating to any form of pretrial detention.

27. The Working Group expresses grave concern that no further details have been provided regarding compliance of the minor's detention with applicable international human rights standards, in particular, with the principle that the deprivation of liberty of a child shall be used only as a measure of last resort and for the shortest appropriate period of time, as set forth in article 37 (b) of the Convention on the Rights of the Child, ratified by Egypt on 6 July 1990, and affirmed by sections 1 and 2 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and by sections 13.1, 18.2 and 19.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

28. The minor has been held in detention by a decision rendered by the Supreme State Security Prosecutor's Office, and has never been brought before the judicial authority that could verify the legality of his arrest and detention by State security agents. In its general comment No. 35 (2014) on liberty and security of person (para. 32), the Human Rights Committee reaffirmed that article 9 (3) of the International Covenant on Civil and Political Rights requires that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. That requirement applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it. The requirement applies even before formal charges have

been asserted, so long as the person is arrested or detained on suspicion of criminal activity. The right is intended to bring the detention of a person in a criminal investigation or prosecution under judicial control. It is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. Accordingly, a public prosecutor cannot be considered as an officer exercising judicial power under article 9 (3) (see general comment No.35, para. 32).

29. The Working Group shares the views of the Human Rights Committee that while the exact meaning of “promptly” may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances. An especially strict standard of promptness, such as 24 hours, should apply in the case of juveniles. The individual must be brought to appear physically before the judge or other officer authorized by law to exercise judicial power. The physical presence of detainees at the hearing gives the opportunity for inquiry into the treatment that they received in custody and facilitates immediate transfer to a remand detention centre if continued detention is ordered. It thus serves as a safeguard for the right to security of person and the prohibition against torture and cruel, inhuman or degrading treatment. In the hearing that ensues, and in subsequent hearings at which the judge assesses the legality or necessity of the detention, the individual is entitled to legal assistance, which should in principle be by counsel of choice (see general comment No. 35, paras. 33–34).

30. The Government failed to demonstrate that it had safeguarded the minor’s due process rights and guarantees, as well as his right to a fair trial, in compliance with articles 9 and 10 of the Universal Declaration of Human Rights and 9 and 14 of the International Covenant on Civil and Political Rights, which is binding on Egypt by virtue of its ratification. This is furthermore in violation of section 14 of the Beijing Rules. This case falls within categories I and III.

31. The Working Group expresses its grave concern about the present case, which, when considered together with the previously adopted opinions relating to Egypt, indicates systemic and widespread arbitrary detentions of young individuals. The Working Group also considers that violations of the fundamental right to be free from arbitrary deprivation of liberty, which cannot be derogated from, will render subsequent convictions unsafe.

Disposition

32. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of the minor is arbitrary, being in contravention 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. It falls within categories I and III.

33. Consequent upon the opinion rendered, the Working Group requests the Government to take the steps necessary to remedy the situation of the minor and bring it into conformity with the standards and principles set forth in the Universal Declaration and the Covenant.

34. The Working Group requests the Government to release the minor immediately and accord him an enforceable right to reparation in accordance with article 9 (5) of the International Covenant on Civil and Political Rights.

[Adopted on 27 April 2015]