

Opinion No. 21/2010 (Egypt)

Communication addressed to the Government on 2 February 2010

Concerning: Abdul Mohamed Gamal Heshmat, Hosni Omar Ali Omaar, and 10 other individuals

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 18/2009)
2. The Working Group conveys its appreciation to the Government for having provided it with information in its reply concerning the allegations of the source. The Working Group regrets that the Government has not replied within the 90-day deadline.
3. (Same text as paragraph 3 of Opinion No. 18/2009)
4. The case summarized hereinafter was reported by the source to the Working Group on Arbitrary Detention as set out in the paragraphs below.
5. According to the source, this case concerns a recent increase of mass arrests and detention, which it considers to be arbitrary, occurring in the Arab Republic of Egypt and targeting the leadership and activists of the “Muslim Brotherhood”, a banned political party in Egypt.
6. In particular, the source reported of the arrests the following two individuals alongside with 10 other members of the “Muslim Brotherhood”:
 - Mr. Mohamed Gamal Heshmat, 54 years old, a renowned doctor in Egypt and an important member of the Arab Doctors Syndicate, who was arrested on 26 September 2009;
 - Mr. Hosni Omar Ali Omaar; 49 years old; a civil engineer with the Directorate of Irrigation of AI Bahira. He was a candidate in the last parliamentary elections. Was arrested on 26 September 2009.

7. In its original submission, the source also referred to arbitrary detention of Mr. Ashraf Abdel Ghaffar and Mr. Abdul Moneim Aboul Fatouh, who were also accused of belonging to the “Muslim Brotherhood”. The Working Group, however, could not form an opinion as to the arbitrariness of their detention for the following reasons:

(a) In its subsequent comments, the source consented with the Government’s information, that Mr. Ghaffar was also accused of and detained in July 2009 for allegedly laundering money raised abroad. He was released in November 2009. The source in his comments provided additional information related to Mr. Ghaffar case (such as the reference to the report of the financial committee), which the Working Group has not had an opportunity to include in its original request for information from the Government;

(b) As to Mr. Abdul Moneim Aboul Fatouh, although he was listed in the original submission among those detained members of the “Muslim Brotherhood”, there was no further reference to the circumstances of his case neither in the Government’s response nor in the subsequent source’s comments on the response. The Working Group has not had sufficient information as to circumstances of his detention to form an opinion on its arbitrariness or otherwise.

8. Mr. Mohamed Gamal Heshmat and Mr. Hosni Omar Ali Omaar were accused of belonging to the “Muslim Brotherhood”, and being “dangerous to public security and order”. The Egyptian authorities invoke article 3 (1) of Law 162 of 1958, which is the Emergency Law. It not only permits the arrest and detention of criminal suspects, but also of “persons who are ‘dangerous to public security and order’”.

9. However, in this regard the source points out that the Special Rapporteur on Countering Terrorism stated in his report of 14 October 2009 on his country mission to Egypt that “the lack of a clear indication in the law as to what exactly constitutes a threat to public security and order is at variance with the principle of legality”.

10. The source considers that the arrest and detention of a large number of political opponents is an excess caused by the Emergency Law. The state of emergency is allegedly in place to combat terrorism in Egypt, yet the arrests carried out often target members of the “Muslim Brotherhood”, who have no link to any terrorist activities.

11. According to the source, since July 2009, successive waves of arrests have been occurring in Egypt, systematically aimed at the “Muslim Brotherhood” leadership and their sympathizers. The majority of those arrested are between the age of 40 and 55 and hold high-profile positions in the companies and institutions in which they work. Many of them work in charity or other forms of associations and all are members of the “Muslim Brotherhood”. They all hold positions of considerable influence and this puts many of them in a promising position for being successfully elected to Parliament.

12. The source submits that the arrest and detention of these two individuals is arbitrary, being devoid of a recognizable legal basis.

13. In addition, the source argues that the arrest and detention of these individuals results from the exercise of their rights to hold opinions, of the right to freedom of thought, opinion, expression, belief and assembly, and the right to take part in the conduct of public affairs, as guaranteed by articles 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 18, 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights.

