



General Assembly

Distr.: General
6 April 2016

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session, 30 November-4 December 2015

Opinion No. 52/2015 concerning Yara Sallam (Egypt)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the 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 1/102 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.

2. In accordance with its methods of work (A/HRC/30/69), on 5 March 2015 the Working Group transmitted a communication to the Government of Egypt concerning Yara Sallam. The Government replied to the communication on 7 May 2015. 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 sentence or despite an amnesty law applicable to him) (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 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. Yara Sallam is the Transitional Justice Officer at the Egyptian Initiative for Personal Rights. She was awarded the North Africa Shield 2013 for her work on the Women's Human Rights Defenders Program at Nazra for Feminist Studies.

5. It is reported that on 21 June 2014, between 7 p.m. and 8 p.m., Ms. Sallam and her cousin were arrested while they were buying drinks from a local kiosk in Heliopolis, Cairo. The source reports that they were forcibly shoved into a police transfer vehicle and taken to the Masr al-Jadida police station. During her interrogation, Ms. Sallam was questioned, without the presence of her lawyers, about the nature of her human rights work and about the management of the Egyptian Initiative for Personal Rights.

6. Shortly before Ms. Sallam's arrest, a protest march had set off from the Al-Ahram metro station towards the Ittihadiya Presidential Palace. The protesters were calling for the release of prisoners of conscience and the repeal of Law 107 of 24 November 2013. Approximately 30 individuals involved in the protest were arrested in Heliopolis on 21 June 2014. It is reported that Ms. Sallam was not actively participating in any demonstration at the time of her arrest. Later that day, eight of those arrested were released without charge, including Ms. Sallam's cousin.

7. On 22 June 2014, a second round of questioning occurred at the Masr al-Jadida Prosecution Office, this time in the presence of lawyers. According to the source, lawyers reported that Ms. Sallam was asked whether she had participated in the demonstration and was questioned about the reasons behind her presence in the vicinity of the protest, before being accused of taking part in the demonstration and of committing violent acts. She denied all charges.

8. Following their questioning, Ms. Sallam and the other defendants were transferred to police stations. Neither their lawyers nor their relatives were informed of where they were taken; instead, lawyers, relatives and activists were forced to actively search to discover the locations of their clients and family members.

9. On 23 June 2014, the Heliopolis Prosecution Office ordered the detention, until 25 June 2014, of Ms. Sallam and the group of other individuals implicated in the protest, on charges of breaching the protest law under the Anti-Protest Law; sabotaging public properties; possession of inflammable materials; and taking part in showing off force with the objective of terrorizing the public during their alleged participation in a peaceful march.

10. On 25 June 2014, the Heliopolis Public Prosecution submitted the case of Ms. Sallam, and the other individuals implicated in the protest, to the Heliopolis Misdemeanour Court. There were 12 provisions in the indictment order: articles 162, 361, 375 (bis) and 375 (bis A) of the Penal Code; articles 1-4 of Law 10 of 1914 on gatherings; and articles 7, 8, 19 and 21 of Law 107 of 2013 on demonstrations and public rallies. These provisions included: participating in an unauthorized demonstration whose aim was to stop the implementation of the law and influence the effectiveness of the public authorities during the carrying out of their work; organizing a demonstration without prior notice as stipulated by the law and participating in a demonstration that breached and threatened public security and the interests of citizens and disrupted transportation and transgressed

public and private property; using force and violence to terrorize and intimidate citizens; and deliberately destroying property owned by the aggrieved party as proved through investigations.

11. On 29 June 2014, the first hearing took place of the trial against Ms. Sallam, together with the other individuals implicated in the protest. It is reported that although the session was due to take place at the Heliopolis courthouse, at the time set for the start of the session, lawyers and family members were informally told that the hearing of the case would be transferred to the Police Academy inside the high security Tora Prison. They were required to rush across the city to attend the trial. It is alleged that defence lawyers and journalists faced difficulties in gaining access to the courtroom, while families of the detainees were denied access.

12. It is reported that the request for provisional release of the defendants on bail was rejected by the court. The judge closed the hearing session and left the courtroom without informing the lawyers about the date of the next hearing. Three hours later they were informally told it was scheduled for 13 September 2014.

13. On 3 July 2014, several special procedures of the Human Rights Council, including the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on violence against women, its causes and consequences, transmitted a joint urgent appeal to the Government of Egypt. The special procedures expressed serious concern at the arrest and subsequent indictment and detention of Ms. Sallam. Serious concern was also expressed at the allegations of ill-treatment of demonstrators advocating the abrogation of Law 107 during and after their arrest at a peaceful protest, as well as the subsequent charges held against them and their detention. The special procedures called attention to the worrying nature of the reports of threats and beatings of those individuals in custody.

