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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 24 April–3 May 2019

Opinion No. 21/2019 concerning Rawda Samir Saad Khater, Amal Majdi al-Husseini Hassan, Habiba Hassan Hassan Shatta, Sara Hamdi Anwar el-Sayed Mohammed, Heba Osama Eid Abu Eisa, Fatma Mohammed Mohammed Ayad, Sara Mohamed Ramadan Ali Ibrahim, Esraa Abdo Ali Farahat, Mariam Imad el-Deen Abu Tork, Fatima Imad el-Deen Ali Abu Tork, Aya Essam al-Shahat Omar, Kholod al-Sayed Mohammed al-Sayed el-Fallahgy and Safa Ali Ali Farahat (Egypt)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 30 January 2019 the Working Group transmitted to the Government of Egypt a communication concerning Rawda Samir Saad Khater, Amal Majdi al-Husseini Hassan, Habiba Hassan Hassan Shatta, Sara Hamdi Anwar el-Sayed Mohammed, Heba Osama Eid Abu Eisa, Fatma Mohammed Mohammed Ayad, Sara Mohamed Ramadan Ali Ibrahim, Esraa Abdo Ali Farahat, Mariam Imad el-Deen Abu Tork, Fatima Imad el-Deen Ali Abu Tork, Aya Essam al-Shahat Omar, Kholod al-Sayed Mohammed al-Sayed el-Fallahgy and Safa Ali Ali Farahat. 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);

(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. Ms. Samir Saad Khater was born in 1997. She is a high school student. She lives in al-Aasar District, Damietta.
5. Ms. Majdi al-Husseini Hassan was born in 1997. She is a high school student. She lives in Ard Zaatar, Damietta.
6. Ms. Hassan Hassan Shatta was born in 1986. She is a French language teacher. She lives in Izbat al-Inaniyyah, Damietta.
7. Ms. Hamdi Anwar el-Sayed Mohammed was born in 1994. She is a student at the Faculty of Pharmacy of al-Azhar University. She lives in New Damietta District, Damietta.
8. Ms. Osama Eid Abu Eisa was born in 1997. She is a high school student. She lives in al-Aasar District, Damietta.
9. Ms. Mohammed Mohammed Ayad was born in 1994. She has a bachelor's degree in Islamic Studies from al-Azhar University. She lives in al-Aasar District, Damietta.
10. Ms. Mohamed Ramadan Ali Ibrahim was born in 1993. She is a student at the Faculty of Education Sciences of Damietta University. She lives in Ard el-Afify, Damietta.
11. Ms. Abdo Ali Farahat was born in 1997. She is a high school student. She lives in Izbat al-Inaniyyah, Damietta.
12. Mariam Imad el-Deen Abu Tork was born in 1992. She has a technical diploma. She lives in al-Aasar District, Damietta. She is the sister of Fatima Imad el-Deen Ali Abu Tork.
13. Fatima Imad el-Deen Ali Abu Tork was born in 1995. She is a student at the Faculty of Education. She lives in al-Aasar District, Damietta.
14. Ms. Essam al-Shahat Omar was born in 1996. She is a student at the Faculty of Commerce of Damietta University. She lives next to the upper bridge in the al-Sinanniyah neighbourhood of Damietta.
15. Ms. al-Sayed Mohammed al-Sayed el-Fallahgy was born in 1997. She is a student at the Faculty of Applied Arts. She lives in el-Megawra el-Talta, New Damietta District, Damietta.
16. Ms. Ali Ali Farahat was born in 1998. She is a high school student. She lives in Izbat al-Inaniyyah, Damietta.

(a) Arrest and detention

17. According to the source, on 5 May 2015, the above-mentioned group of 10 women and 3 minors peacefully demonstrated in the streets of Damietta against economic conditions and the detention of political opponents, some of whom were their relatives. While they were walking down Sharabassi Street, several individuals in civilian clothes assaulted them, violently beat them up, and delivered them to police officers. The police officers took them to Damietta Second Police Station. The individuals were then transferred

to the security forces camp of Damietta, where they remained in incommunicado detention for several days.

