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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventy-sixth session, 22-26 August 2016****Opinion No. 38/2016 concerning Ali Salad Mohamed (Somalia)**

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 and 24/7 of 26 September 2013. The mandate was extended for a further three years in resolution 33/ 22 of 30 September 2016.
2. In accordance with its methods of work (A/HRC/30/69), on 17 June the Working Group transmitted a communication to the Government of Somalia concerning Ali Salad Mohamed. The Government has not replied to the communication. 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 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, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. Mr. Ali Salad Mohamed (hereinafter Mr. Salad Mohamed), born in 1954, lives in Mohamed Haibe district, Hargeisa, Somaliland.

5. On 14 February 2014, the police raided the home of Mr. Salad Mohamed and searched the house. The police officers indicated that they were carrying out an operation and they were looking for Mr. Ahmed Ali Salad, the son of Mr. Salad Mohamed. Mr. Ahmed Ali Salad was reportedly accused of fraud of an estimated amount of half million dollar that he was allegedly supposed to transfer to Dubai or China when he was working with Zakhir money transfer company in Sudan. Zakhir is a Sudan-based money transfer company that is owned by a Sudanese businessman. At the time of the raid, Mr. Ahmed Ali Salad was not at home.

6. On 15 February 2014, a man representing the abovementioned Sudanese businessman and some village elders visited the home of Mr. Salad Mohamed to ask for the whereabouts of his son, Mr. Ahmed Ali Salad.

7. On 16 February 2014, Mr. Salad Mohamed met with men representing the Sudanese businessman in a hotel. He indicated that he was not involved in the business between his son and the Sudanese businessman and he was not aware of any money transaction. He also informed them that his son was in Bossaso city in Puntland.

8. On 6 April 2014, the police raided the home of Mr. Salad Mohamed again and arrested him without any arrest warrant. However, the police officers indicated that the arrest was related to the alleged crime his son committed.

9. Mr. Salad Mohamed was held in detention at the Hargeisa central police without charges until 29 April 2014, when he was informed of the charges against him. In the charge sheet dated 28 April 2014 that the Hargeisa regional prosecutor office submitted to the court, Mr. Salad Mohamed was charged under the Somali Penal Code for “providing assistance to a suspected person” (article 297), “fraudulent insolvency” (article 497), and “Non-observance of orders of the authorities” (article 505).

10. The trial started on 3 May 2014. On 30 August 2014, the Hargeisa regional court sentenced Mr. Salad Mohamed to two years imprisonment under article 297 of the Penal Code; one year imprisonment under article 497; and three months imprisonment under article 505, which makes the total imprisonment three years and three months. The court also sentenced Mr. Salad Mohamed and his son to pay 555,525 USD to the Sudanese businessman.

11. On 1 December 2014, the Hargeisa regional appeal court upheld the judgement of the regional court.

12. In January 2015, the lawyer of Mr. Salad Mohamed appealed to the Supreme Court. However, he was later informed that the court would not consider the request as it was not

submitted within the required timeframe. The lawyer submitted a complaint letter to the Supreme Court requesting it to review the appeal.

13. The source submits that the continued deprivation of liberty of Mr. Salad Mohamed is arbitrary and falls under categories I and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. In its view, Mr. Salad Mohamed was arrested without a warrant and no legal reason was provided to him at the time of the arrest. He was held without charges until 29 April 2014. The source argues that there was no legal basis to justify the detention of Mr. Salad Mohamed between 6 and 29 April 2014 which is in violation of article 9 of the International Covenant on Civil and Political Rights (ICCPR).

14. In addition, the source argues that Mr. Salad Mohamed has been arrested, detained and sentenced for the crime of fraud allegedly committed by his son. The source adds that the detention of Mr. Salad Mohamed is used as a means to pressure the appearance of his son.

15. The source also submits that Mr. Salad Mohamed has not been guaranteed the international norms of due process and guarantees to a fair trial during the period of his deprivation of liberty, in violation of articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the ICCPR. The source argues that the court which tried Mr. Salad Mohamed was biased by highly influential people.

16. On 9 May 2016, the Supreme Court agreed to look into the case. The source raised concern about the independence of the court and indicated that the court was influenced by highly connected people. However, the source later informed that the Supreme Court of Somalia, on 23 July 2016, issued a decision to drop the charges against Mr. Salad Mohamed and he was immediately released from prison in the wake of the decision. The source also notes, however, the Office of Attorney General has appealed against the court's decision.

