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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021**

### **Opinion No. 83/2021 concerning Ahmed Samir Santawy (Egypt)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,<sup>1</sup> on 18 August 2021 the Working Group transmitted to the Government of Egypt a communication concerning Ahmed Samir Santawy. 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 or her sentence or despite an amnesty law applicable to him or her) (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 Covenant (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).

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<sup>1</sup> A/HRC/36/38.

## Submissions

### *Communication from the source*

4. Ahmed Samir Santawy is an Egyptian citizen, born in 1991, who usually resides in New Cairo. At the time of his arrest, he was a 29-year-old student enrolled in a master's programme at the Central European University, in Vienna.

5. According to the information received, on 15 December 2020 Mr. Santawy returned to Egypt from Austria on a winter break to visit his family. He arrived at Sharm El Sheikh International Airport, where he was stopped and interrogated by the airport's police about his studies in Vienna and his research on sexual and reproductive rights. Prior to December 2020, Mr. Santawy had been stopped and questioned by airport police about the purpose of his trips and his studies, on previous arrivals or departures from Egypt.

6. The source reports that, on 23 January 2021, at around 2 a.m., while Mr. Santawy was on a trip to Dahab, South Sinai, approximately seven armed masked men from the National Security Agency raided his family home in Cairo. Without a warrant or any explanation, the agents searched the house, confiscating property, including a surveillance camera and the video footage. The National Security Agency agents then instructed that Mr. Santawy must report to the police station once he returned to Cairo.

7. On 30 January 2021, Mr. Santawy complied with the request and went to the police station in the Fifth Settlement district in Cairo, but he was not informed of the reason for his summons. He was released with instructions to return on 1 February 2021. As requested, he returned to the police station on 1 February, and was then detained by the authorities for five days, without access to his lawyers or family.

8. During the period in which he was held incommunicado, Mr. Santawy was reportedly blindfolded and slapped in the face by National Security Agency agents. The source adds that the authorities have denied Mr. Santawy facilities to consult with his lawyers privately since his detention. On 17 February 2021, the Supreme State Security Prosecution renewed Mr. Santawy's detention for 15 days, in the absence of Mr. Santawy and his lawyers. On 23 February 2021, the Supreme State Security Prosecution included him in case No. x (number redacted), on charges of financing a terrorist group. The authorities did not share any information about the identity of the group, or evidence to prove Mr. Santawy's membership. Nevertheless, Mr. Santawy remained in pretrial detention.

9. Reportedly, on 2 March 2021, the Supreme State Security Prosecution renewed Mr. Santawy's detention for 15 days for further investigation. Similarly, Mr. Santawy's detention was renewed on 16 March 2021, for another 15-day period. Subsequent renewals were made on 12 and 24 April, as well as on 9 and 19 May, respectively. On 10 May 2021, Mr. Santawy's lawyer submitted a request to the Public Prosecutor for the release of Mr. Santawy on bail, pending completion of the investigation in his case. This application remains unanswered.

10. It is reported that on 22 May 2021, the Supreme State Security Prosecution summoned Mr. Santawy for investigation in a new Supreme State Security case (number redacted). Similar to the first case, the prosecution accused Mr. Santawy of joining a terrorist group with knowledge of its purposes, and of publishing and broadcasting false news and statements from abroad that would harm security and public order. Mr. Santawy's detention was further extended for 15 days on 23 May 2021.

11. Mr. Santawy has allegedly been included in at least two cases, the latter of which was referred to trial before the State Security Emergency Misdemeanour Court (in the First Settlement). According to the authorities, the first case (number redacted) is still being investigated. The second case is registered under a number which is also redacted. Neither Mr. Santawy nor his lawyer were formally informed of the charges in either of the cases.

12. The lawyers were reportedly only granted access to the file for the second case during the first hearing on 1 June 2021 – four months after Mr. Santawy was arrested and detained. In this case, Mr. Santawy was charged with spreading false news from abroad about the domestic situation in Egypt that could disturb security and public order, under the Penal Code, and with joining a terrorist group with knowledge of its aims, under article 12 of the Counter-Terrorism Law (No. 94) of 2015. The source alleges that, in the first case, neither Mr.

