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Human Rights Council Working Group on Arbitrary Detention

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No. 56/2014 (United Arab Emirates)

Communication addressed to the Government on 19 December 2013

concerning Saleh Farag Dhaifullah, Ibrahim Abdulaziz Ibrahim Ahmad, Mohamed Abdulmoneim Mohamed Mahmoud, Ahmad Mahmoud Taha, Medhat Mohamed Mustafa al-Ajez, Ali Ahmad Ibrahim Sonbol, Mohamed Mahmoud Ali Shahdah, Abdullah Mohamed Ibrahim Zaza, Salah Mohamed Rezaq al-Mashad, Abdullah al-Arabi Abdullah Omar Ibrahim, Ahmad Gafar, Abdulmoneim Ali al-Said Atyea and Mourad Mohamed Hamed Othman

The Government replied to the communication on 16 April 2014 and provided an additional response on 7 May 2014.

The State is not 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 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. Between November 2012 and January 2013, 13 Egyptian nationals were arrested and taken to an unknown location in the United Arab Emirates. The cases of the individuals concerned are summarized below.

4. Saleh Farag Dhaifullah (صالح فرج ضيف الله), born on 6 February 1958, usually resides in Dubai and works as a monitoring director at the Islamic Bank of Dubai. On 21 November 2012, 10 people wearing civilian clothes arrested Mr. Dhaifullah at his house in Dubai. They searched the house without showing any warrant authorizing them to do so. They confiscated two laptops, an electronic tablet and two mobile phones. The men then took Mr. Dhaifullah to an unknown place.

5. Ibrahim Abdulaziz Ibrahim Ahmad (إبراهيم عبد العزيز إبراهيم أحمد), born on 26 April 1947, usually resides in Abu Dhabi and works as a communication engineer. On 15 December 2012, Mr. Ahmad was arrested by State security agents at his house in Abu Dhabi. The arrest occurred right after he was banned from returning to Egypt with his wife and children, although the family has visited Egypt once every three months since 1998. The security agents searched Mr. Ahmad's apartment and car, and he was then taken to an unknown State security detention centre in a black GMC jeep, followed by two other identical cars full of other State security agents, including two women.

6. Mohamed Abdulmoneim Mohamed Mahmoud (محمد عبد المنعم محمد محمود), born on 20 February 1959, usually resides in Al-Sharjah and works as a medical doctor at Al-Sharjah hospital. On 3 January 2013, Mr. Mahmoud was scheduled to travel to Egypt to attend the funeral of his mother-in-law. At Al-Sharjah airport, Mr. Mahmoud's passport was confiscated by authorities of the United Arab Emirates without any justification and he was consequently not allowed to travel. On 7 January 2013, Mr. Mahmoud informed a nurse at Al-Sharjah hospital that he was going to the airport to seek information on his confiscated passport. His phone was switched off shortly thereafter, and his whereabouts became unknown. Moreover, a friend of Mr. Mahmoud's saw what looked like an official car with Abu Dhabi number plates in front of Mr. Mahmoud's apartment building on the same day of his disappearance. The friend indicated that the light in the flat had been on and had been turned off half an hour later.