14. In November 2010, parliamentary elections are scheduled to be held in Egypt, and the source is concerned that the current trend of arrests and detention is motivated, in particular, by a desire to silence or at least disrupt the plans by the leaders of the “Muslim Brotherhood”, Egypt’s largest opposition movement, to submit their candidacies for these elections and run successful election campaigns.

15. The source states that in the runup to the 2008 municipal elections, Egypt's security forces conducted mass arrests on a similar scale to those occurring at present, targeting mainly "Muslim Brotherhood" members who had submitted their candidacies as independents. The source reports that, in total, 831 leading members or sympathizers of the movement were arrested around the country, establishing a pattern.
16. The Government in its response described the legal procedures through which the two above-mentioned individuals were detained. According to the response, the two individuals were released.
17. According to the response, Mr. Mohamed Gamal Heshmat and Mr. Hosni Omar Ali Omaar, together with 10 other Muslim Brotherhood members, had been arrested on 26 September 2009 and charged with the membership of an illegal organization and possession of written material and publications designed to promote and raise awareness of this organization's beliefs. These individuals were released on 5 October 2009 further to a court order.
18. The source confirms that the two individuals were indeed released due to a lack of evidence against them.
19. The source maintains that the Egyptian authorities continued persecution of these individuals as a result of the exercise of their right to the freedom of thought, opinion and expression, as guaranteed by article 19 of the International Covenant.
20. The source emphasized that that these individuals were rearrested following the Government's response to the Working Group stating that they had been released.
21. In particular, Mr. Ali Omaar was released in January 2010, following five months of detention which the authorities justify in their response to the Working Group as required for "investigations", which found no evidence to justify his deprivation of liberty. However, Mr. Ali Omaar was again arrested by the SSI on 18 March 2010. On 22 March, the criminal court of Damanhour, having considered his case, ordered his immediate release for lack of any evidence justifying his continued detention. Despite this release order, the SSI kept him in detention, and the Ministry of the Interior issued an administrative detention order. The source concludes that Mr. Hosni Omar Ali Omaar's detention between September 2009 and January 2010 as well as his current detention are arbitrary as they lack any legal basis and because they are a direct result of his exercising of his right to the freedom of opinion and expression.
22. Mr. Mohamed Gamal Heshmat, originally arrested on 26 September 2009, was released on 26 November 2009, following the prosecution's findings that there was no evidence against him, and thus his deprivation of liberty had no legal basis. However, according to the source, he was rearrested by SSI forces on 3 May 2010, after the Government sent its response to the Working Group, under the same accusations of belonging to a prohibited organization, the Muslim Brotherhood. He is currently detained in Bourj al Arab prison, in particularly difficult conditions. He has undertaken a hunger strike in protest at his rearrest and the conditions of his arrest and detention. The source states that Mr. Heshmat has not been presented before a judge or been tried. Accordingly, the source considers that Mr. Mohamed Gamal Heshmat was detained arbitrarily between 26 September and 26 November 2009 and is again detained arbitrarily, as his detention cannot be justified and as it results from his exercising of his right to freedom of opinion and expression.
23. The source contends that the fact that the Government states in its response to the Working Group that these individuals were investigated in different ways, and yet all were released without officially been charged or tried, shows that there was insufficient evidence against them to justify their detentions. Their rearrests and continued prosecution on the

same charges is thus not driven by evidence but motivated by a desire on the part of the authorities to hinder their potential for organizing any campaign for their election to Parliament in November 2010.

24. The source concludes that, in light of the elements confirmed by the Government's response to the Working Group and the further clarifications on the current situations provided above, the detention of Messrs. Hosni Ali Omaar and Mohamed Gamal Heshmat have been arbitrary as there is no legal justification for it, and it results from the exercising of their right to freedom of opinion and expression.

25. The Working Group reiterates its prior considerations on similar cases of detention in Egypt (such as its Opinions No. 3/2007 and 27/2008, as well as the views of the Committee against Torture and the Committee on Economic, Social and Cultural Rights, on the situation caused by the declaration of state of emergency in Egypt since 6 October 1981 (see, for instance, CAT/C/CR/29/4, para.5, and E/C.12/1/Add.44, para.10).

