



General Assembly

Distr.: General
20 October 2016

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session, 18-27 April 2016

Opinion No. 6/2016 concerning Alaa Ahmed Seif al Islam Abd El Fattah (Egypt)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the 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 1/102 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.

2. In accordance with its methods of work (A/HRC/30/69), on 16 February 2015 the Working Group transmitted a communication to the Government of Egypt concerning Alaa Ahmed Seif al Islam Abd El Fattah. The Government responded to the communication on 20 April 2015. The State is a party to the International Covenant on Civil and Political Rights.

3. 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 him or her) (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);

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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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Alaa Ahmed Seif al Islam Abd El Fattah, born on 18 November 1981, is an Egyptian national and usually resides in Giza, Egypt. Mr. Abd El Fattah is a human rights defender, activist, independent blogger and software developer. He is the co-founder of a popular and prize-winning blog aggregator, Manalaa, which promotes free speech and human rights.

5. On 26 November 2013, Mr. Abd El Fattah participated in a peaceful demonstration in front of the Shura Council (the upper house of the Egyptian parliament), which was organized by an Egyptian human rights advocacy group by the name of No to Military Trials for Civilians. The demonstration was reported to have been staged to denounce the new constitutional provisions which allow civilians to be tried before military tribunals.

6. On 27 November 2013, Mr. Abd El Fattah learned from the media that the Public Prosecutor's Office had issued a summons against him. He was charged with illegally organizing the protest on 26 November, assaulting a police officer and stealing the latter's two-way radio.

7. Mr. Abd El Fattah informed relevant authorities that he would comply with the summons and present himself at the Public Prosecutor's Office. Nevertheless, on 28 November 2013, at approximately 10 p.m., a joint force comprising agents from Qasr el-Nil police station, Omraneya police station and the Egyptian Special Forces raided his house. Mr. Abd El Fattah was beaten by the officers after he asked to see the arrest warrant. No warrant was presented, nor did the officers give any reason for the arrest. Subsequently, Mr. Abd El Fattah was taken to an unknown place by force. He was blindfolded and handcuffed. Two laptops and two mobile phones were confiscated by the officers.

8. On 29 November 2013, Mr. Abd El Fattah was transferred to Tora maximum-security prison. He was detained there until 23 March 2014, when he was released on bail.

9. On 11 June 2014, Mr. Abd El Fattah was informed that the judge had handed down a judgment while he and one of his lawyers were waiting outside the court to attend the hearing. According to another lawyer of Mr. Abd El Fattah, who was in the waiting room of the court when the judgment was handed down, the judge never entered the courtroom and no hearing took place. Mr. Abd El Fattah was alleged to have violated articles 7, 8, 19, 21 and 22 of a new law which had entered into force on 24 November 2013, two days before the protest in which he had participated. Mr. Abd El Fattah was sentenced to 15 years' imprisonment, and was detained on the spot. While in detention, he went on hunger strike from 18 August to 16 September 2014.

10. On 16 September 2014, Mr. Abd El Fattah was released on bail for the second time.

11. On 27 October 2014, he was arrested again at the Tora Police Academy when he was attending a hearing related to his case and taken to Al Mazraa prison. The court refused to give any reasons for the arrest and detention. In Al Mazraa prison, Mr. Abd El Fattah

was held in a different cell from other political prisoners. His cellmates were reportedly encouraged to harass him. He was also harassed by prison guards. Mr. Abd El Fattah was not allowed winter clothes and was forced to sleep on a concrete slab in increasingly cold temperatures. He went on hunger strike a few days after he was rearrested. As a result, he has lost a lot of weight.

12. The source submits that the detention of Mr. Abd El Fattah is arbitrary and falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

13. The source is of the view that the arrest and detention of Mr. Abd El Fattah result from his exercise of his right to freedom of opinion, his participation in a peaceful demonstration and his political activism, which are activities protected by article 19 of the Universal Declaration of Human Rights and articles 19, 21, 22 and 25 of the Covenant. In this regard, the source indicates that the law which was applied in this case, namely Act No. 107/2013 regulating the right to hold peaceful public meetings, processions and peaceful demonstrations, has been used by the authorities as a tool to repress virtually all forms of assembly and association in Egypt.

