
**ADVANCE UNEDITED
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Human Rights Council
Working Group on Arbitrary Detention**ADVANCE UNEDITED VERSION****Opinions adopted by the Working Group on Arbitrary
Detention at its seventy-second, 20– 29 April 2015****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 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 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);

(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. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:

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

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

Dr. Farah Ibrahim Mohamed Alagar, 60 years old, is a retired officer from the Sudan Armed Forces and was formally the chairperson 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 Peoples' Liberation Movement-North (SPLM-N) to attend on going peace talks in Addis Ababa, Ethiopia, between the SPLM-N and the Government of Sudan.

4. On 3 December 2014, during a meeting in Addis Ababa, Dr. Medani and Mr. Eissa signed the "Sudan Call: A Political Declaration on the Establishment of a State of Citizenship and Democracy", together with two other signatories, namely, Sudanese political and armed opposition groups. The source informs that the "Sudan Call" is a declaration that commits signatories to work towards the end of the conflicts raging in different regions of Sudan. The document also pledges to work towards legal, institutional and economic reforms.

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

6. On 7 December 2014, at 1 a.m., Dr. Farah Ibrahim Mohamed Alagar was arrested by approximately 10 members of the NISS at his home in the Alfitihab neighbourhood of Omdurman. The source informs that Dr. Alagar had also attended the Sudan Call negotiations in Addis Ababa but had not signed the resulting document. He was taken to the NISS offices in Khartoum Bahri and was not provided with any reasons for his arrest.

7. The source informs that Dr. Medani suffers from heart problems and has high blood pressure, for which he has 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 NISS reception office in Khartoum

at the Airport Street to deliver his medication, however, it is not clear whether he has received it.

8. According to the source, the same night, Mr. Eissa was arrested at his home in Khartoum by seven plain-clothes 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 NISS office in Khartoum to deliver his medication, but received no confirmation that it would be delivered to him. His family was informed that they were not allowed to see him.

9. The source reports that on 7 December 2014, at 1 a.m., Dr. Farah Ibrahim Mohamed Alagar was arrested by approximately 10 members of the NISS at his home in the Alfitihab neighbourhood of Omdurman. The source informs that Dr. Alagar had also attended the Sudan Call negotiations in Addis Ababa but had not signed the resulting document. He was taken to the NISS offices in Khartoum Bahri and was not provided with any reasons for his arrest.

10. On 9 December 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 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 (SDN 6/2014) to the Government of Sudan. The Special Procedures expressed grave concern regarding the alleged arbitrary arrest and incommunicado detention of Dr. Medani and Mr. Eissa, and the lack of information about their current fate and whereabouts. Serious concerns were expressed regarding their health whilst in detention, given their serious medical condition and the allegations that they did not have access to their medication in detention.

11. On 12 December 2014, the Government of the Republic of the Sudan responded by letter to a request from the Office of the High Commissioner for Human Rights, Africa Branch, for information with regard to Dr. Medani and Mr. Eissa. It conveyed the following details:

“1. The two mentioned Sudanese citizens have recently signed an agreement titled “Sudan Call” to form an alliance with a rebel group called “the Sudanese Revolutionary Front”. The latter declared launching war against the State.

2. Performing its responsibility to protect the National Security in Sudan, the concerned authorities arrested Dr. Amin Mekki Medani and Mr. Farouk Abu Eissa to conduct investigations with them regarding the agreement with a Sudanese rebel group.”

12. The source reports that from the time of their arrest until 21 December 2014, Dr. Medani, Mr. Eissa, and Dr. Alagar were held incommunicado by the NISS.

13. On 21 December 2014, they were transferred from NISS custody to Kober Prison in Khartoum. On that day, Dr. Alagar was reportedly allowed to receive a 30-minute visit from his family. The visit was attended by the NISS, who reportedly ordered him not to discuss the treatment and conditions of his detention.

14. That same day, it is reported that seven members of the NISS raided the offices of the Sudanese Human Rights Monitor (SHRM) in Khartoum, founded by Dr. Medani. A number of laptop computers and documents were confiscated.

15. On 22 December 2014, the three men were permitted to meet with a team of lawyers. The same day, Mr. Eissa was briefly taken to Alamal Hospital, a hospital owned by the NISS, due to high blood pressure, and also received a visit from his family.

16. On 24 December 2014, Dr. Medani received a visit from his family. The source informs that his family have since been permitted to bring him food that is compatible with his health needs as a diabetic.