18. The source submits that, in the security forces camp, the above-mentioned group of 13 individuals were forced to stand in front of a wall, with their hands above their heads, for several hours. Each time they moved, officers would beat them or pour cold water over their heads. The source reports that they were placed in cells with men and were deprived of sleep, food and water for three days while they were repeatedly verbally abused. Officers also reportedly threatened to rape them and to put snakes and rats in the cell with them. The 13 individuals were then interrogated by a public prosecutor without the assistance of a lawyer. Reportedly, under threat of torture, an officer made them sign a document that they were not allowed to read. The source believes that the document contained false confessions.

19. Allegedly, on 12 May 2015, the respective families of the 13 individuals were allowed to visit them but not to provide them with any medication.

20. The source states that, on 26 December 2015, a first trial hearing was held before Damietta Criminal Court in “misdemeanour case No. 4337”. The 13 individuals were not present during the hearing, but their lawyers were allowed to attend. During the hearing, the judge stated that all the individuals indicted in the case had recognized their involvement in the events of 5 May 2015 and that they were all members of the Muslim Brotherhood, a group that was designated as a terrorist organization in Egypt in 2013.

21. Reportedly, another hearing was held on 24 January 2016, once again in the absence of the defendants. On 27 June 2016, the court ordered the provisional release of 8 of the 13 individuals. The court then adjourned the case until it issued its verdict on 28 September 2018, when it convicted and sentenced the 13 individuals to periods of two or three years in prison.¹

22. The source states that the 13 individuals were thus convicted and sentenced to prison on the sole basis of a document they had to sign under threat of torture.

23. The source reports that since the 13 individuals were transferred to Port Said Prison they have been detained in small cells along with dozens of other prisoners. They have not had daily access to drinkable water and have been forced to sleep on the ground. They have not seen a doctor since their admission to the prison, in spite of their vulnerable state. According to the source, the 13 individuals have been subjected to ill-treatment by the prison administration, through violence and deliberate physical and moral humiliation. It has also been reported that the noise in the cell is very loud, prisoners smoke heavily and the women and girls have been subjected to constant harassment.

24. The source further explains that, due to the poor detention conditions and torture in Port Said Prison, the health of the 13 individuals has deteriorated. Ms. Abdo Ali Farahat has suffered, inter alia, from spasms because of the poor hygiene and the lack of access to the bathroom. Ms. Hamdi Anwar el-Sayed Mohammed has suffered from eye inflammation, a persistent cough and headaches due to the lack of ventilation and the smoke inside the cell. Mariam Imad el-Deen Abu Tork has suffered from respiratory crises leading to repeated episodes of fainting, which, allegedly, the prison administration ignored, claiming she was only pretending to be ill. Ms. Mohammed Mohammed Ayad suffered from heart disease and needed special medical attention. Her family submitted documents confirming that she had heart disease and needed constant health care and regular medication. However, the prison administration did not provide her with the necessary health care until after she had a heart attack on 11 June 2015.

¹ Ms. Samir Saad Khater, Ms. Majdi al-Husseini Hassan, Ms. Osama Eid Abu Eisa and Ms. Ali Ali Farahat were sentenced to two years in prison; Ms. Hassan Hassan Shatta, Ms. Hamdi Anwar el-Sayed Mohammed, Ms. Mohammed Mohammed Ayad, Ms. Mohamed Ramadan Ali Ibrahim, Ms. Abdo Ali Farahat and Mariam Imad el-Deen Abu Tork were sentenced to three years in prison; Fatima Imad el-Deen Ali Abu Tork, Ms. Essam al-Shahat Omar and Ms. al-Sayed Mohammed al-Sayed el-Fallahgy were sentenced to three years in prison. The source also mentions that other individuals who were prosecuted in the same case were sentenced to 10 years in prison.