14. The source also argues that Mr. Abd El Fattah has not been guaranteed the international norms of due process and guarantees to a fair trial, in violation of articles 9 and 10 of the Declaration and articles 9 and 14 of the Covenant. Mr. Abd El Fattah was arrested without an arrest warrant and was not informed of the reasons for his arrest. As stated above, the judgment of 11 June 2014 was handed down in absentia and without a hearing.

15. The source further indicates that there were many other irregularities in the trial of Mr. Abd El Fattah which are in violation of article 14 of the Covenant. During a number of court hearings, the public was not allowed to attend. The case of Mr. Abd El Fattah was heard by Judge Fiky. In 2011, Mr. Abd El Fattah filed a complaint against Judge Fiky, accusing him and 21 other judges of allowing electoral fraud during the 2005 elections. The source further claims that, although the impartiality of Judge Fiky in this case is questionable, the judge did not recuse himself until 15 September 2014. During most of the retrial hearings, Mr. Abd El Fattah was placed in a soundproof glass cage, making it impossible for him to make himself heard or to speak to his lawyers. Access to his lawyer outside court hearings was also limited at times. The lawyers of Mr. Abd El Fattah were not provided with access to video evidence prior to the hearings. During court hearings, his lawyers were repeatedly reprimanded by the presiding judge for asking too many questions of the prosecution witnesses and told to stop doing so.

16. With regard to the arrest and detention of Mr. Abd El Fattah, the Working Group and other United Nations special procedure mandate holders transmitted two joint urgent appeals to the Government of Egypt, dated respectively 3 and 6 December 2013.¹ The Working Group acknowledges receipt of the responses from the Government on this matter, dated 27 December 2013 and 18 and 21 January 2014.²

Response from the Government

17. In its response dated 20 April 2015, the Government provided the Working Group with the following information.

¹ See A/HRC/26/21, sect. II. A, Case Nos. EGY 16/2013 and EGY 17/2013.

² See A/HRC/26/21.

18. Two members of the 6 April Movement, Ahmed Maher Ibrahim and Mr. Abd El Fattah, called upon citizens to participate in a demonstration in front of the premises of the Shura Council at 4 p.m. on 26 November 2013, to express opposition to the provisions in the new Constitution that would allow civilians to be tried before military courts. As a token of protest against the new Act regulating demonstrations, they failed to give prior notification of that demonstration, as required by law.

19. Around 350 people gathered in front of the Shura Council premises, where they raised banners criticizing the new Act, the Constitution and military trials and shouted slogans against the police and the armed forces. The police allowed them to exercise their right to express their opinion for a while, even though the demonstration, being unlawful, might have been dispersed immediately. Later, the police, having an obligation to safeguard public security and the rights and freedoms of citizens, ordered them to disperse on the grounds that they had failed to give prior notification and were contravening the new Act on demonstrations by blocking the public thoroughfare, impeding the flow of traffic and attacking security forces. They were also hampering the functioning of public facilities and government departments, since the demonstration was taking place in front of the Shura Council premises and in the vicinity of the premises of the People's Assembly and the Council of Ministers and was thereby obstructing traffic in Qasr al-Aini Street, the principal thoroughfare in the middle of the capital city where many government departments and facilities are located, including the parliament and ministries. Although safe corridors were established through which the demonstrators could disperse, and sufficient time was allowed for this, they failed to comply. Loudspeaker announcements were made, and they were given two further deadlines within which to leave, but they again failed to comply. Water cannons were then used to disperse the crowd, but the crowd attacked the police, shouting insults and throwing stones and empty bottles. While this was happening, a number of demonstrators surrounded Lieutenant Colonel Emad Tahoun, who was assaulted, injured and robbed of his police radio. Meanwhile, the street remained blocked and the flow of traffic interrupted. The police arrested 24 demonstrators armed with knives. They were brought before the Public Prosecutor's Office and 23 of them were released on 4 December 2013.