Non-Response from the Government to the Working Group's regular communication

17. On 17 June 2016, the Working Group transmitted the allegations from the source to the Government of Somalia under its regular communication procedure. The Working Group requested the Government of Somalia to provide detailed information by 16 August 2016 about the current situation of Mr. Salad Mohamed, and any comment on the source's allegations. The Working Group also requested the Government of Somalia to clarify the factual and legal grounds justifying detention of Mr. Salad Mohamed. The Working Group further requested the Government of Somalia to provide details regarding the conformity of the legal proceedings against him with international human rights treaties to which Somalia is a party.

18. The Working Group regrets that it did not receive a response from the Government of Somalia to this communication. The Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

19. In its jurisprudence, the Working Group has established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be

understood to rest upon the Government if it wishes to refute the allegations.¹ In this case, the Government of Somalia has chosen not to challenge the *prima facie* credible allegations made by the source. Under paragraph 15 of its methods of work, the Working Group may render an Opinion in the absence of a response from the Government.

20. First of all, the Working Group notes that Mr. Salad Mohamed was arrested, on 4 April, 2016, without a warrant, and no legal reason was provided to him at the time of the arrest. This would constitute a violation of the international norms against arbitrary liberty deprivation, including article 9 of the UDHR, and the ICCPR, article 9(2) of which states that “anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest...”.

21. The source also reports that Mr. Salad Mohamed was held in detention without charge around 24 days, from 6 April 2014 until 29 April 2014. Such deprivation of liberty of Mr. Salad Mohamed conducted without promptly informing charges against him, constitute a violation of the international norms on detention, including article 9(2) of the ICCPR, which states “anyone who is arrested [...] shall be promptly informed of any charges against him.”

22. The Working Group believes that the above-mentioned deprivation of liberty of Mr. Salad Mohamed conducted in violation of article 9(2) of the ICCPR is without legal basis and falls within category I of the categories applicable to the consideration of cases submitted to the Working Group

23. There was also the allegation that Mr. Salad Mohamed has been arrested, detained, and sentenced for the crime of fraud allegedly committed by his son and that this has been done to pressure the appearance of his son. Taking into account all the circumstances of the case, the Working Group, however, views that, as of this writing, it is not in a position to make a legal analysis to the full length due to the lack of sufficient and substantial information.

24. With regard to the submission that the judicial process leading to his deprivation has not been impartial, and has been biased by highly influential people, the Working Group also opines that, as of this writing, it is not in a position to make a judgment to the fullest length due to the lack of sufficient and substantial information as well.

25. The Working Group also recognizes that the Supreme Court of Somalia, on 23 July 2016, issued a decision to drop the charges against Mr. Salad Mohamed and he was immediately released from prison. While noting that, however, the Office of Attorney General has appealed against the court’s decision, the Working Group wishes to emphasize that the international requirements of fair trial and the demand of justice be met throughout the possible further judicial process.

26. Under paragraph 17(a) of its method of work, the Working Group reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned.

Disposition

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

The deprivation of liberty of Mr. Salad Mohamed, being in contravention of article 9 of the Universal Declaration of Human Rights and article 9(1) and 9(2) of the

¹ See, for example, Report of the Working Group, A/HRC/19/57, 26 December 2011, para. 68, and Opinion No. 52/2014.

International Covenant on Civil and Political Rights is arbitrary, falling under Category I of the categories applicable to cases submitted for consideration to the Working Group.

28. Consequent upon the Opinion rendered, the Working Group requests the Government of Somalia to take the necessary steps to remedy the situation of Mr. Salad Mohamed without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the UDHR and the ICCPR.

29. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to accord Mr. Salad Mohamed an enforceable right to an effective remedy, including the reparations, in accordance with article 8 of the UDHR, article 9(5) of the ICCPR, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/RES/43/173).

Follow-Up procedure

30. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on follow-up action taken on the recommendations made in this Opinion, including:

- (a) whether compensation or other reparations have been made to Mr. Ali Salad Mohamed;
- (b) whether an investigation has been conducted into the violation of Mr. Ali Salad Mohamed's rights, and if so, the outcome of the investigation;
- (c) whether any legislative amendments or changes in practice have been made to harmonise the Government's laws and practices with its international obligations in line with this Opinion, and
- (d) whether any other action has been taken to implement this Opinion.

31. The Government is further invited to inform the Working Group of any difficulties which it may have encountered in implementing the recommendations made in this Opinion, and whether further technical assistance is required, for example, through a Working Group visit.

31. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of this Opinion. However, the Working Group reserves the possibility of undertaking its own follow-up of this Opinion if new concerns in relation to this case are brought to its attention. This follow-up procedure will enable the Working Group to keep the Human Rights Council informed of the progress made in implementing its recommendations, as well as any failure to take action.

32. The Working Group recalls that the Human Rights Council has called 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 arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.²

[Adopted on 26 August 2016]

² Human Rights Council Resolution 24/7, A/HRC/RES/24/7, 8 October 2013, paragraph 3.