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Human Rights Council Working Group on Arbitrary Detention

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No. 9/2015 (Sudan)

Communication addressed to the Government on 18 February 2015

Concerning Amin Mekki Medani, Farouk Abu Eissa and Farah Ibrahim Mohamed Alagar

The Government has not replied to the communication.

The State is 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);

* The Sudan acceded to the International Covenant on Civil and Political Rights on 18 March 1986.



(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. Amin Mekki Medani, 75 years old, is a human rights lawyer. He is the President of the Confederation of Civil Society Organisations of the Sudan and former President of the *Sudan Human Rights Monitor*.

4. Farouk Abu Eissa, 78 years old, is the Chair of the National Consensus Forces of the Sudan, an umbrella of political opposition parties, and has a long history of political activism calling for democratic transformation in the Sudan. He is a former Secretary-General of the Arab Lawyers' Union and the National Democratic Alliance.

5. Farah Ibrahim Mohamed Alagar, 60 years old, is a retired officer from the Sudanese Armed Forces and was formally the Chair of the National Congress Party in Blue Nile State. He was later engaged in April 2014 as an independent conflict resolution expert by the Sudan People's Liberation Movement-North to attend ongoing peace talks in Addis Ababa between the Movement and the Government of the Sudan.

6. On 3 December 2014, during a meeting in Addis Ababa, Mr. Medani and Mr. Eissa signed the Sudan Call, a political declaration on the establishment of a State of citizenship and democracy, together with two Sudanese political and armed opposition groups. The source reports that the Sudan Call is a declaration that commits signatories to work to end the conflicts raging in different regions of the Sudan. The document is also a pledge to work towards legal, institutional and economic reforms.

7. Mr. Medani and Mr. Eissa returned to Khartoum from Addis Ababa on 4 and 5 December 2014, respectively. According to the source, on 6 December 2014, at approximately 11 p.m., seven plain-clothed men in a utility vehicle arrested Mr. Medani at his home in Khartoum. The men who carried out the arrest are believed to be members of the National Intelligence and Security Service of the Sudan.

8. The source reports that Mr. Medani suffers from heart problems and has high blood pressure, for which he has been prescribed medication. He is also diabetic and follows a strict dietary regime. During his arrest, he was allegedly informed that there was no need for him to bring his medication with him and that he would return home soon. After he did not return home following his arrest, his family went to the reception office of the National Intelligence and Security Service in Airport Street, Khartoum, to deliver his medication. It is not clear, however, whether he received it.

9. According to the source, that same night, Mr. Eissa was arrested at his home in Khartoum by seven plain-clothed men. Mr. Eissa suffers from stenosis, high blood pressure and diabetes, for which he takes regular medication. During his arrest, he was not able to

take all of his medication with him. The following day, his family went to the National Intelligence and Security Service offices in Khartoum to deliver his medication, but did not receive any confirmation that it would be delivered to him. His family was informed that they were not allowed to see him.

10. The source reports that, on 7 December 2014, at 1 a.m., Mr. Alagar was arrested by approximately 10 members of the National Intelligence and Security Service at his home in the Alfitihab neighbourhood of Omdurman. Mr. Alagar had also attended the Sudan Call negotiations in Addis Ababa but had not signed the resulting document. He was taken to the offices of the Service in Khartoum Bahri and was not provided with any reason for his arrest.

11. On 9 December 2014, several special procedures mandate holders of the Human Rights Council, including the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, transmitted a joint urgent appeal to the Government of the Sudan. They expressed grave concern regarding the alleged arbitrary arrest and incommunicado detention of Mr. Medani and Mr. Eissa, and the lack of information about their current fate and whereabouts. Serious concerns were expressed regarding their health while in detention, given their critical medical condition and the allegations that they did not have access to their medication in detention.

12. On 12 December 2014, the Government responded by letter to a request for information with regard to Mr. Medani and Mr. Eissa from the Africa Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR). The letter conveyed the following details:

(a) The two above-mentioned citizens of the Sudan had recently signed an agreement entitled “Sudan Call” to form an alliance with a rebel group called the Sudanese Revolutionary Front. The latter had declared it was launching war against the State;

(b) Performing its responsibility to protect national security in the Sudan, the authorities concerned had arrested Mr. Medani and Mr. Eissa to conduct investigations into the agreement signed with a Sudanese rebel group.

13. The source reports that, from the time of their arrest until 21 December 2014, Messrs. Medani, Eissa and Alagar had been held incommunicado by the National Intelligence and Security Service.

14. On 21 December 2014, they were transferred from the custody of the National Intelligence and Security Service to Kober prison in Khartoum. On that day, Mr. Alagar was reportedly allowed to receive a 30-minute visit from his family. The visit was attended by members of the Service, who allegedly ordered him not to discuss his treatment or the conditions of his detention.

15. On that same day, it is reported that seven members of the National Intelligence and Security Service raided the offices in Khartoum of the *Sudan Human Rights Monitor*, which Mr. Medani had founded. A number of laptop computers and documents were confiscated.

16. On 22 December 2014, the three men were permitted to meet with a team of lawyers. On the same day, Mr. Eissa, owing to high blood pressure, was briefly taken to Alamal Hospital, which is owned by the National Intelligence and Security Service, and he also received a visit from his family.

17. On 24 December 2014, Mr. Medani received a visit from his family. The source reports that his family had since been permitted to take him food compatible with his health needs as a diabetic.