20. Investigations revealed that Ahmed Maher Ibrahim and Mr. Abd El Fattah had called for the demonstration on 26 November 2013 in front of the premises of the Shura Council, without giving notification. The accused Ahmed Maher Ibrahim had been present among the demonstrators, had urged them not to disperse in contravention of a police order and had thrown stones at police officers. The accused Mr. Abd El Fattah had also been present in front of the premises of the Shura Council and had participated in the demonstration. He had attacked police by throwing stones and had been among those who assaulted Lieutenant Colonel Emad Tahoun and stole the latter's radio, although his companions managed to prevent his arrest. Since the demonstrators were intent on contravening the Act on demonstrations and public gatherings, perpetrating acts of violence and thuggery and attacking the police, the demonstration was not peaceful; on the contrary, it was accompanied by attacks on the police, theft of their equipment and the throwing of stones by the demonstrators, some of whom were carrying knives as stated above.

21. The accused Mr. Abd El Fattah was arrested under an arrest warrant issued by the Public Prosecutor's Office on 27 November 2013, in accordance with article 126 of the Code of Criminal Procedure, once sufficient evidence had been produced to indicate that he had committed the offences of which he was accused. The police executed the warrant on 28 November 2013. An examination of the investigation reports found no evidence which officially confirmed the assertion by the accused that he had declared his intention to give himself up to the Egyptian authorities. On the contrary, the report drawn up by Lieutenant Colonel Mohammed El Sayyed, head of the Qasr El Nil Criminal Investigation Department, shows that the accused resisted the police officers executing the arrest warrant.

22. When the accused Mr. Abd El Fattah was questioned, after being informed of the charges against him and of the fact that the investigation proceedings were being conducted by the Public Prosecutor's Office, he acknowledged that he had called for and participated in the demonstration in front of the premises of the Shura Council on 26 November 2013 without following any of the legally prescribed prior notification procedures. Moreover, two compact discs provided by the Directorate-General of Technical Assistance and containing footage from the scene enabled participants to be clearly identified and showed that the accused Mr. Abd El Fattah was present at the demonstration in front of the premises of the Shura Council on that day. A report from the Directorate of Information and Documentation also showed that the accused Mr. Abd El Fattah used the social networking service Twitter to call upon citizens to demonstrate at 4 p.m. on 26 November 2013 at the main entrance to the Shura Council building.

23. It is noteworthy that, during the investigation, the accused Mr. Abd El Fattah was found to have bodily injuries which he claimed the police had inflicted. The Public Prosecutor's Office, treating the accused as a victim, immediately questioned him about this matter and recorded his visible injuries. It sent him to a government hospital to receive the necessary first aid and medical treatment, and also ordered his examination by the Department of Forensic Medicine in order to determine the nature of his injuries and the manner in which they had occurred. Copies were made of the documents concerning his injuries.

24. On 9 December 2013, all the accused with the exception of Ahmed Maher Ibrahim were sent for trial on criminal charges of participating, together with other unknown persons, in a gathering of more than five individuals which had caused a disturbance of the peace. The aim of the gathering was to attack persons and public and private property and prevent public officials from carrying out their duties, by using force and violence and carrying offensive weapons. During the course of the gathering, and with full knowledge of its aims, the accused persons committed the following offences:

(a) They stole a radio belonging to the Ministry of the Interior which was in the possession of Lieutenant Colonel Emad Tahoun. Force was used to this end, namely that some of the accused surrounded the victim while others struck him, overcame his resistance and were thereby able to steal the radio. This assault left traces of injuries on the victim, as detailed in the investigation report;

(b) They and other unknown persons made a show of force and used violence against police officers who had sought to prevent the accused and others from gathering at the scene of the incident. They attacked the police, thereby threatening the safety of police officers and disturbing public peace and tranquillity, as detailed in the investigation report;

(c) They participated in a demonstration during which the peace and public order were disturbed and they blocked a public thoroughfare, impeding the flow of traffic, as detailed in the investigation report;

(d) They attacked Lieutenant Colonel Emad Tahoun and police recruit Ahmed Mohammed Abdel Aal, who were carrying out their duties, inflicting on them the injuries described in the two medical certificates annexed to the investigation report.