14. On 28 November 2014, the Government responded to the allegations contained in the joint urgent appeal, conveying the following details:

(a) On 21 June 2014, around 100 people organized a march which began in front of the Al-Ahram metro station and moved towards the Ittihadiya Presidential Palace. During the course of the march, while passing through Ismailiya Square in the Heliopolis neighbourhood of Cairo, participants blocked the road and impeded the flow of traffic. As a result security forces were obliged to intervene and managed to disperse the participants, arresting 24 individuals (17 young men and 7 young women);

(b) The Public Prosecutor ordered that those arrested be held in detention for four days pending further investigation;

(c) On 29 June and on 26 October 2014, the Heliopolis Criminal Court sentenced each of the 22 accused to three years' imprisonment and payment of a fine of 10,000 Egyptian pounds;

(d) The defendants appealed against the sentence before the Heliopolis Court of Criminal Appeal. On 9 November 2014, the Court postponed its review to 28 December 2014.

15. The source reports that on 13 September 2014 the Heliopolis Misdemeanour Court postponed the trial against Ms. Sallam, together with the other individuals implicated in the protest, to 11 October 2014.

16. On 26 October 2014, Ms. Sallam, together with the other detainees, were sentenced before the court of first instance to three years' imprisonment; an additional three years of police surveillance; payment of a LE10,000 fine; and repayment for property damages they allegedly caused in relation to their alleged participation in the protest held on 21 June 2014.

17. On 28 December 2014, the Heliopolis Appeal Misdemeanour Court reduced the sentence against Ms. Sallam and the other individuals implicated in the protest, to two years' imprisonment and two years' police surveillance. Ms. Sallam's lawyers have appealed to the court of cassation, which will only review the case with respect to procedural matters. The source reports that it is unlikely that the court will render a decision in this case before two years.

18. On the basis of the foregoing, the source submits that the deprivation of liberty of Ms. Sallam may be considered arbitrary, falling under categories II and III. Ms. Sallam is being detained solely for exercising her rights to freedom of expression and assembly, and her detention and sentencing aim to sanction her legitimate human rights activities. Furthermore, there have been numerous breaches to the right to fair trial, including the following:

- Ms. Sallam was initially questioned by unidentified individuals, without the presence of her lawyer; throughout the process, she was threatened and pressured to admit involvement in the protest.
- The case was referred to trial with excessive speed and her defence lawyer faced major logistical challenges in obtaining the case file and information about the dates and hearings; her lawyer was not notified to where she had been moved and had to discover the location through his own efforts.
- When Ms. Sallam was brought in front of a judge, she was held in a cage, thereby violating the principle of presumption of innocence.
- The initial hearing on the merits of the ongoing detention of Ms. Sallam was not held; there was no form of individualized hearing on the merits of the detention; and, when the judge was asked to release the defendants, he refused without providing any reasons for that refusal.

19. In the light of the above, the source submits that Ms. Sallam's detention is in contravention of her rights guaranteed in articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights.

Response from the Government

20. In its response of 7 May 2015 the Government submitted to the Working Group a memorandum from the Office for International Cooperation of the Office of the Prosecutor-General. In the memorandum, the representative of the Office provided the following information.

21. On 21 June 2014, the chief officer at Masr al-Jadida police station was informed that a group of individuals had gathered at the Al-Ahram metro station. On arriving at the site, he found that around 50 people had assembled there with the intention of marching together to the Presidential Palace. When he asked whether they had obtained a permit for the demonstration and march, they replied in the negative. The officer therefore advised and instructed them to disperse, but they failed to do so.

22. According to the officer, the number of demonstrators increased and they began to march, blocking a public thoroughfare in both directions. At that point, passers-by and

workers in shops along the street began challenging the demonstrators and asking them to disperse. The demonstrators responded with threats of force and violence. They then began throwing stones and Molotov cocktails, damaging a number of shops, billboards, trees and a police car, at which point the police chief intervened and ordered the arrest of the perpetrators, including Ms. Sallam.

23. The investigations were conducted by officials from the Public Prosecutor's Office and six police officers were questioned to establish the facts set forth above. The officials also questioned workers in the shops that were damaged, and prosecutors travelled to the location of the incident for an on-site examination.