(b) Legal analysis

(i) Deprivation of liberty under category II

25. The source claims that the 13 individuals were arrested for practising their legitimate and universally protected rights to freedom of expression and peaceful assembly, and for their political affiliation with the Muslim Brotherhood. This, according to the source, renders the detention arbitrary under category II.

26. The source argues that, in view of article 19 of the Universal Declaration of Human Rights and articles 19 and 21 of the Covenant, the right to freedom of expression and peaceful assembly of the 13 individuals was violated as the exercise of their rights did not threaten the national security or the public order of the State or harm the rights of other citizens.

(ii) Deprivation of liberty under category III

27. The source submits that the 13 individuals were held incommunicado for seven days and were thus unable to have any contact with their families and their lawyers. During that period, they were also allegedly subjected to threats and physical and psychological torture in order to force them to sign a document that they were not allowed to read. This, according to the source, was a violation of the individuals' rights to have access to a lawyer, a doctor and their family from the time that they were taken into custody.

28. Furthermore, the source claims that the 13 individuals were questioned without the presence of their lawyers during their first interrogation on 6 May 2015 by the Public Prosecution of Damietta. They were not provided with access to their lawyers until 12 May 2015. Therefore, according to the source, the arbitrariness of the case is due to the failure of the authorities to enable the individuals to contact and have access to their legal representatives. The source notes, however, that the individuals were represented at the first hearing by an assigned counsel.

29. The source also claims that the 13 individuals were tortured in the security forces camp of Damietta and in Port Said Prison. The source alleges that, on 10 May 2018, an officer of Port Said Prison and jailers hit Ms. Abdo Ali Farahat on her face and leg and prevented her from sleeping for two days. An officer of the prison threatened to move Ms. Mohamed Ramadan Ali Ibrahim to a room without a bathroom if she reported her poor conditions of detention to the media. On 6 May 2018, in the security forces camp of Damietta, a national security officer threatened to rape Ms. Samir Saad Khater if she refused to sign a document that she had not read and also threatened to rape Mariam Imad el-Deen Abu Tork in front of her husband if she refused to sign a document. Those actions, according to the source, are a violation of the prohibition of torture.

30. Furthermore, the source claims that the rights of children, as prescribed in article 80 of the Constitution, as well as article 37 of the Convention on the Rights of the Child, principle 2 of the Declaration on the Rights of the Child and article 17 of the African Charter on the Rights and Welfare of the Child, have been violated. In the present case, Ms. Samir Saad Khater, Ms. Majdi al-Husseini Hassan and Ms. Osama Eid Abu Eisa were minors at the time of their arrest. They were also subjected to torture, threats and ill-treatment and were detained with adults in the same room.

Response from the Government

31. On 30 January 2019, a communication relating to the allegations set out above was sent to the Government of Egypt. In accordance with its methods of work, the Working Group gave the Government until 1 April 2019 to submit its response. The Working Group notes that, to date, the Government has not replied to its communication and has not requested an extension of the deadline.

Discussion

32. 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.

33. The Working Group finds that the allegations of the source are coherent, sufficiently detailed and contain some identifying information, which made the overall story credible.

34. 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 (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.

35. According to the information provided by the source, which the Government has chosen not to contest, the 13 persons were arrested without a warrant while they were demonstrating in the streets of Damietta. In principle, the circumstances of an arrest could inform the subject of the arrest of the reasons for the arrest, for example, where the subject is arrested in *flagrante delicto*. However, in such a case, the ongoing activity is obviously criminal, unlike the case of a peaceful demonstration. As a result, when law enforcement agents make an arrest during a peaceful demonstration, they must have a warrant of arrest or justify the arrest to the subject. In the present case, such an obligation deriving from article 9 of the Universal Declaration of Human Rights and article 9 (1) and (2) of the Covenant was not fulfilled.