25. The accused Mr. Abd El Fattah was sent for trial on the charge of organizing a gathering of more than five individuals which was likely to endanger public order, insofar as its purpose was to attack persons and public and private property, and using force and violence against public officials carrying out their duties, as detailed in the investigation report. He was also charged with organizing a demonstration without giving written notification to the police station which exercised jurisdiction over the area in which it was to take place, as noted in the investigation report. These acts constitute felonies and misdemeanours punishable under articles 2, 3, 3 bis (1) and 4 of Act No. 10 of 1914

concerning public gatherings; articles 136, 137 (1), 314, 375 bis and 375 bis (a) (i) and (v) of the Criminal Code; articles 7, 8, 9, 21 and 22 of Act No. 107 of 2013 regulating the right to hold peaceful public meetings, processions and demonstrations; and articles 1 (1), 25 bis (1) and 30 (1) of the Weapons and Munitions Act No. 394 of 1954, as amended by Acts No. 26 of 1978 and No. 165 of 1981 and by clause 7 of schedule 1 annexed to Act No. 26 of 1978 as amended by Decision No. 1956 of 2007 of the Minister of the Interior.

26. In January 2014, the accused Mr. Abd El Fattah was sentenced in absentia to a term of 15 years' penal servitude. However, since he was arrested only after that judgment was handed down, the sentence in absentia was annulled in accordance with the Code of Criminal Procedure and, on 23 February 2015, he was retried in his presence and sentenced to five years' penal servitude.

27. The Public Prosecutor's Office ordered the said accused person to be remanded in custody, for the periods and on the grounds prescribed by law, from the time of his arrest until 9 December 2013, the date on which the case was referred to the competent criminal court. Thereafter, the competent court was responsible for considering the question of his pretrial detention on the grounds that it deemed appropriate, in the light of the provisions of the Code of Criminal Procedure.

28. With regard to the allegations concerning the right of defence, the Department of Public Prosecution conducted its investigation of the accused Mr. Abd El Fattah without regard for his beliefs, his gender or his ideology, and brought criminal charges against him after gathering oral and technical evidence for submission to the competent court. The Public Prosecutor's Office had an obligation to ensure that the accused was accompanied by a lawyer during his questioning, in accordance with the provisions of article 124 of the Code of Criminal Procedure, under which an official investigating felonies or misdemeanours punishable by a mandatory penalty of imprisonment is permitted to question the accused or confront him with other accused persons or witnesses only after inviting his lawyer to be present. If the accused does not have a lawyer, or if his lawyer does not appear after being invited to do so, the investigator must, *ex officio*, appoint a lawyer for him. Finally, the case file was submitted to the relevant judge, not to a special or extraordinary court, and the judgment delivered against the defendant was subject to appeal, in conformity with the constitutional and legal principle that court proceedings in Egypt are conducted at two levels. Accordingly, convicted persons are entitled to lodge an appeal with the Court of Cassation pursuant to the provisions of article 381 of the Code of Criminal Procedure and article 30 of the Act regulating appeal and cassation procedures.

29. It is noteworthy that article 11 (2) of the Act regulating demonstrations stipulates that: "If any of the participants in a public meeting, procession or demonstration commit an act which constitutes a legally punishable offence or a non-peaceful means to express their opinion, security forces wearing official uniform may, if so ordered by their field commander, proceed to disperse the public meeting, procession or demonstration and arrest anyone suspected of having committed the offence".

30. The police allowed the demonstrators to exercise their right to express their opinion for a while, since any demonstration on a public thoroughfare is likely to cause a minor disturbance of the peace that can be condoned. However, in view of the presence of the demonstration in front of the premises of the Shura Council, its obstruction of the public thoroughfare and disruption of traffic thereon, as well as the acts of aggression committed against the security services and the legal obligation of the police to maintain public order and safeguard the rights and freedoms of citizens, the security forces finally warned the demonstrators, more than once, to disperse. However, the demonstrators ignored the warnings while continuing their assaults on the security forces, until they were eventually dispersed by water cannons. As already indicated, some of the demonstrators committed criminal offences punishable under Egyptian law.

