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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventieth session (25–29 August 2014)

No. 36/2014 (Syrian Arab Republic)

Communication addressed to the Government on 17 June 2014

concerning Ammar Tellawi

The Government has not replied to the communication.

The State is 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 15/8 of 30 September 2010. The mandate was extended 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 State 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 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. The case summarized below was reported to the Working Group on Arbitrary Detention.

4. Ammar Tellawi, born in 1979, is a Syrian national and a PhD student at a university in Damascus.

5. Mr. Tellawi has been a peaceful opponent of the regime of Hafez al-Assad and his son, Bashar al-Assad. He has published a few books and organized public roundtable meetings on the political situation in Syria.

6. On 9 December 2006, he was arrested by agents of the Syrian military intelligence while he was at a bus depot in Damascus. The agents did not show an arrest warrant and allegedly beat him with a gun on the head, which rendered him unconscious. He was taken to an unknown location where he was allegedly tortured all night by various means, including the use of electrical shocks. As a result of the severe acts of torture, Mr. Tellawi suffered from temporary memory loss.

7. While Mr. Tellawi's family was initially unaware of his fate and whereabouts, they were subsequently informed that he was detained in Branch 235 (also known as Palestine Branch), a military intelligence detention facilities in Damascus. Mr. Tellawi was held incommunicado in this Branch and his family was not allowed to visit him. Mr. Tellawi was also not provided with any medical care, although he suffers from visual impairment in both eyes that requires medical attention.

8. Mr. Tellawi was finally brought before an investigating judge in January 2008, 13 months after his arrest and incommunicado detention. The judge charged him under article 306 of the Syrian Code of Criminal Procedure (Penal Code), which prohibits taking part in an "association established in order to change the social character of the State by terrorist means". Mr. Tellawi was then transferred to Sidnaya prison where his family could visit him once a month.

9. On 30 January 2011, he was tried before the Supreme State Security Court and sentenced to 15 years' imprisonment, under article 306 of the Penal Code. Mr. Tellawi's lawyer was not allowed to access his client's file so as to prepare his defence. He was only permitted to attend the trial, during which the prosecution allegedly did not present any evidence substantiating Mr. Tellawi's involvement in the alleged "terrorist" activities.

10. Mr. Tellawi was transferred to Aleppo prison on 22 June 2011. He is often allegedly subjected to solitary confinement, forced starvation, ill-treatment and humiliation. He has also been made a target of multiple mock executions. His family saw him for the last time during the summer of 2012 and was told in early February 2014 that they could never visit him again. Mr. Tellawi remains detained in Aleppo prison to date.

11. The source submits that Mr. Tellawi's detention is arbitrary, as there is no legal basis justifying his detention. It stresses the fact that Mr. Tellawi was arrested on 9 December 2006 without an arrest warrant and that he was never informed of the reasons for his arrest until he was finally brought before the investigating judge in January 2008. According to the source, this violates articles 424 and 425 of the Penal Code, which stipulate that no one may be detained without being duly charged in accordance with the legal procedures. The source adds that article 104 of the Penal Code states that an investigating judge has an obligation to promptly question an accused person who has been summoned to appear before him, or any suspect arrested under the terms of a warrant, within 24 hours. In violation of that requirement, Mr. Tellawi was not brought before an investigating judge until 13 months after his arrest.

12. The source also argues that Mr. Tellawi's detention is arbitrary because it results from the exercise of his rights to freedom of expression, peaceful assembly and association, guaranteed under article 19, 21 and 22 of the International Covenant on Civil and Political Rights, respectively. The source maintains that Mr. Tellawi was arrested because of his political activities against the Al-Assad regime, adding that article 306 of the Penal Code has been systematically used to repress political opponents.

13. The source further submits that there are grave violations of the international norms relating to the right to a fair trial in the present case, which gives the deprivation of Mr. Tellawi's liberty an arbitrary character. The source stresses that Mr. Tellawi was held without charges for 13 months and it took over four years for him to be tried and sentenced by a court, in violation of article 9, paragraph 3, of the Covenant, which states that "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release". The source also argues that the Supreme State Security Court, which has recently been abolished, cannot be considered "a competent, independent and impartial tribunal established by law", that would guarantee the right to a fair trial, as stipulated in article 14, paragraph 1, of the Covenant. In support of its argument, the source points out, *inter alia*, that the Court does not guarantee full access to lawyers and often fails, or refuses, to investigate the alleged use of torture in extracting confessions, and that the Court's decisions are not subject to appeal. The source argues that all the decisions that have been rendered by this extraordinary court are thus unlawful, *per se*, and should be rendered void, and that the convicted persons should be tried *de novo* before an impartial and fair court.

Response from the Government

14. The Working Group addressed a communication to the Government of the Syrian Arab Republic on 17 June 2014, requesting detailed information about the current situation of Mr. Tellawi, and the legal provisions justifying his continued detention and their compliance with international law. The Working Group regrets that the Government has not responded to the allegations transmitted to it.