36. In addition, the 13 individuals were kept incommunicado for seven days. The Working Group, in its practice, has consistently argued that holding persons incommunicado breaches the right to challenge the lawfulness of the detention before a judge and is contrary to article 9 (4) of the Covenant.²

37. Moreover, the authorities failed to promptly present the detainees to a judge for them to be able to challenge the legality of their arrest and detention, in compliance with article 9 (3) of the Covenant.

38. For the above reasons, the Working Group finds that the arrest and detention of the 13 young female protestors lack a legal basis, and are therefore arbitrary, falling within category I.

39. The source also notes that the arrest and subsequent detention of the 13 individuals resulted from their legitimate exercise of the right to peacefully demonstrate against economic conditions and the detention of political opponents, some of whom are their relatives. The Government has failed to challenge this credible allegation.

40. The Working Group recalls that the enjoyment of freedom of expression and the right to hold and participate in peaceful assemblies imposes on the State a positive obligation to facilitate the exercise of those rights (A/HRC/20/27, para. 27). Moreover, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that freedom of expression can be exercised through any sort of medium, including the right to participate in demonstrations and peaceful protests staged by parts of society that wish to show their discontent with public policies (A/HRC/23/40/Add.1, para. 71). In addition, the Working Group notes that the freedoms of opinion and of expression, as set out in article 19 of the Covenant, are indispensable conditions for the full development of the person; they are essential for any society and in fact constitute the foundation stone for every free and democratic society. According to the Human Rights Committee, no derogations can be made to article 19 because it can never become necessary to derogate from it during a state of emergency.³

41. The arrest and detention of the 13 female protestors also infringe on their freedom of association of the 13 female protestors because they were arrested only because they were enjoying their right to freedom of association in a peaceful manner.

42. For all those reasons, the Working Group concludes that the arrest and detention of the 13 named individuals were due to their enjoyment of the rights to freedom of expression and association. The arrest and detention therefore fall under category II. As a result, there

² See, e.g., opinions No. 53/2016, No. 56/2016, No. 6/2017 and No. 10/2017.

³ General comment No. 34 (2011) on the freedoms of opinion and expression, para. 5.

should not be any trial. However, the source reported that there was a trial and the Working Group will now assess the circumstances of that trial.

43. The 13 young female protestors were tried and convicted for their participation in the demonstration and for their association with the Muslim Brotherhood, on the basis of their confessions. The Working Group will now assess the circumstances vis-à-vis category III.

44. First and foremost, the source alleged that the detainees were tortured during their detention leading to their confessions. Even though the Government had the opportunity to challenge the allegation, it chose not to do so. The Working Group recalls that any such allegation must be duly investigated at the domestic level before a court may rely on any confessions made. The Working Group also recalls that, pursuant to article 14 (3) (g) of the Covenant, it is a *jus cogens* norm that forcing confessions violate the right to a fair trial. Bearing in mind that the Government has chosen not to address the allegation, the Working Group concludes that the Court in its judgment relied on confessions that should have been excluded from the case records.

45. The Working Group furthermore refers to article 14 (3) (d) of the Covenant, which addresses the guarantee of legal assistance in criminal proceedings.⁴ In the present case, all 13 individuals were first detained incommunicado, which meant that they could not prepare for their defence. In addition, they were interrogated by a public prosecutor without the assistance of a lawyer. Within the same legal framework, they have the right to be present at their own trial, while it has been established that they were not brought to the courtroom for all the hearings related to their case. The foregoing circumstances are a violation of the right of the 13 individuals to legal assistance and representation and to be present at their trial.

46. Furthermore, some of the subjects of the present opinion, namely Ms. Samir Saad Khater, Ms. Majdi al-Husseini Hassan and Ms. Osama Eid Abu Eisa, were minors at the time of their arrest and detention. The Working Group recalls its previous jurisprudence in which it highlighted that article 37 (b) of the Convention on the Rights of the Child, to which Egypt was a party, established that the arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time.⁵ In the present case, no appropriate treatment was afforded to the three minors at the time of their arrest or during their detention, which means that the obligation set out in the Convention was not complied with.