31. The freedom to express opinions is a right guaranteed to all under the Constitution and laws of Egypt and in compliance with its relevant international commitments. However, the breaking-up of the above-mentioned demonstration and the arrest of participants who committed the described criminal acts do not constitute an infringement of that right, since freedom to express opinion, far from being absolute, is subject to certain rules and conditions. In particular, the exercise of that right must not encroach on the rights and freedoms of other citizens and must not be used as a means to commit legally punishable criminal acts. Accordingly, the Act regulating demonstrations placed no restriction on that right, provided that it was exercised within the limits of the law. This is the rule currently observed in most countries of the world. In fact, in its judgment delivered on 5 March 2009, a chamber of the European Court of Human Rights ruled that a sentence of three months' imprisonment imposed by a French court on demonstrators charged with obstructing traffic on a public highway did not constitute a violation of article 11 of the European Convention on Human Rights, concerning freedom of assembly and association, since the obstruction caused by the demonstration exceeded the limits generally permitted for demonstrations.

Further comments from the source

32. The response from the Government was transmitted to the source on 24 April 2015.

33. The source alleges that, in its response, the Government of Egypt argues that Mr. Abd El Fattah was taken before the criminal court because he committed criminal offences and not because of his exercise of basic rights and freedoms. The source reiterates that Mr. Abd El Fattah's imprisonment falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it, as he was prosecuted for the legitimate exercise of his right to freedom of opinion and expression (article 19 of the Covenant), his right to freedom of peaceful assembly and association (articles 21 and 22 of the Covenant) and his right to take part in the conduct of public affairs (article 25 of the Covenant). The source alleges that the response from the Government presents a version of events that does not reflect the actual motives for prosecuting Mr. Abd El Fattah, nor his experiences in prison and in the courts.

34. The source also alleges that the Act regulating demonstrations prohibits "violations of general security, public order, or production" and "calling for disrupting public interests". It also prohibits action that could impact public services or the flow of traffic, as well as assaults on security forces and the threat of danger to individuals or property. According to the source, there is ample information, including a report from Human Rights Watch observers who were present, that the demonstration in which Mr. Abd El Fattah participated was peaceful. Furthermore, the source mentions that public figures and elected officials who were inside the Shura Council building at the time of the protest testified that the protest was peaceful.³ The source alleges that the prosecution did not present credible evidence to the contrary.

35. The source alleges that, during Mr. Abd El Fattah's trial, the prosecution relied on video evidence purporting to show Mr. Abd El Fattah at the protest outside the premises of the Shura Council, but that the video was actually composed of footage from several different protests and gatherings. Furthermore, the source stated that the prosecutor did not, at any point, identify Mr. Abd El Fattah in the video: when the prosecution showed footage from the Shura Council protest, Mr. Abd El Fattah was not visible. The source alleges that, contrary to the assertion of the Government of Egypt, Mr. Abd El Fattah was not involved

³ Nagm al-Deen, Tariq, "Egyptian activist Abdel Fattah jailed", 23 February 2015. Available from www.alaraby.co.uk/english/news/2015/2/23/egyptian-activist-alaa-abdel-fattah-jailed.

in throwing rocks at the police, nor is there any credible evidence that would support such an assertion.

36. The source argues that the Act regulating demonstrations requires organizers of a protest to notify the authorities before a demonstration occurs and that the relevant provision applies only to these organizers. In the opinion of the source, Mr. Abd El Fattah was not an organizer of the 26 November 2013 protest at the premises of the Shura Council and therefore he could not have committed this offence.

37. According to the source, the actual organizers of the protest have admitted that they organized the protest, have stated that Mr. Abd El Fattah did not play an organizing role, and have attempted to turn themselves in to the authorities.⁴

38. The source states that the Government of Egypt bases its argument that Mr. Abd El Fattah was the organizer of the Shura Council protest on the fact that he shared a link to the event on social media. The source alleges that Mr. Abd El Fattah was one of many persons who shared information about the protest online, and that this does not suffice to classify him as an organizer.