17. The source submits that the deprivation of liberty of Dr. Medani, Mr. Eissa and Dr. Alagar may be considered arbitrary according to categories I, II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. The source argues that their detention is without legal basis as three men remain detained in Kober prison in Khartoum without any formal charges having been brought against them by the Government of Sudan to date. The source argues this is in violation of article 9 of the Universal Declaration of Human Rights (UDHR) and articles 9(1) and (2) of the International Covenant on Civil and Political Rights (ICCPR), therefore rendering the detention arbitrary according to category I.

18. The source additionally submits that their arrests are believed to be connected to their participation in the "Sudan Call" political negotiations held in early December 2014 in Addis Ababa. In this respect, their detentions are thought to be connected solely to the peaceful expression of their beliefs in favour of democratic principles and peace and security in Sudan. The source argues this is in violation of articles 19 and 20 of the UDHR and articles 19 and 21 of the ICCPR, therefore rendering the detention arbitrary according to category II.

19. The source recalls that Dr. Medani, Mr. Eissa and Dr. Alagar were detained incommunicado until 21 December 2014, without access to any legal assistance nor any information on the reasons for their detention nor of 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 ICCPR. Further, 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 pursuant to article 9(4) of the ICCPR. 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 UDHR. Further, in violation of article 14(3)(b) of the ICCPR they were denied, for a period of two weeks, their right to communicate with counsel of their own choosing. The source submits that the non-observance of the international norms relating to the right to a fair trial, places the deprivation of liberty of Dr. Medani, Mr. Eissa and Dr. Alagar, within category III.

Response from the Government

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

21. Despite the absence of any information from the Government, the Working Group considers that it is in the position to render its Opinion on the detentions of Messrs. Medani, Eissa, and Alagar in conformity with paragraph 16 of its Methods of Work.

Discussion

22. The Government choose not to rebut the prima facia reliable allegations submitted by the source, according to which, Messrs. Medani and Eissa have been deprived of liberty for signing a political document that committed signatories to work towards the end of the conflicts raging in different regions of Sudan. The document also pledged to work towards

legal, institutional and economic reforms. Mr Alagar has been deprived of liberty for been present at the meeting where the document was signed.

23. In its letter of 12 December 2014 the Africa Branch of the Office of the High Commissioner for Human Rights was informed by the Government that agreement titled “Sudan Call” was signed to form an alliance with a rebel group called “the Sudanese Revolutionary Front” which, according to the Government, “declared launching war against the State”.

The Government maintained that the authorities arrested the two men “to conduct investigations with them regarding the agreement with a Sudanese rebel group.”

24. The Working Group considers that Dr. Medani, a prominent human rights defender and former UN Human Rights Office Regional Representative for the Arab Region, Dr. Eissa, the leader of the opposition National Consensus Forum, and Dr. Alagar have been deprived of liberty for a peacefully exercise of the right to freedom of expression.

25. 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 multi-party democracy, democratic tenets and human rights.”¹

26. 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 UDHR and Article 19 of the ICCPR.

Thus, the deprivation of liberty of Messrs. Medani, Eissa, and Alagar falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

27. Furthermore, in violation of Article 9.2 of the ICCPR, 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 ICCPR.

28. Messrs. Medani, Eissa, and Alagar have not been brought before a judicial authority since December 2014, contrary to article 9(3) of the ICCPR which requires that anyone arrested or detained on a criminal charge shall be brought *promptly* before a judicial authority.

Moreover, 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 pursuant to article 9(4) of the ICCPR.

29. Since December last year Messrs. Medani, 75 years old, Eissa, 78 years old, and Alagar, 60 years old are detained without charges and have never been brought before a judicial authority as required by Article 9.3 of the ICCPR. In violation of Article 9.4 of the ICCPR, they also have been deprived of the right to challenge the lawfulness of their detention before a court.

30. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial, established in Articles 9 and 10 of the UDHR and Article 9 of the ICCPR in this case is of such gravity as to give the deprivation of liberty of Messrs. Medani, Eissa, and Alagar an arbitrary character.

31. Thus, the deprivation of liberty of Messrs. Medani, Eissa, and Alagar falls within categories I and III of the categories applicable to the consideration of cases submitted to the Working Group.

¹ HRC, General comment No. 34, CCPR/C/GC/34, para. 23.

Disposition

32. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Messrs. Medani, Eissa, and Alagar has been arbitrary, being in contravention of Articles 9, 10, and 19 of the UDHR and Articles 9 and 19 of the ICCPR; it falls within categories I, II, and III of the categories applicable to the consideration of the cases submitted to the Working Group.

33. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Messrs. Medani, Eissa, and Alagar and bring it into conformity with the standards and principles set forth in the UDHR and ICCPR.

34. 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, paragraph 5, of the International Covenant on Civil and Political Rights

35. In accordance with Article 33(a) of the Revised Methods of Work of the Working Group, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture for appropriate action.

[Adopted on 24 April 2015]