24. Officials from the Public Prosecutor's Office also questioned the accused, who denied the facts and the charges against them. However, one of them admitted that she had urged her friends to join the demonstration, posting a message on her Facebook page entitled "Freedom for detainees" and specifying that the gathering was to take place on the evening of 21 June 2014 at the Al-Ahram metro station. The officials decided to keep all the persons charged in pretrial detention.

25. On 24 June 2014, the Public Prosecutor's Office referred the accused to the Masr al-Jadida Misdemeanour Court on charges of unlawful assembly, disorderly conduct, participation in an unauthorized demonstration, and destruction of public and private property. These offences are punishable under articles 162 (1) and (2), 361 (1) and (2), 375 bis and 375 (a) bis (1) of the Criminal Code, articles 1, 2 (1), 3, 3 bis and 4 of Law No. 10 of 1914 as amended, and articles 7, 8, 19 and 21 of Law No. 107 of 2013.

26. At the hearing on 26 October 2014, the court sentenced all the accused to three years of imprisonment and to a fine of LE10,000. The accused filed an appeal against the judgement and the appeal court reduced the sentence to two years of imprisonment on 28 December 2014.

27. It is also reported in the memorandum from the Public Prosecutor's Office in general terms that Egyptian legislators have established a highly effective system for administering criminal law, the aim being to strike the requisite balance between the public interest and respect for accused persons' constitutional rights. The Government further described in its response the relevant legal principles and domestic legislation.

28. The memorandum also describes in detail the general legal principles and domestic legislation concerning the right to personal liberty, the right to be tried before a judge, and the right to defence. It further contains detailed descriptions of other general matters such as the functioning of the Public Prosecutor's Office and investigating judges in Egypt.

29. The Public Prosecutor's Office also informed the Working Group that the accused persons had failed to abide by the law. They had not provided advance notification of the demonstration and they failed to comply with the police order to disperse. In fact, they began disrupting traffic and attacking public and private facilities, using stones and Molotov cocktails. It followed that the participants were no longer simply exercising their rights under the Constitution, but were also undermining the rights and freedoms of others.

30. Concerning Ms. Sallam, the Public Prosecutor's Office informed the Working Group that it had invited a lawyer for Ms. Sallam to be present during the investigations into her case. The accused was informed of the charges against her and the evidence indicating that she had committed the offences. She was then given the possibility to present her defence and respond to the charges or, alternatively, to exercise her constitutional right to remain silent and not to reveal her line of defence. At no point was she subjected to any form of coercion.

31. Ms. Sallam was informed of the date on which her case would be heard, allowing her adequate time to choose a defence lawyer and to prepare for the trial. She and the other accused were present at their trial.

Further comments from the source

32. The source maintains that the Government failed to demonstrate that Ms. Sallam's deprivation of liberty does not result from the exercise of the right to freedom of opinion and expression, and the right to freedom of assembly and association.

33. According to the source, Law No. 107 of 2013 in violation of which Ms. Sallam was convicted, has introduced bureaucratic hurdles that significantly restrict the exercise of the right to protest and to peaceful assembly as well as prison sentences for the exercise of the right to protest and peaceful assembly.

34. Furthermore, the source maintains that Ms. Sallam was not arrested while participating in the protest, as the Government of Egypt alleges, but rather she was arrested while buying drinks from a kiosk in Heliopolis in the vicinity of the protest after it had been dispersed by security forces. During the trial, on 13 September 2014, two videos were shown at the request of the defendants' lawyers. None of the defendants and no weapon appeared in the videos. In fact, the video showed individuals wearing civilian outfits standing alongside the riot police forces who were assaulting what appeared to be peaceful protesters, using stones and metal bars. The video showed that the police made no attempt to protect the peaceful protesters.

35. The source reiterates that during the interrogation Ms. Sallam was questioned about her position at the Egyptian Initiative for Personal Rights, which demonstrates that she was targeted owing to her legitimate human rights activities.

36. In regard to the Government's reply that the defendants had the opportunity to challenge the pretrial detention before a judge, the source points out that Ms. Sallam should have been presented before a court on 25 June 2014 after the expiry of her four-day detention. However, she was not brought to court, and the prosecution issued an indictment order instead, before she had a chance to challenge her pretrial detention before an independent judicial body.

37. The source is of the opinion that the Government used pretrial detention against Ms. Sallam without grounds or justification — a practice that is now routinely used as a punitive measure against political prisoners and human rights defenders while they are awaiting trial.