7. Ahmad Mahmoud Taha (أحمد محمود طه), aged 55, usually resides in Dubai and works as a mathematics teacher. On 13 December 2012, Mr. Taha was scheduled to travel to Egypt to spend the academic winter break with his family there. At the Dubai airport, Mr. Taha's passport was confiscated by authorities of the United Arab Emirates without any justification and he was consequently not allowed to travel. Mr. Taha was provided with a phone number that he could call for further questions and inquiries. When he called the number on 16 December 2012, he was told not to worry and that somebody would call him as soon as they had updates on the subject. On 18 December 2012, Mr. Taha received a phone call requesting him to report to the Dubai Airport to collect his passport. He contacted the Egyptian consulate in Dubai and informed them of what had happened and of the call he had received. He was told that consulate personnel would accompany him to the airport to collect his passport. On 19 December 2012, accompanied by the Egyptian consulate personnel, Mr. Taha went to the Dubai airport and was immediately arrested there on the basis that he was wanted by the security forces in Abu Dhabi.
8. Medhat Mohamed Mustafa al-Ajez (مدحت محمد مصطفى العاجز), born on 4 April 1971, usually resides in Ajman and works as a pharmaceuticals professor. On 30 November 2012, approximately 13 State security agents in civilian clothes, including two women, arrested Mr. Al-Ajez at his flat. The agents searched the flat for two hours and confiscated his computer and phones. Mr. Al-Ajez was then taken to an unknown place.
9. Ali Ahmad Ibrahim Sonbol (علي أحمد إبراهيم سنبل), born on 10 July 1949, usually resides in Dubai and works as a medical doctor at the Rached Hospital. On the evening of 19 December 2012, approximately 10 State security agents in civilian clothes arrested Mr. Sonbol at his house. They searched the house without presenting any warrant. He was then taken to an unknown place.
10. Mohamed Mahmoud Ali Shahdah (محمد محمود علي شهدة), born on 5 November 1966, usually resides in Dubai and works as a medical doctor. On 30 December 2012, Mr. Shahdah was arrested at his house in Dubai by security forces in civilian clothes. The security personnel searched the house and confiscated all laptops and mobile phones, and then took Mr. Shahdah to an unknown place.
11. Abdullah Mohamed Ibrahim Zaza (عبد الله محمد إبراهيم زعزع), born on 1 June 1957, usually resides in Umm al-Quwain and works as a dentist. On 3 December 2012, Mr. Zaza received an official request from the Immigration Office to leave the country within 15 days. Mr. Zaza contacted the Egyptian Embassy in the United Arab Emirates; he was told not to worry and to take the time he needed to finish tasks related to his departure and close his business. On 10 December 2012, a representative from the Immigration Office went to see Mr. Zaza at his private practice and reassured him that he could leave the country once he had closed his business. At 8 p.m. on 11 December 2012, police officers in civilian clothes arrested Mr. Zaza at his private clinic while he was working. They searched the premises without presenting any search or arrest warrants.
12. Salah Mohamed Rezaq al-Mashad (صلاح محمد رزق المشد), born on 9 April 1955, usually resides in Dubai and works as an engineer. On 11 December 2012, Mr. Al-Mashad was arrested by security forces at his home in Dubai. He was taken to an unknown place. The security personnel did not present an arrest warrant.
13. Abdullah al-Arabi Abdullah Omar Ibrahim (عبد الله العربي عبد الله عمر إبراهيم), born on 5 December 1956, usually resides in Dubai and works as a teacher of religious studies and of the Arabic language. On 30 November 2012, Mr. Ibrahim was arrested by Abu Dhabi police officers at his house in Dubai. They searched his house and took his laptop, mobile phone and passport. His wife and children were not allowed to communicate with him during his arrest.

14. Ahmad Gafar (أحمد جعفر), born on 2 April 1964, usually resides in Dubai and works as a media director. On 14 December 2012, Mr. Gafar received a call from the Dubai police requesting him to come to their office. He never returned home. The security forces searched his workplace and confiscated his personal laptops and work archives.

15. Abdulmoneim Ali al-Said Atyea (عبد المنعم علي السيد عطية), born on 5 October 1971, usually resides in Dubai and works as a managing director. On 3 January 2013, Mr. Atyea was arrested by security forces in his work office in Dubai. The security forces took two laptops and his mobile phones, then took him to an unknown place.

16. Mourad Mohamed Hamed Othman (مراد محمد حامد عثمان), born on 31 July 1963, usually resides in Dubai and is an owner and chief executive officer of a construction company in Dubai. On 19 December 2012, Mr. Othman was at the Dubai airport to leave the country indefinitely, having closed his business in the United Arab Emirates. He called his family and confirmed he was at the airport, returning to Egypt. His whereabouts became unknown after the phone call.

17. The source reports that the 13 above-mentioned individuals are currently being detained in Al-Wathba prison in Abu Dhabi, and have been there since the beginning of September 2013. The source further informs the Working Group that those individuals have been subjected to torture and ill-treatment during their detention, including the use of an electric chair, repeated beatings, prolonged solitary confinement with severe cooling of the cell, and death threats against them.

18. The source submits that the detention of the above-mentioned individuals may be considered arbitrary.

19. The source submits that in none of the cases have the detainees or their families been provided with a legal basis justifying their detention. The detainees were arrested without being shown an arrest warrant and have never been informed of the charges against them. The source also informs the Working Group that the detainees have not been afforded an opportunity to see a lawyer and do not know the nature of the accusations against them. The source argues that this violates article 26 of the Constitution of the United Arab Emirates, which provides that “no person may be arrested, searched or detained or imprisoned except in accordance with the provisions of the law”.

20. The source further argues that the detention of the above-mentioned individuals may be based on their alleged membership in the Egyptian Muslim Brotherhood, having regard to the fact that the arrests took place in the context of trials and convictions of 68 nationals of the United Arab Emirates in July 2013 for their alleged link with the Muslim Brotherhood. Therefore, in the source’s view, the detention of the above-mentioned individuals is arbitrary, as it results from the exercise of the right to freedom of opinion and expression guaranteed by article 19 of the Universal Declaration of Human Rights.

Response from the Government

21. In its response dated 16 April 2014, the Government provided the Working Group with information, as follows.

22. The Government states that it has considered the report containing inquiries and a request for information concerning Mr. Shahdah, Mr. Atyea and Mr. Mahmoud.

23. The Government says that the accused Egyptian nationals Mr. Shahdah, Mr. Atyea and Mr. Mahmoud appeared before the Department of Public Prosecution in view of the evidence produced concerning their commission of offences punishable under the federal Criminal Code. They were confronted with the evidence against them and an order was issued for their remand in custody. The Government emphasizes that all the legal safeguards concerning their rights were respected during their questioning by the

Department of Public Prosecution. They were allowed to meet with the Egyptian Ambassador, and also receive family visits, in the Department of Public Prosecution, where their case is still pending completion of the investigation procedures.