26. In particular, the Working Group, in its Opinion No. 27/2008, paragraph 82, recalled that pursuant to articles 9 and 10 of the Universal Declaration and articles 9 and 14 of the International Covenant everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal. This shall be interpreted as meaning that if such independent and impartial judicial authority decides that an order issued by an administrative authority is not appropriate, those arrested should be immediately released. An arrest of these individuals again under the same charges by administrative authorities will have no legal basis and will imply a non-observance of a judicial decision.

27. The Working Group also concurs with the position taken by the Human Rights Committee in its general comment No. 29 (2001) that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during the state of emergency and that in order to protect non-derogable rights, the right to take proceedings before a court and to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant. This implies that release orders of courts competent to exercise control over the legality of detention must be honoured by the Government even in a state of emergency.

28. In its Opinion No. 21/2007, paragraph 19, as well as on earlier occasions (Opinion No. 5/2005 (Egypt), paragraph 19; Decision No. 45/1995 (Egypt), paragraph 6; and Decision No. 61/1993 (Egypt), paragraph 6), the Working Group considered that maintaining a person in administrative detention once his release has been ordered by a court competent to exercise control over the legality of detention, renders the deprivation of liberty arbitrary.

29. The Working Group reiterates its opinion that, in such cases, no legal basis can be invoked to justify the detention, least of all an administrative order of the Executive issued to circumvent a judicial decision ordering the release.

30. In the current case before the Working Group, Mr. Ali Omaar had been released in January 2010, and then was rearrested by the SSI on 18 March 2010. On 22 March 2010, the criminal court of Damanhour ordered his immediate release. However, despite the judicial order, the SSI kept him in detention, and the Ministry of Interior issued an administrative detention order against him.

31. The Working Group also refers to the report of 14 October 2009 of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, on his mission to Egypt (17 to 21 April 2009). It is emphasized in the report (para. 20), that the lack of a clear indication in the Emergency Law as to what exactly constitutes a threat to public security and order is at variance with the principle of legality. This deficiency, according to the report, coupled with the fact that

SSI officers in practice enjoy *carte blanche* in deciding on whom to arrest and that terrorist suspects are in many cases detained without receiving sufficiently detailed information, if any, on the reason for their detention, is incompatible with article 9 (2) of the International Covenant and seriously diminishes any real possibility for the detainee to contest the legality of detention, as stipulated by article 9 (4). The Special Rapporteur expressed particular concern as to the widespread practice that persons are not actually released after a release order is given, but are transferred by SSI officers to non-official premises or police stations where they are held illegally until a new detention order is given.

32. Indeed, in the current case, the Government did not further specified what crimes the holding of “extremist ideas” may constitute and in what way the activities of Mohamed Gamal Heshmat, Hosni Omar Ali Omaar, and the 10 other individuals pose a threat to the stability and public security of the country. Such allegations are inconclusive if the individuals concerned are unaware of what exact crimes they are accused of, especially in view of courts’ orders for their release. In the absence of such specifications the Working Group has no reason to question the allegation of the source that their detention is solely connected to the exercise of their right to freedom of opinion and expression as guaranteed by article 19 of the International Covenant. Accordingly, the detention of Mohamed Gamal Heshmat and Hosni Omar Ali Omaar, as well as of the 10 other individuals detained with them was arbitrary (category II).

33. In fact, Mohamed Gamal Heshmat had been released in November 2009 and was re-arrested by SSI in May 2010, after the Government sent its response to the Working Group, under the same accusations of belonging to a prohibited organization, the Muslim Brotherhood. He remains in detention and has not been presented before a judge or been tried.

34. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Messrs. Mohamed Gamal Heshmat and Hosni Omar Ali Omaar has been arbitrary, being in contravention of articles 9 and 19 of the International Covenant on Civil and Political Rights, to which Egypt is a Party, and falls within categories I and II of the categories applicable to the consideration of the cases submitted to the Working Group.

35. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mohamed Gamal Heshmat and Hosni Omar Ali Omaar 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. The Working Group believes that the adequate remedy would be their immediate release.

Adopted on 1 September 2010