38. The source states that on 29 June 2014, when the court hearing took place at the Police Academy inside the high security Tora Prison, access to the courtroom was heavily restricted, defence lawyers and journalists facing difficulties in gaining access to the room.

39. The source maintains that the handling of the case by the judicial authorities was marred by numerous breaches to the right to a fair trial, including the right to defence and the right to public debate. Despite the claims of the Government, the judiciary in Egypt has become extremely politicized and has been using a legal arsenal of repressive laws to target and imprison peaceful dissenting voices in the country, in particular human rights defenders.

40. The source later informed the Working Group that Ms. Sallam had been released from prison on 23 September 2015 upon presidential pardon.

Discussion

41. Although Ms. Sallam was released, the Working Group, in accordance with paragraph 17 (a) of its methods of work, reserves the right to render an opinion whether or not the deprivation of liberty was arbitrary, notwithstanding the release.

42. Ms. Sallam is a human rights activist, the Transitional Justice Officer at the Egyptian Initiative for Personal Rights. She was awarded the North Africa Shield 2013 for her work on the Women's Human Rights Defenders Program at Nazra for Feminist Studies. Upon her arrest, Ms. Sallam was questioned by the police about the nature of her human rights work and about the management of the Initiative. This confirms that the deprivation of liberty of Ms. Sallam related to her human rights activities.

43. Ms. Sallam was convicted for violation of Law No. 107 of 24 November 2013 for alleged participation in the protest march calling for the release of prisoners of conscience and the repeal of that Law. However, in its response, the Government did not rebut the *prima facie* reliable information that Ms. Sallam was not actively participating in any demonstration at the time of her arrest. Instead the Government merely stated in general terms that participants in the demonstration blocked the road and impeded the flow of traffic. No information on any evidence of Ms. Sallam's role, if any, in the demonstration (including alleged violence) was provided by the Government to the Working Group.

44. In regard to Law No. 107, the Working Group points out that the United Nations High Commissioner for Human Rights expressed concern regarding the Law, which "criminalizes acts by demonstrators which may breach 'security and public order', without clearly defining these terms, leaves the door open to a very restrictive and repressive interpretation".¹ The High Commissioner also expressed concern as to the "collective" responsibility under this Law. In particular, she stressed that the Law created "a real risk that the lives of peaceful protestors will be put at risk because of the violent behaviour of a few".²

45. The Working Group considers that Ms. Sallam has been deprived of liberty for having peacefully exercised her right to freedom of expression and freedom of association as guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights. Thus, the deprivation of liberty of Ms. Sallam falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

46. Ms. Sallam was arrested on 21 June 2014 and, in violation of article 9 (3) of the International Covenant on Civil and Political Rights, was not brought before a judicial authority for eight days. During those eight days, in violation of article 9 (4) of the Covenant, Ms. Sallam was deprived of the right to challenge the lawfulness of her detention before a court. Only on 29 June 2014 was she brought before the court for the first hearing. Indeed, pursuant to article 9 (3), anyone detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. The Human Rights Committee emphasized that: "While the exact meaning of 'promptly' may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest ... any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances."³

¹ "New anti-demonstration law in Egypt must be amended, urges UN rights chief", statement of 26 November 2013, available from www.un.org.

² *Ibid.*

³ General comment No. 35 (2014) on liberty and security of person, para. 33.

47. Furthermore, the Government has not refuted the prima facie reliable allegation that Ms. Sallam was initially interrogated by the police without the presence of a lawyer in violation of her right to immediate access to a lawyer. In this regard, the Working Group recalls that, according to the Human Rights Committee: “States parties should permit and facilitate access to counsel for detainees in criminal cases, from the outset of their detention.”⁴

48. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial and to liberty and security, established in article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, in this case is of such gravity as to give the deprivation of liberty of Ms. Sallam an arbitrary character. Thus, the deprivation of liberty of Ms. Sallam falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

Disposition

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

The deprivation of liberty of Ms. Sallam is arbitrary, being in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 19 and 22 of the International Covenant on Civil and Political Rights and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

50. Consequent upon the opinion rendered, the Working Group requests the Government to take the steps necessary to remedy the situation of Ms. Sallam and bring it into conformity with the standards and principles enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

51. The Working Group believes that, taking into account all the circumstances of the case, including her release on 23 September 2015, the adequate remedy would be accord her an enforceable right to compensation in accordance with article 9 (5) of the International Covenant on Civil and Political Rights.

[Adopted on 4 December 2015]

⁴ Ibid., para. 35.