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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. 60/2016 concerning Omar Abdulrahman Ahmed Youssef Mabrouk (Egypt and Kuwait)

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 4 August 2016 the Working Group transmitted a communication to the Governments of Egypt and of Kuwait concerning Omar Abdulrahman Ahmed Youssef Mabrouk. Neither Government has replied to the communication. Both States are parties 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);

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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. Mr. Mabrouk, who was born on 22 July 1995, is a student and a citizen of Egypt.
5. On 1 October 2015, Mr. Mabrouk was arrested by members of the Kuwait State Security in Kuwait City. The arrest was conducted without presenting a warrant or providing any reason for the arrest. It is alleged that Mr. Mabrouk's belongings were confiscated by State Security agents before he was taken to an unknown location. He was not permitted to contact or to be contacted by anyone.
6. Shortly after the arrest, the Egyptian judicial authorities issued an extradition request on the basis of unclear charges of being affiliated with a group that committed Internet-related crimes. Since Mr. Mabrouk was held incommunicado, he was in practice denied, by the Kuwaiti authorities, the possibility of judicially challenging the extradition request.
7. On 2 November 2015, it is reported that Mr. Mabrouk was extradited to Egypt, without his family being notified. Once in Egypt, he was accused of being a member of a terrorist organization and of being involved in extremist terrorist activities. He was held at the Homeland Security facility at Lazoghly Square in Cairo.
8. On 15 December 2015, Mr. Mabrouk was transferred to the 6 October police station in Cairo. Mr. Mabrouk continued to be held incommunicado. It is reported that, during his detention, he was severely tortured. He was subjected to beatings, electrocutions and psychological torture, was forced to stand in stressful positions, was deprived of sleep and sharp metal instruments were used to inflict pain on him with the intention of getting him to confess to being involved in the constitution of an unlawful group. His family filed complaints, which have remained unanswered, with the general police station in Cairo and the East Cairo Prosecution. A family member who enquired about Mr. Mabrouk's whereabouts was threatened and intimidated by police officers.
9. On 1 April 2016, on the basis of forced confessions he was alleged to have made, Mr. Mabrouk was officially charged (case No. 672 of 2015) but was not informed of the nature of the charges against him. As his extradition order was based on unclear accusations of having joined a banned group that committed Internet-related crimes, it is believed that he was indicted in connection with political opinions that he peacefully expressed, including on Facebook and through his participation in demonstrations against the current Government of Egypt.
10. On 10 April 2016, he was transferred to the Amen el-Markazy detention facility in Giza, Cairo, where he is currently detained.
11. On 11 April 2016, he was brought before the State Security Prosecutor in Amen el-Markazy, where he saw a lawyer for the first time but was not permitted to speak with that lawyer. It is also reported that Mr. Mabrouk was forced to sign documents that he was not allowed to read.

12. On the same day, Mr. Mabrouk was sent to the forensic medicine department of Zenhom district in Cairo after having been brought before a prosecutor. He underwent a medical examination but the written report on that examination did not document the signs of torture that were still visible on his body.

13. On 20 April 2016, Mr. Mabrouk was permitted to speak with his family for the first time since his arrest.

14. To date, neither Mr. Mabrouk nor his lawyer have had access to the legal file concerning Mr. Mabrouk's case, and the charges remain unclear. Mr. Mabrouk has not been tried before a court.

15. There are concerns that confessions extracted under torture were used to charge Mr. Mabrouk and may be the only evidence that will be used to convict him. There are also concerns that Mr. Mabrouk will be sentenced to a heavy penalty.

16. The source submits that the deprivation of liberty of Mr. Mabrouk is arbitrary and falls under categories I, II and III. With regard to category I, the source submits that Mr. Mabrouk was arrested in Kuwait without a warrant and that, to date, official charges have not been disclosed either to Mr. Mabrouk or his lawyer. The source argues that there was no legal basis to justify the detention of Mr. Mabrouk between 1 October 2015 and 1 April 2016, when he was officially charged, and that such detention is in violation of article 9 of the Covenant.

17. The source argues that the arrest and deprivation of liberty of Mr. Mabrouk result from the exercise of his rights to freedom of expression and to freedom of peaceful assembly and association, as guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the Covenant. Thus, the case falls under category II.

18. The source also submits that Mr. Mabrouk 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. Mabrouk was held incommunicado between 1 October 2015 and 11 April 2016, during which time he was allegedly tortured to confess and was denied access to a lawyer to prepare a defence as well as to his judicial file. In addition, Mr. Mabrouk has not yet been tried before a court. All of the above amount to violations of articles 9 (1)-(4) and 14 (3) (a)-(c) and (g) of the Covenant.

Response from the Government

19. The Working Group transmitted a communication to the Governments of Egypt and of Kuwait on 4 August 2016. However, neither Government responded within the 60-day time frame, nor did they seek an extension of the deadline. The Working Group deeply regrets such lack of cooperation.