Discussion

15. Despite the absence of any information from the Government, the Working Group considers that it is in the position to render its opinion in conformity with paragraph 16 of its methods of work.¹ The Government of the Syrian Arab Republic has not rebutted the allegations concerning Mr. Tellawi submitted by the source.

¹ See, for instance, opinion No. 5/2014 (Iraq), paras. 14 and 15.

16. Mr. Tellawi remains arbitrarily detained in breach of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, and there are serious violations of the right to a fair trial under article 10 of the Universal Declaration of Human Rights, article 14 of the International Covenant on Civil and Political Rights and customary international law. He was held in incommunicado detention for 13 months before being brought before a judge, subjected to torture and not provided with any medical care. Furthermore, he was not given adequate access to legal assistance for the trial. His sentence, handed down three years later, of 15 years' imprisonment under article 306 of the Penal Code, by the Supreme State Security Court constitutes another breach of international law. Although acknowledging that the said Court has subsequently been abolished, the Working Group underlines that the trial of civilians or decisions placing civilians in preventive detention by military courts are in breach of the fundamental requirements of independence and impartiality and guarantees for a fair trial, as required by article 10 of the Universal Declaration of Human Rights, article 14 of the International Covenant on Civil and Political Rights and customary international law, as confirmed by the constant jurisprudence of the Working Group.² In this respect, the Working Group refers to its previous opinions concerning the Syrian Arab Republic, including opinions No. 37/2011 and No. 43/2013.

17. In its concluding observations on the Syrian Arab Republic, the Human Rights Committee stated that it remained concerned about numerous allegations that the procedures of military courts do not respect the guarantees laid down in article 14 of the Covenant (CCPR/CO/71/SYR, para. 17).

18. The Committee against Torture, in its concluding observations on the initial report of Syria, stated that it "is deeply concerned at the numerous, consistent and serious allegations that this court fails to function in accordance with the international standards for courts of law" (CAT/C/SYR/CO/1, para. 11), and added that the Supreme State Security Court "has the competence to adopt sentences and impose penal sanctions for crimes that are very widely defined". Finally, in its general comment No. 32 (2007)³, the Human Rights Committee reaffirmed that the guarantees in article 14 are applicable to common and exceptional jurisdictions of civil and military character.

19. The Working Group concludes that the breaches of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, in this case, are of such gravity as to give Mr. Tellawi's deprivation of liberty an arbitrary character. It therefore falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

20. The Working Group also finds that Mr. Tellawi's deprivation of liberty results from the exercise of his rights to freedom of expression, peaceful assembly and association, guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights, and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights. It falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

² See A/HRC/27/48, para. 66, and opinions No. 20/2012 (Israel); No. 11/2012 (Egypt); No. 12/2012 (Egypt); No. 6/2012 (Bahrain); No. 3/2012 (Israel); No. 1/2012 (Egypt); No. 57/2011 (Egypt); No. 50/2011 (Egypt); No. 37/2011 (Syrian Arab Republic); No. 38/2011 (Syrian Arab Republic); No. 39/2011 (Syrian Arab Republic); No. 1/2011 (Syrian Arab Republic); No. 3/2011 (Egypt); No. 31/2010 (Bolivarian Republic of Venezuela); No. 32/2010 (Peru); No. 27/2010 (Syrian Arab Republic); No. 22/2010 (Egypt); No. 23/2010 (Myanmar); No. 13/2010 (Palestinian Authority); No. 9/2010 (Israel); No. 5/2010 (Israel).

³ Human Rights Committee general comment No. 32 (2007) on the right to equality before the courts and tribunals and to a fair trial, para. 22.

21. The Working Group recalls that this is only one of several opinions of the Working Group finding the Syrian Arab Republic in violation of its international human rights obligations.⁴ The Working Group reminds the Syrian Arab Republic of its duties to comply with international human rights obligations not to detain anyone arbitrarily; to release persons who are arbitrarily detained; and to provide them with compensation. The duty to comply with international human rights obligations rests not only on the Government, but on all officials of the State, including judges, the police, security officers and prison officers with relevant responsibilities. The Working Group emphasizes that no one person contributes to human rights violations. The Working Group also underlines the individual criminal responsibility that can derive from arbitrary detention, when such detention constitutes a crime against humanity under customary international law.

Disposition

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

The deprivation of liberty of Ammar Tellawi is in breach of articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights. It falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

23. Consequent upon the opinion rendered, the Working Group requests the Government of the Syrian Arab Republic to remedy the situation of Mr. Ammar Tellawi and to bring it into conformity with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and customary international law.

24. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to immediately release Mr. Tellawi and accord him an enforceable right to compensation, in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights and customary international law. The duty to provide Mr. Tellawi with compensation for the violation of his rights rests upon the State and must be enforceable before the national courts.

25. 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 28 August 2014]

⁴ See also opinions No. 1/2011, No. 26/2011, No. 37/2011, No. 38/2011, No. 9/2012 and No. 43/2013.