47. In addition, the Working Group refers to the interpretation of the Convention on the Rights of the Child provided by the Committee on the Rights of the Child that, as part of a comprehensive policy for juvenile justice, States parties should develop and implement a wide range of measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. Such measures should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care, as provided for in article 40 (4) of the Convention.⁶ These requirements have been ignored in the case under consideration.

48. The Working Group is further concerned by the allegations in relation to the treatment of the 13 individuals at both the security forces camp of Damietta and at Port Said Prison, in particular the violence inflicted on them, the poor conditions of detention, the lack of health care and the lack of separation between women, men and minors. The treatment and living conditions outlined in the allegations fall short of the standards set out in, inter alia, rules 1, 2, 11, 12, 13, 22, 24, 25, 39 and 43 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and in

⁴ See also Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 37 ff.

⁵ Opinion No. 57/2011, para. 13.

⁶ General comment No. 10 (2007) on children's rights in juvenile justice, para. 23.

principles 1, 5 and 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

49. Taking into account those findings, the Working Group concludes that the violations of the fair trial rights of the 13 individuals have been of such gravity as to give their deprivation of liberty an arbitrary character under category III.

50. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

Disposition

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

The deprivation of liberty of Rawda Samir Saad Khater, Amal Majdi al-Husseini Hassan, Habiba Hassan Hassan Shatta, Sara Hamdi Anwar el-Sayed Mohammed, Heba Osama Eid Abu Eisa, Fatma Mohammed Mohammed Ayad, Sara Mohamed Ramadan Ali Ibrahim, Esraa Abdo Ali Farahat, Mariam Imad el-Deen Abu Tork, Fatima Imad el-Deen Ali Abu Tork, Aya Essam al-Shahat Omar, Kholod al-Sayed Mohammed al-Sayed el-Fallahgy and Safa Ali Ali Farahat, being in contravention of articles 5, 9, 19 and 20 of the Universal Declaration of Human Rights and articles 7, 9, 10, 14, 19 and 21 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

52. The Working Group requests the Government of Egypt to take the steps necessary to remedy the situation of Ms. Samir Saad Khater, Ms. Majdi al-Husseini Hassan, Ms. Hassan Hassan Shatta, Ms. Hamdi Anwar el-Sayed Mohammed, Ms. Osama Eid Abu Eisa, Ms. Mohammed Mohammed Ayad, Ms. Mohamed Ramadan Ali Ibrahim, Ms. Abdo Ali Farahat, Mariam Imad el-Deen Abu Tork, Fatima Imad el-Deen Ali Abu Tork, Ms. Essam al-Shahat Omar, Ms. al-Sayed Mohammed al-Sayed el-Fallahgy and Ms. Ali Ali Farahat without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

53. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the 13 individuals named immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

54. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the 13 individuals named and to take appropriate measures against those responsible for the violation of their rights.

55. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

56. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

57. 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 Ms. Samir Saad Khater, Ms. Majdi al-Husseini Hassan, Ms. Hassan Hassan Shatta, Ms. Hamdi Anwar el-Sayed Mohammed, Ms. Osama Eid Abu Eisa, Ms. Mohammed Mohammed Ayad, Ms. Mohamed Ramadan Ali Ibrahim, Ms. Abdo Ali Farahat, Mariam Imad el-Deen Abu Tork, Fatima Imad el-Deen Ali Abu Tork, Ms. Essam al-Shahat Omar, Ms. al-Sayed Mohammed al-Sayed el-Fallahgy and Ms. Ali Ali Farahat have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to the 13 individuals named;

(c) Whether an investigation has been conducted into the violation of the rights of the 13 individuals named 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 Egypt with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

58. 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.

59. 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.

60. 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.⁷

[Adopted on 1 May 2019]

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