39. The source also points out that the Act regulating demonstrations has been designed and implemented in such a way as to deter peaceful public gatherings and expression of political dissent.

40. The source argues that the Government of Egypt attempts to draw support for the restriction of Mr. Abd El Fattah's right to freedom of assembly from the judgment of the European Court of Human Rights in the case of *Barraco v. France*.⁵ In the opinion of the source, the correct application of the relevant standards to the present case would result in the conclusion that Mr. Abd El Fattah's detention was clearly not justified. In *Barraco v. France*, the Court determined that a French court could sentence a demonstrator to a suspended prison term of three months and a fine. The Court held that article 11 of the European Convention on Human Rights does not categorically prohibit a French court from imposing prison sentences for obstructing traffic on a public highway as part of a demonstration. However, the Court's balancing test will come out in favour of the demonstrator if the sentence is disproportionate to the alleged offence, and/or if the demonstrator's interest in the action is proportionally greater. It can be argued that both of these circumstances are present in Mr. Abd El Fattah's case. First, Mr. Abd El Fattah's five-year sentence, in a prison where he is subject to harassment and neglect, is quantitatively and qualitatively different from the three-month suspended sentence imposed on the French plaintiff in *Barraco v. France*. Second, his interest in protesting against military trials for civilians is high, as fellow activists are subjected to such unfair trials, which have serious implications for the state of human rights in Egypt. Furthermore, Mr. Abd El Fattah's prosecution is clearly motivated by a desire to silence him specifically, and occurs in the context of the subjection of other activists in Egypt to detention as a result of their activities.

41. The source alleges that the restriction of Mr. Abd El Fattah's right to freedom of expression through his arrest and detention cannot be considered permissible under article 21 of the Covenant. Therefore, it violates his right to freedom of assembly. As the arrest and detention of the petitioner result from the exercise of his right to freedom of assembly, it falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

⁴ FreeAlaa, "The imprisonment of Alaa Abd El Fattah". Available from https://docs.google.com/document/d/1x5ET89CijFYyLIMxJAycsz2por9cu_b3ybblyW-FBxs/edit (accessed 14 October 2016).

⁵ European Court of Human Rights, *Barraco v. France*, No. 31684/05, para. 42, 5 March 2009.

42. The source argues that the Government of Egypt likewise fails to address the fact that Mr. Abd El Fattah's defence lawyers were not granted access to the evidence against him before hearings occurred, and were unable to speak with him during court proceedings because he was placed in a soundproof glass cage. As the response from the Government fails to contest the majority of the irregularities set out in the petition and the update to the petition, the source considers these fair-trial violations to be undisputed.

43. The source draws attention to the fact that the Government of Egypt states that Mr. Abd El Fattah was prosecuted on the basis of "strong and technical" evidence against him. On this basis, Mr. Abd El Fattah's right to a fair trial was violated on countless occasions. The failure to observe international standards relating to the right to a fair trial during Mr. Abd El Fattah's trial was of such gravity that it also renders his detention arbitrary under category III.

Discussion

44. Taking into consideration all the information received, the Working Group was convinced that Mr. Abd El Fattah is the co-founder of a popular blog aggregator, Manalaa, which promotes free speech and human rights, and was also convinced that on 26 November 2013, Mr. Abd El Fattah participated in a peaceful demonstration in front of the premises of the Shura Council. The aim of such a demonstration was to express different legitimate views and opinions regarding amendments to the legislation of Egypt.

45. The Government of Egypt did not present convincing information to evidence that Mr. Abd El Fattah called for the demonstration in front of the premises of the Shura Council; therefore, he could not be prosecuted or tried for not fulfilling the legally prescribed notification procedures applicable to the organizers of the peaceful demonstration. Mr. Abd El Fattah's use of the social networking service Twitter to call upon citizens to demonstrate does not evidence or prove that he was an organizer of the demonstration. Therefore, he could not be sentenced for a crime applicable to organizers of a protest.

46. The Working Group was also not convinced that Mr. Abd El Fattah committed crimes during the peaceful protest. The Working Group did not receive convincing information to evidence that the accused committed the offence of organizing a gathering of more than five individuals, that he was likely to endanger public order, or that his purpose was to attack persons and public and private property, as well as using force and violence against public officials carrying out their duties.