24. The Government provided the Working Group with additional information on 7 May 2014.

25. The Government reports that Mr. Dhaifullah, Mr. Al-Mashad, Mr. Othman and Mr. Ahmad will each serve a term of four years of imprisonment on the second charge (disseminating stolen data containing secret defence information among themselves and to another organization) and the fourth charge (knowing about the theft of secret information and not notifying it to the authorities) brought against them, charges that are interrelated. Mr. Gafar will serve a term of one year's imprisonment on the charge of knowing about the theft of secret information and not notifying it to the authorities. Mr. Taha was acquitted.

26. The Court ordered the dissolution of the Egyptian Muslim Brotherhood organization on the territory of the United Arab Emirates, the closure of its main office and all branch offices and the confiscation of all the apparatus and equipment seized, in accordance with article 182 of the Criminal Code.

27. The Government states that the Court diligently applied the values of fairness and justice in the light of the precepts of Islamic sharia, the provisions of the law and the Court's firmly established judicial principles by allowing scope, in a fully transparent manner, for the defendants to present their petitions, pleas and defence arguments in conformity with the legal procedures laid down in the State's Constitution and in international treaties.

28. Mr. Al-Ajez, Mr. Sonbol, Mr. Zaza and Mr. Ibrahim were found guilty of creating and running an international branch of an organization without permission and collecting money without permission; they were sentenced to six months' imprisonment and fined 3,000 dirhams.

Further comments from the source

29. The two responses from the Government were transmitted to the source on 17 April 2014 and 16 July 2014, respectively. According to the source, none of the defendants were presented with any warrant or given any justification for their arrests. All were kept incommunicado for several weeks before being transferred to Al-Wathba prison and before being allowed to contact their families to let them know that they had been arrested.

30. The source adds that those 13 persons were held in incommunicado detention and obliged to sign confessions under torture. All the documents and files used by the prosecution were produced by the security services. The defendants were not allowed to make free statements or to call their own witnesses. All the testimonies that the defendants tried to present were declared inadmissible by the court without any justification.

31. The source confirmed that Mr. Shahdah, Mr. Atyea, Mr. Mahmoud and Mr. Dhaifullah had been sentenced to six months of imprisonment for creating and running an international branch of a forbidden organization and fined 3,000 dirhams for collecting money without permission.

32. Mr. Al-Mashad and Mr. Ahmad were sentenced to four years' imprisonment for disseminating stolen data that contained secret defence information and to six months in jail and a 3,000 dirham fine for collecting money without permission.

33. Concerning Mr. Gafar, the source confirmed that he had been sentenced to one year's imprisonment for knowing about the founding of an international branch of an illegal

organization and not notifying it to the authorities and fined 3,000 dirham for collecting money without permission.

Discussion

34. The Working Group notes that according to the information submitted by the source, which has not been rebutted by the Government, the above-mentioned persons were taken by agents in plain clothes who did not present any identity document showing their law enforcement status and who took those persons to an unknown location. No judicial detention warrant was shown to the detainees and none of them were promptly informed of the reasons for their arrest. Arrest warrants were issued retroactively on the day of the first hearing and were not made available to the detainees.

35. Detainees were forced, under torture during their incommunicado detention, to sign false statements that they were not allowed to read. Those statements constitute the main evidence and testimonies used during the trial. No copies of the secret documents were added to the prosecution files. Lawyers were appointed by the authorities and access to them was provided only during the first hearing.

36. On the basis of the foregoing discussion, the Working Group concludes that the violations of the right to due process and the right not to be subjected to torture or other cruel, inhuman or degrading treatment, as enshrined in articles 5, 9, 10 and 11 of the Universal Declaration of Human Rights, are of such gravity as to give the deprivation of liberty of the above-mentioned 13 persons an arbitrary character, thereby falling within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Disposition

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

The deprivation of liberty of Saleh Farag Dhaifullah, Ibrahim Abdulaziz Ibrahim Ahmad, Mohamed Abdulmoneim Mohamed Mahmoud, Ahmad Mahmoud Taha, Medhat Mohamed Mustafa al-Ajez, Ali Ahmad Ibrahim Sonbol, Mohamed Mahmoud Ali Shahdah, Abdullah Mohamed Ibrahim Zaza, Salah Mohamed Rezaq al-Mashad, Abdullah al-Arabi Abdullah Omar Ibrahim, Ahmad Gafar, Abdulmoneim Ali al-Said Atyea and Mourad Mohamed Hamed Othman, constitutes violations of articles 5, 9, 10 and 11 of the Universal Declaration of Human Rights, and falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

38. Consequent upon the opinion rendered, the Working Group recommends that the Government provide the 13 persons named above with adequate reparation, starting with their immediate release.

39. In accordance with article 33 (a) of its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 21 November 2014]