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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-eighth session, 13–22 November 2013

No. 39/2013 (Egypt)

Communication addressed to the Government on 7 August 2013

Concerning Mohamed Mohamed Morsi Eissa El-Ayyat, Ahmed Abdel Atty, Essam Al-Haddad, Khaled El-Kazaz, Abdelmageed Meshali, Asaad El-Sheikha and Ayman Ali

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 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), 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);

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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 as follows:

4. Dr. Mohamed Mohamed Morsi Eissa El-Ayyat (hereinafter Dr. Morsi), aged 61, born in Al-Sharqiya Governorate on 20 August 1951, is the recently deposed President of the Arab Republic of Egypt. Prior to taking office as President, he was a university professor at Cairo University. He is married to Ms. Naglaa Mahmoud. They reside with their five children on 90th Street, Fifth Area, New Cairo, Cairo.

5. Dr. Ahmed Abdel Atty (hereinafter Dr. Atty), aged 45, born in Sharqeya Governorate, is Dr. Morsi's Head of Office. Dr. Atty is married with four children and resides with his family in the Fifth Area, New Cairo, Cairo.

6. Dr. Essam Al-Haddad (hereinafter Dr. Al-Haddad), aged 60, born in Alexandria, is Dr. Morsi's Advisor on Foreign Affairs. He is married with four children and resides with his family on Al-Kahraa Street, Al-Mokattam, Cairo.

7. Mr. Khaled El-Kazaz (hereinafter Dr. El-Kazaz), aged 34, born in Cairo, is Dr. Morsi's Secretary for Foreign Affairs. Mr. El-Kazaz is married with four children and resides with his family at 6161 Al-Mokattam Street, Al-Mokattam, Cairo.

8. Mr. Abdelmageed Meshali (hereinafter Mr. Meshali), aged 37, is Dr. Morsi's Advisor on Internal Affairs. He is married with children.

9. Mr. Asaad El-Sheikha (hereinafter Mr. El-Sheikha), aged 51, is Dr. Morsi's Chief of Staff. He is married with four children and resides in the Fifth Area, New Cairo, Cairo.

10. Dr. Ayman Ali (hereinafter Dr. Ali), aged 51, born in Damietta Governorate, is Dr. Morsi's Advisor on the Affairs of Egyptians Living Abroad. Dr. Ali is married with four children and resides in the Fifth Area, New Cairo, Cairo.

11. The source further conveys that Dr. Morsi's personal lawyer, Mr. Abdelmonem Metwally (hereinafter Mr. Metwally), was arrested on 4 July 2013 and is currently being detained at Tora Prison.

12. According to the information provided by the source, on 3 July 2013, General Abdel Fattah Said Al-Sisi of the Egyptian Army announced a military intervention in Egypt and arrested the country's President, Dr. Morsi, together with his six aforementioned advisors: Dr. Atty, Dr. Al-Haddad, Mr. El-Kazaz, Mr. Meshali, Mr. El-Sheikha and Dr. Ali.

13. The source reports that, to date, no legal basis has been invoked for the arrest of Dr. Morsi and his advisors. They have not been charged with a concrete offence or brought before a court of justice.

14. The source indicates that it has received reports, including from Dr. Morsi's family, that he and his advisors have been placed under house arrest at the premises of the

Republican Guard, where they are detained in solitary confinement under heavy security. The source reports that Dr. Morsi and his advisors have been kept incommunicado, unable to contact their families or legal counsel.

15. The source further reports that Mr. Metwally, Dr. Morsi's lawyer, had reportedly visited Tora Prison on the date of his arrest with the goal of providing legal assistance to other senior officials of the deposed Egyptian Government who were arrested at the same time as Dr. Morsi.

16. The source fears that Dr. Morsi and his advisors may be at risk of torture and ill-treatment.

17. The source submits that Dr. Morsi and his advisors are being detained arbitrarily. In support of its allegation, the source draws the attention of the Working Group on Arbitrary Detention to its previous finding that house arrest can be considered a form of deprivation of liberty and cites the Working Group's Opinions Nos. 8/1992, 2/2002, 9/2004 and 2/2007.

18. In the source's view, the detention of Dr. Morsi and his advisors constitutes not only a violation of their right to liberty and security of the person guaranteed by article 9 of the International Covenant on Civil and Political Rights, but also of their right to fair trial as defined in article 14 of the same treaty.

Response from the Government

19. By letter dated 7 August 2013, the Working Group transmitted the above allegations to the Government of Egypt, requesting detailed information about the current situation of Dr. Morsi and his advisors. The Working Group regrets that the Government did not respond to the allegations transmitted by the Group within 60 days or request an extension to submit a response, in accordance with paragraph 15 of the Working Group's methods of work.

20. 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 Dr. Morsi and his advisors, in conformity with paragraph 16 of its methods of work.

Discussion

21. Pursuant to articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the Arab Republic of Egypt is a party, anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him; shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful; and to communicate with counsel of his own choosing.

22. According to the jurisprudence of the Working Group, any kind of deprivation of liberty, of whatever nature, must be regarded as detention.

23. As alleged in the petition submitted by the source on 10 July 2013, Dr. Morsi, President of the Arab Republic of Egypt, was deposed by the army and deprived of his liberty, along with several of his advisors. In violation of their fundamental rights, the aforementioned were not given any legal basis to justify their detention; were not notified of the charges against them; had not been brought before a judge; were placed under house arrest at the premises of the army and under high security; and, were unable to communicate with their families or lawyers.

24. In the opinion of the Working Group, the violation of these fundamental guarantees, enjoyed by all persons deprived of their liberty, is likely to adversely affect any subsequent

proceedings and therefore cannot be derogated from in any way whatsoever. In this regard, the Working Group concurs with the view that “[w]here the breaches of the rights of the accused are such as to make it impossible for him/her to make his/her defence within the framework of his rights, no fair trial can take place...Unfairness in the treatment of the suspect or the accused may rupture the process to an extent making it impossible to piece together the constituent elements of a fair trial”.¹

25. The Working Group considers that the non-observance of the right to be free from arbitrary arrest and detention and of the norms relating to a fair trial, pursuant to articles 9, 10 and 11 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights in the case under consideration, is of such gravity as to give the case of Dr. Morsi and his advisors an arbitrary character.

26. Thus the deprivation of liberty of Dr. Morsi and his advisors falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

27. The Working Group finds it regrettable that the Government of Egypt, which is facing a serious crisis that stems in part from similar violations of human rights, has not thought it necessary to respond to these allegations, especially regarding the President of the Republic and his advisors.

Disposition

28. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following Opinion:

The deprivation of liberty of Dr. Morsi and his advisors mentioned above is arbitrary, being in contravention of articles 9, 10, and 11 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights and falling within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

29. Consequent upon the Opinion being rendered, the Working Group requests the Government to release Dr. Morsi and his advisors immediately and to take the necessary steps to provide redress for all the material and moral damage suffered by these individuals through reasonable compensation, in line with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

30. The Working Group recalls the request of the Human Rights Council for all States to cooperate with the Working Group, to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons deprived of their liberty, and to inform the Working Group of the steps they have taken.²

[Adopted on 13 November 2013]

¹ *Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006*, International Criminal Court, Case No. ICC-01/04-01/06 (OA 4), 14 December 2006, para. 39.

² A/HRC/RES/24/7, paras. 3, 6 and 9.