Discussion

20. In the absence of responses from the Governments, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

21. The Working Group recalls that the information provided in the present case is partly confirmed by the communication of the Working Group on Enforced or Involuntary Disappearances sent to both Egypt and Kuwait (see A/HRC/WGEID/108/1, paras. 62-63).

22. The facts related to Mr. Mabrouk as reported by the source are coherent and match a pattern that the Working Group has observed in recent years, during the political crisis in

Egypt (see A/HRC/WGAD/2014/10, A/HRC/WGAD/2014/35, A/HRC/WGAD/2015/14, A/HRC/WGAD/2015/17, A/HRC/WGAD/2015/49, A/HRC/WGAD/2015/52, A/HRC/WGAD/2015/53 and A/HRC/WGAD/2016/6). Moreover, the information provided by the source is reliable and the Working Group considers that the facts are *prima facie* credible.

23. The Working Group has in its jurisprudence established the way 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 Governments have chosen not to challenge the *prima facie* credible allegations made by the source. Having already concluded that the facts in the submissions by the source are credible, the Working Group finds therefore that Mr. Mabrouk, an Egyptian citizen residing in Kuwait, was arrested by Kuwait State Security authorities and was held incommunicado for one month before being extradited to Egypt. There, he was again held incommunicado, for about five months, and tortured before the prosecutor announced that he was being charged, without providing additional details. Therefore, Mr. Mabrouk has not been notified of any charge against him or been brought before a judge for more than one year.

24. The Working Group is particularly alarmed by the fact that Mr. Mabrouk was held incommunicado and recalls that the Human Rights Committee noted, in paragraph 35 of its general comment No. 35 (2014) on liberty and security of person, that incommunicado detention that prevents prompt presentation before a judge inherently violates article 9 (3) of the Covenant.¹

25. On the basis of the above-mentioned facts, the Working Group concludes that the deprivation of liberty of Mr. Mabrouk falls within category I, for arrest and detention without legal grounds, and category III, for serious violations of the right to due process and, in particular, the right to know the reasons of one's arrest and detention (arts. 9 (2) and 14 (3) (a) of the Covenant), the right to challenge one's detention before a court of law (art. 9 (3) and (4) of the Covenant) and the right not to be forced to testify against oneself or to confess guilt (arts. 7 and 14 (3) (g) of the Covenant).

26. The source also argues that the present case falls within category II, as he submits that the arrest and detention of Mr. Mabrouk are the consequence of the exercise of his rights to freedom of expression and of freedom to peaceful assembly and association. The statement that Mr. Mabrouk was arrested and detained because of posts published on Facebook is supported by the necessary evidence; the source admits, however, that the causal link is simple deduction on its part. The Working Group does not consider that such a deduction is the only possible one and finds therefore that the information available does not allow it to conclude that the present case falls under category II.

27. The present case is one of many concerning the arbitrary deprivation of liberty of persons in Egypt that have been brought to the attention of the Working Group during the past three years. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of international law may constitute crimes against humanity. The Working Group would like to reiterate its request that the Government of Egypt invite it to visit Egypt so that the Working Group can engage with the Government more constructively and offer assistance in addressing concerns relating to the arbitrary deprivation of liberty.

¹ See also communication No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.7.

28. The finding of the Working Group in the present case does not apply only to Egypt but also to Kuwait, which has conducted the initial arrest and is responsible for the first 30 days of incommunicado detention. It is not clear to the Working Group whether the authorities in Kuwait received a request from Egypt at the time of the arrest; in any case, the authorities of both countries ought to conduct their operations in accordance with their binding obligations. As the actions of the authorities are in violation of the above-mentioned provisions, both Egypt and Kuwait therefore fully share responsibility for the serious violations alleged in the present case.

29. Finally, the allegations of torture ought to be referred to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

Disposition

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

The deprivation of liberty of Omar Abdulrahman Ahmed Youssef Mabrouk, being in contravention of articles 7, 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

31. The Working Group requests the Governments of Egypt and of Kuwait to take the steps necessary to remedy the situation of Mr. Mabrouk without further delay and to bring it into conformity with its international obligations under the Universal Declaration of Human Rights and the Covenant.

32. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to release Mr. Mabrouk immediately and to accord to him an enforceable right to compensation in accordance with article 9 (5) of the Covenant. Both Governments concerned are responsible for ensuring such full compensation.

33. Finally, the Working Group considers it necessary and appropriate to refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for any further action in connection to the allegations of torture.

Follow-up procedure

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

- (a) Whether Mr. Mabrouk has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Mabrouk;
- (c) Whether an investigation has been conducted into the violation of Mr. Mabrouk'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 two Governments concerned with their international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

35. The two Governments concerned are invited to inform the Working Group of any difficulties they may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through visits by the Working Group.

36. The Working Group requests the source and the two Governments concerned 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.

37. 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.²

[Adopted on 25 November 2016]

² See Human Rights Council resolution 24/7, paras. 3 and 7.