



General Assembly

Distr.: General
30 January 2017

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-seventh session, 21-25 November 2016

Opinion No. 54/2016 concerning Mohamed Hamed Mohamed Hamza (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. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/30/69), on 5 July 2016 the Working Group transmitted a communication to the Government of Egypt concerning Hamed Mohamed Hamza. The Government has not replied to the communication. 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 Covenant (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);

GE.17-01354(E)



* 1 7 0 1 3 5 4 *



(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. Mr. Hamza was born on 14 March 1991 and is a military officer in the Egyptian army. He lives in Giza Governorate, Egypt.

5. On 27 April 2015, Mr. Hamza received a subpoena from the military intelligence service, as a result of which he presented himself to the service and was interrogated. He was subsequently arrested and detained but not given any reasons why. Mr. Hamza was held incommunicado in the Nasr City facility of the military intelligence service and placed in solitary confinement in a cell measuring 1 m² with no natural light and insufficient ventilation. Mr. Hamza's entire body was allegedly beaten with sticks. He was subjected to ill-treatment and torture for days. Specifically, he was hanged by the hands and electrocuted for several consecutive minutes; moreover, he was given inedible food and little water. As a result of that treatment, he eventually confessed to crimes.

6. On 6 May 2015, Mr. Hamza was brought before the military prosecution of Nasr City without the assistance of a lawyer. He was charged with "attempting a forceful coup, changing the Constitution of the State, its republican order and the system of Government" and with forcefully "attempting to occupy some public institutions". He was then brought back to the military intelligence service facility in Nasr City, where he was held incommunicado until 18 June 2015.

7. On 18 May 2015, the trial of Mr. Hamza and of another 27 defendants started at the Hikstep military court, on the premises of a military facility. Hearings were not open to the public.

8. On 18 June 2015, Mr. Hamza was transferred to Hikstep military camp, where he was again detained incommunicado, for more than one month.

9. During the court proceedings, the lawyers of the defendants requested that investigations be carried out into the allegations of torture made by the 28 individuals standing trial, including Mr. Hamza; however, neither the judge nor the military prosecutor took steps in that regard. The lawyers also requested that confessions obtained as a result of torture be dismissed, but the judge ignored the request. Furthermore, according to the source, the lawyers were not allowed to obtain copies of the prosecution records and were refused the right to bring their own files during the hearings.

10. On 19 August 2015, the military trial concluded. Mr. Hamza, who was one of the few defendants present in the courtroom on the day of the sentencing, was sentenced to life imprisonment, on the basis of the confessions he had made under torture. Lawyers of the defendants were barred from entering the courtroom. Under Egyptian military law, the sentences needed to be ratified by the Ministry of Defence. The defendants' lawyers have since filed an appeal against the sentences but no decision on its admissibility has yet been made.

11. Mr. Hamza remains in detention at Hikstep military camp.

12. The source submits that the continued deprivation of liberty of Mr. Hamza is arbitrary and falls under category III. In its view, Mr. Hamza has not been guaranteed the international norms of due process and guarantees to a fair trial during the period of his deprivation of liberty, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant. The source argues that Mr. Hamza was detained between 27 April and 6 May 2015 without any charges, that he was subjected to ill-treatment and torture while in pretrial detention, that the confessions used against him before the court had been obtained under torture, that Mr. Hamza's lawyer was denied access to documents related to the case and that all the above constitute violations of articles 9 (1) and (2) and 14 (3) (b), (e), (d) and (g) of the Covenant.

Response from the Government

13. On 5 July 2016, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information before 5 September 2016 about the current situation of the above-mentioned individual and any comment on the source's allegations. The Working Group also requested the Government to clarify the legal provisions justifying his continued detention and to provide details regarding the conformity of his trial with international law.

14. The Working Group regrets that it did not receive a response from the Government to the communication. The Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

15. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

16. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

17. The Working Group received reliable information by the source stating that the rights of Mr. Hamza to a fair trial had been violated. Mr. Hamza was detained on 27 April 2015 without being informed of the reasons for his detention or arrest. He was held incommunicado and in solitary confinement, in violation of his rights to be presented before a judge, to be tried without delay, to have access to lawyer and to communicate with his family. He was also subjected to torture and ill treatment; under duress, he confessed to committing a crime. He was accused of "attempting a forceful coup, changing the Constitution of the State, its republican order and the system of Government" and of forcefully "attempting to occupy some public institutions". Neither Mr. Hamza nor his lawyer were given access to all the evidence and information contained in the criminal file, which impeded Mr. Hamza's ability to defend himself through legal counsel. Mr. Hamza was subsequently sentenced to life imprisonment. The Working Group finds that such violations of articles 9 and 10 of the Universal Declaration on Human Rights and of articles 9 and 14 of the Covenant are of such gravity as to render the detention arbitrary, in accordance with category III.

18. The source reports some allegations of torture that seem credible to the Working Group. Given the specific circumstances of the present case, the Working Group therefore considers it appropriate to refer those allegations to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

Disposition

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

The deprivation of liberty of Mohamed Hamed Mohamed Hamza, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and of articles 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within category III.

20. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to release Mr. Hamza immediately and to accord to him an enforceable right to full reparation in accordance with international law.

21. Finally, the Working Group refers the specific allegation of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action, in accordance to paragraph 33 (a) of the methods of work.

Follow-up procedure

22. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Hamza has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Hamza;
- (c) Whether an investigation has been conducted into the violation of Mr. Hamza's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Government with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

23. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

24. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

25. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.¹

[Adopted on 23 November 2016]

¹ See Human Rights Council resolution 33/30, paras. 3 and 7.