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PROCEDURES SPECIALES DU CONSEIL DES
DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE HUMAN
RIGHTS COUNCIL

Working Group on Arbitrary Detention

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Dear Mr. Melzer,

I would like to refer to the sixty-third session of the Working Group on Arbitrary Detention, during which the Working Group adopted several Opinions on cases of detention submitted to it.

In accordance with paragraph 18 of the Working Group's Methods of Work, I am sending to you, attached herewith, the text of Opinion No. 12/2012 (Egypt) regarding a case submitted by your organization.

This Opinion will be reproduced in the Working Group's annual report to the Human Rights Council.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Miguel de la Lama".

Miguel de la Lama
Secretary

Working Group on Arbitrary Detention

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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its sixty-third session 30 April–4 May 2012****No. 12/2012 (Egypt)****Communication addressed to the Government on 1 March 2012****Concerning: Mr. Ouda Seliman Tarabin****The Government did not reply 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 that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its working methods, 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);

(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

The case summarized hereafter has been reported to the Working Group on Arbitrary Detention as follows:

1. **Mr. Ouda Seliman Tarabin**, born in Egypt in 1981, is a national of Israel. He was ten years old when his family moved from Egypt to Israel and was subsequently granted Israeli citizenship.
2. It is reported that in September 1999, Mr. Tarabin together with his mother, travelled to Egypt on their Israeli passports. The aim of their trip was to visit Mr. Tarabin's sisters residing in El-Arish, Egypt. They subsequently returned to Israel. During another visit to Egypt, Mr. Tarabin was arrested on 3 December 2000 by the local police in his sister's home in El-Arish, allegedly for illegally crossing the border and for espionage. The arrest took place two days after Mr. Tarabin had arrived in Egypt.
3. Following his arrest, Mr. Tarabin was taken for interrogation by the Military Intelligence and he was told that he had been sentenced to 15 years of imprisonment. Mr. Tarabin was informed that his cousin had confessed to the allegation that Mr. Tarabin and his father were connected to the Israeli Army. According to the information received, Mr. Tarabin did not have access to a lawyer or legal assistance during his interrogation or thereafter. The source submits that the cousin was interrogated about whom he had visited when he crossed the border into Israel. Reportedly, he responded that he had gone to visit his uncle, Mr. Tarabin's father.
4. Mr. Tarabin has at no point been presented with an indictment providing for the alleged offence that he was arrested for or the charges on the basis of which he was convicted.
5. The source reports that Mr. Tarabin has never served in the Israeli Army and he had only finished school at the time of his arrest.
6. Mr. Tarabin was detained in several prisons since the moment of his arrest. In 2004, the State Security Office in Egypt allegedly sent a letter to the Israeli Embassy in Cairo confirming that Mr. Tarabin was being held in detention in Egypt and that he had been moved to Liman-Tora prison in Cairo.
7. Mr. Tarabin was sentenced by a military court in Sinai in March 2000 to 15 years of imprisonment. Since we have been informed that his prisoner card indicates that Mr. Tarabin was only arrested on 3 December 2000, in the source's view, this shows that Mr. Tarabin was tried and sentenced by the court *in absentia* prior to his arrest.
8. The source contends that Mr. Tarabin was not present at the trial and was not given the opportunity to be promptly brought before a competent tribunal. The source further reports that his trial took place in March 2000 as stated by the Egyptian State Security Office. At that moment Mr. Tarabin was not present in Egypt and he had received no summons from any court and was not aware of any charges against him.

9. First, the source points that it is unclear what are the exact charges that justified Mr. Tarabin's arrest and detention. In addition to the allegation that Mr. Tarabin was never presented with a proper indictment, his trial and sentence took place *in absentia* prior to his arrest. According to the source, this constitutes a breach of Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR) which provides that the defendant shall be tried in his presence and shall be allowed to defend himself in person. In support of this contention, the source emphasizes that at the moment of the alleged trial held in March 2000, Mr. Tarabin was outside Egypt and had received no prior notification or summons to appear before the court or about any charges pressed against him. Moreover, the source contends that Mr. Tarabin has not had access to a lawyer or any legal assistance in breach of Articles 14(3)(b) and 14(3)(d) of the ICCPR.
10. Second, the source argues that Mr. Tarabin, a civilian, should not have been tried by a military court. He has allegedly not been allowed to appeal his sentence in alleged breach of Article 14(5) of the ICCPR.
11. In light of the foregoing, the source submits to the Working Group that Mr. Tarabin's detention is arbitrary as it is a result of grave breaches of his right to a fair trial.

Response from the Government

12. The Working Group transmitted the above allegations to the Government of Egypt requesting it to provide, in its reply, detailed information about the current situation of Mr. Tarabin and to clarify the legal provisions justifying his continued detention. It is regretted that the Working Group has not received a response from the Government.

Discussion

13. In the absence of a response from the Government and based on its Methods of Work, the Working Group is able to render an opinion in light of the information submitted to it.
14. The Working Group has consistently held the firm view that due process of law must be adhered to in all circumstances no matter who the detainee is and what the nature of the charges happen to be. Mr. Tarabin is an Israeli citizen who was allegedly arrested by Egyptian authorities due to lack of documentation on his person and suspected of espionage for Israel. These serious charges required serious responses in accordance with the law.
15. Analysing the material available to the Working Group in the present case, it appears that a number of oversights and procedural lapses have occurred. Upon arrest and detention, Mr. Tarabin was informed of the charges against him and that he was sentenced to 15 years imprisonment.
16. Mr. Tarabin appeared to have been tried in *absentia* with no possibility of defending himself; nor could he engage legal counsel or produce evidence to prove his innocence. This procedure is a violation of Mr. Tarabin's right to a fair trial under article 14 of the ICCPR.
17. In the absence of evidence to the contrary, it is assumed that Mr. Tarabin is a civilian but has been tried in *absentia* by a Military Court. In its Opinion 27/2008¹ regarding Egypt, the Working Group stated that it "considers that, in principle, military tribunals should not try civilians. The Human Rights Committee has also expressed concern that these tribunals as well as State Security Courts show no guarantees of independence. In addition, their decisions are not subject to appeal before a higher court as established by Article 14 of the International Covenant on Civil and Political Rights (see CCPR/CO/76/EGY, para. 16)." The Working Group has consistently held the view that

¹ Adopted on 12 September 2008 and can be accessed on <http://www.unwgadatabase.org>

whatever the charges they face, civilians should not be tried by military courts as they cannot be considered as an independent and impartial tribunal for civilians” (Opinion No. 27/2008 (Egypt)).

18. On the issue of trial in absentia, the Working Group refers to Article 14(3)(d) of the International Covenant on Civil and Political Rights where it states that everyone charged with a criminal offence shall have the right to be presumed innocent and “to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.” General Comment No. 32 of the Human Rights Committee² also requires that, notwithstanding the absence of the accused, all due steps have to be taken to inform accused persons of the charges and to notify them of the proceedings.

Disposition

19. In the light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

That the detention of Mr. Tarabin is arbitrary in contravention of Article 14 of the International Covenant on Civil and Political Rights and falling under category III of the methods of work of the Working Group.

20. Consequent upon the Opinion rendered, the Working Group requests the Government to take necessary steps to remedy the situation of Mr. Tarabin and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.
21. The Working Group believes that taking into account all the circumstances of the case, adequate remedy would be immediate release and enforceable right to compensation in accordance with article 9(5) of the International Covenant on Civil and Political Rights.

[Adopted on 3 May 2012]

² CCPR/C/GC/32, para. 31