47. On the contrary, the Working Group is aware that the arrests and judgment were based on Act No. 107/2013 regulating the right to hold peaceful public meetings, processions and peaceful demonstrations, which seems contrary to international law, in particular the right to freedom of opinion and peaceful demonstration. As mentioned in other cases related to Egypt and addressed by the Working Group, such legislation appears to be used as a tool for repressing peaceful demonstrations, and places extremely broad restrictions on the right to freedom of expression and peaceful assembly.⁶

48. The Working Group considers that the use of Twitter to invite people to participate in a peaceful protest is protected by the right of freedom of opinion and expression, as well as the right to disseminate ideas and participate in peaceful protests. As the Working Group

⁶ The United Nations High Commissioner for Human Rights has called upon the authorities to amend or repeal what she characterized as a "seriously flawed new law". Office of the United Nations High Commissioner for Human Rights, "New anti-demonstration law in Egypt must be amended, urges UN rights chief", 26 November 2013.

has stated in its deliberation No. 8 on deprivation of liberty linked to/resulting from the use of the Internet,⁷ including Twitter, a vague and general reference to public order, without being properly explained and documented, is insufficient to convince the Working Group that the restrictions on the freedom of expression by way of deprivation of liberty are necessary when using the Internet.

49. In paragraphs 46 and 47 of its deliberation No. 8, the Working Group recalled that:

The list of the forms and manner of the expression of opinions for which their authors are punished is, according to the Working Group's experience, pretty broad. It includes, but is not limited to: public denunciation of government policy; organizing, founding of, or participation in opposition movements or in public demonstrations; public manifestation of one's religious belief, mainly if that religion is not an officially recognized, or otherwise tolerated denomination or religion; graffiti drawn on walls, contesting the official State ideology; production and distribution of printed material or pamphlets inviting the population to conduct public debates discussing alleged government corruption; invitation to vote for opposition forces at a forthcoming election; listening to or watching foreign radio or television broadcasts; and participation in the funeral of politically controversial figures;

Though Governments often argue that the individual who participated in actions referred to above by way of illustration crossed the permissible limits of his freedom of expression, the position of the Working Group is that the peaceful, non-violent expression or manifestation of one's opinion, or dissemination or reception of information, even via the Internet, if it does not constitute incitement to national, racial or religious hatred or violence, remains within the boundaries of the freedom of expression. Hence, deprivation of liberty applied on the sole ground of having committed such actions is arbitrary.

50. In view of the above, the Working Group considers that Mr. Abd El Fattah was arbitrarily arrested as a result of his exercise of his right to freedom of opinion and his participation in a peaceful demonstration, contrary to article 19 of the Declaration and articles 19, 21 and 22 of Covenant. Also, the detention of Mr. Abd El Fattah was based on Act 107/2013, which is contrary to international law, and therefore the detention was arbitrary.

51. The Working Group was convinced that, on 28 November 2013, the Egyptian authorities did not present any arrest warrant to Mr. Abd El Fattah and did not provide any reasons for his arrest. The Working Group received information from the source that was not rebutted by the Government of Egypt, relating to the obstruction of the accused's access to and free communication with his lawyers.

52. Therefore the Working Group considers that the detention of Mr. Abd El Fattah was arbitrary and thus in violation of articles 9 and 10 of the Declaration and articles 9 and 14 of the Covenant.

53. 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 individuals in the context of peaceful protests.

⁷ See E/CN.4/2006/7, paras. 32-52.

Disposition

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

The Working Group considers that the detention of Alaa Ahmed Seif al Islam Abd El Fattah is arbitrary and falls within categories I, II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

55. In conformity with the present opinion, the Working Group recommends that the Government should provide Mr. Alaa Ahmed Seif al Islam Abd El Fattah with adequate reparation, starting with his immediate release.

56. In accordance with rule 33(a) of the methods of work of the Working Group, the Working Group considers it appropriate to refer the allegations of torture and other inhumane or degrading treatment or punishment to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 19 April 2016]