18. The source submits that the deprivation of liberty of Messrs. Medani, Eissa and Alagar may be considered arbitrary as it falls within categories I, II and III of the categories applicable to the cases submitted to the Working Group for consideration. The source argues that their detention is without legal basis as the three men remain detained in Kober prison in Khartoum without any formal charges having been brought against them to date by the Government. This is in violation of article 9 of the Universal Declaration of Human Rights and articles 9 (1) and (2) of the International Covenant on Civil and Political Rights, thereby rendering the detention arbitrary as it falls within category I.

19. The source additionally submits that the arrests are believed to be connected to the men's participation in the Sudan Call political negotiations held in early December 2014 in Addis Ababa. In this respect, their detention is thought to be connected solely to the peaceful expression of their beliefs in favour of democratic principles and peace and security in the Sudan. The source argues that this is in violation of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights, thereby rendering the detention arbitrary as it falls within category II.

20. The source recalls that Messrs. Medani, Eissa and Alagar were detained incommunicado until 21 December 2014, without access to any legal assistance and without any information on the reason for their detention or on the legal basis justifying their deprivation of liberty. Since the date of their arrests they have not been brought before a judicial authority, contrary to article 9 (3) of the International Covenant on Civil and Political Rights. They have also been denied the right to challenge the lawfulness of their detention before a court and to be released if the court finds the detention unlawful pursuant to article 9 (4) of the Covenant. They have not been entitled to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations and of any criminal charge against them, contrary to article 10 of the Universal Declaration of Human Rights. In violation of article 14 (3) (b) of the Covenant, for a period of two weeks they were further denied their right to communicate with counsel of their own choosing. The non-observance of the international norms relating to the right to a fair trial places the deprivation of liberty of Messrs. Medani, Eissa and Alagar within category III.

Response from the Government

21. The Working Group regrets that the Government has not responded to the allegations transmitted by the Group on 18 February 2015.

22. Despite the absence of any information from the Government, the Working Group considers that it is in a position to render its opinion on the detention of Messrs. Medani, Eissa and Alagar in conformity with paragraph 16 of its methods of work.

Discussion

23. The Government chose not to rebut the reliable prima facie allegations submitted by the source, according to which Mr. Medani and Mr. Eissa were deprived of their liberty for having signed a political document that committed its signatories to work towards ending the conflicts raging in different regions of the Sudan. The document was also a pledge to work towards legal, institutional and economic reforms. Mr. Alagar has been deprived of his liberty for having been present at the meeting at which the document was signed.

24. The OHCHR Africa Branch was informed by the Government in a letter of 12 December 2014 that the Sudan Call was signed to form an alliance with a rebel group

called the “Sudanese Revolutionary Front” which, according to the Government, declared it was launching war against the State. The Government maintained that the authorities arrested the two men to conduct investigations with them into the agreement with a Sudanese rebel group.

25. The Working Group considers that Mr. Medani, a prominent human rights defender and former OHCHR Regional Representative for the Arab region, Mr. Eissa, the leader of the opposition party National Consensus Forum, and Mr. Alagar have been deprived of their liberty for peacefully exercising their right to freedom of expression.

26. The Working Group recalls that restrictions on the exercise of the right to freedom of expression may never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and human rights (see general comment No. 34 (2011) on freedoms of opinion and expression, para. 23).

27. In this case, Messrs. Medani, Eissa and Alagar have been deprived of liberty for having peacefully exercised their right to freedom of expression as guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. Their deprivation of liberty thus falls within category II of the categories applicable to the cases submitted to the Working Group for consideration.

28. Furthermore, in violation of article 9 (2) of the International Covenant on Civil and Political Rights, Messrs. Medani, Eissa and Alagar were not informed at the time of arrest, of the reasons for their arrest. They have never been informed of any charges against them, in violation of the same provision of the Covenant.

29. Messrs. Medani, Eissa and Alagar have not been brought before a judicial authority since December 2014, contrary to article 9 (3) of the International Covenant on Civil and Political Rights, which requires that anyone arrested or detained on a criminal charge be brought promptly before a judicial authority. Moreover, pursuant to article 9 (4) of the Covenant, they have been denied the right to challenge the lawfulness of their detention before a court and to be released if the court finds the detention unlawful.

30. Since December 2014, Messrs. Medani, Eissa and Alagar have been detained without charge and have never been brought before a judicial authority as required by article 9 (3) of the International Covenant on Civil and Political Rights. In violation of article 9 (4) of the Covenant, they have also been deprived of the right to challenge the lawfulness of their detention before a court.

31. The Working Group considers that in this case the non-observance of the international norms relating to the right to a fair trial, established in articles 9 and 10 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, is of such gravity as to give the deprivation of liberty of Messrs. Medani, Eissa and Alagar an arbitrary character.

32. The deprivation of liberty of Messrs. Medani, Eissa and Alagar thus falls within categories I and III.

Disposition

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

The deprivation of liberty of Amin Mekki Medani, Farouk Abu Eissa and Farah Ibrahim Mohamed Alagar is arbitrary, being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9 and 19 of the International Covenant on Civil and Political Rights and falls within categories I, II and III of the categories applicable to the cases submitted to the Working Group for consideration.

34. Consequent upon the opinion rendered, the Working Group requests the Government to take the steps necessary to remedy the situation of Messrs. Medani, Eissa and Alagar and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

35. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release Messrs. Medani, Eissa and Alagar and accord them an enforceable right to compensation in accordance with article 9(5) of the International Covenant on Civil and Political Rights.

36. In accordance with article 33 (a) of its methods of work, 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, for appropriate action.

[Adopted on 24 April 2015]