Santawy nor his lawyers were officially informed of the charges against Mr. Santawy, nor was he officially charged.

13. According to the information received, Mr. Santawy's first hearing, relating to the second case (number redacted), before the Emergency State Security Court, was held on 1 June 2021. The second hearing was held on 8 June 2021 and was adjourned to 22 June 2021 for adjudication.

14. On 22 June 2021, Mr. Santawy was sentenced by the Emergency State Security Court – a special court whose proceedings are reportedly inherently in violation of due process rights – to four years' imprisonment and a fine of 500 Egyptian pounds for publishing "false news to undermine the State, its national interests and public order and spread panic among the people". Reportedly, verdicts issued by the Emergency State Security Court, a special court that operates under states of emergency, cannot be appealed and are only subject to the President's review. The state of emergency, which has been imposed by the President since April 2017 and is renewed every three months with parliamentary approval, reportedly further undermines the rule of law in Egypt.

15. On 23 June 2021, Mr. Santawy, jailed at Liman Tora Prison and allegedly detained arbitrarily since 1 February 2021, went on hunger strike in protest at the unjust conviction by the Emergency State Security Court. On 6 July 2021, Mr. Santawy was transferred to the prison hospital, after his health deteriorated significantly. The source adds that his health continues to be at serious risk of decline.

#### Legal analysis

16. The source submits that the detention of Mr. Santawy constitutes an arbitrary deprivation of his liberty under categories I, II, III and V. The source notes that Egypt is a State party to the International Covenant on Civil and Political Rights, and that the rights enshrined therein are incorporated into Egyptian domestic law and are binding on the Government through article 93 of the Constitution.

#### i. Category I

17. The source claims that it is clearly impossible to invoke any legal basis for Mr. Santawy's continued pretrial detention with near-automatic renewals. The authorities have renewed Mr. Santawy's detention at least 10 times, without hearing his testimony, and without any opportunity for his lawyers to be heard or to review any evidence as to why he must be detained awaiting charges.

18. Under the Criminal Procedure Code, pretrial detention is reportedly an exceptional measure that is applicable only in cases where: (a) the offence is in flagrante delicto; (b) there is fear that the accused may flee; (c) there is fear that the legal process may be impeded or harmed; or (d) the case involves security and public order; or if (e) the crime is a felony or a misdemeanour punished with a prison sentence and the accused is not known to reside in Egypt. The source adds that in cases that qualify for pretrial detention, an arrested individual can be detained without charge for 15 days; this can then be extended for up to two additional 15-day periods, amounting to a total of 45 days. If a judge determines that preliminary investigations are not complete at the 45-day mark, he may grant additional periods of renewal of detention. Ultimately, the Criminal Procedure Code stipulates that pretrial detention cannot be extended for more than a maximum of six months for misdemeanours, 18 months for felonies, and two years for crimes punishable by death or by life imprisonment.

19. The source alleges that Mr. Santawy was not detained in flagrante, that is, while committing an offence. Rather, agents of the National Security Agency detained him at their offices in Cairo after he wilfully honoured an unqualified summons, as a law-abiding citizen. Mr. Santawy's summons came after numerous State security agents reportedly raided his family home without a warrant. Despite the circumstances, Mr. Santawy appeared at the National Security Agency in good faith. His conduct prior to and during his interaction with the authorities provided no indication that he intended to flee. In fact, Mr. Santawy's conduct is an indication that he intends to cooperate fully with the authorities in determining any actual charge against him. There is reportedly no evidence to suggest that Mr. Santawy has been unwilling to cooperate with the authorities or that his temporary release would impede

or harm the legal process. There is also no evidence suggesting that Mr. Santawy has been involved in any of the crimes mentioned by the authorities. The fact that authorities left Mr. Santawy in pretrial detention for months, without presenting evidence or charges for such serious alleged crimes, indicates that there is no valid claim against him.

20. The source also claims that the provisions of the Criminal Procedure Code which were invoked to keep Mr. Santawy in pretrial detention violate international law and cannot serve as a basis for his deprivation of liberty. The source notes that under article 54 of the Constitution, article 6 of the African Charter on Human and Peoples' Rights and articles 9 to 11 of the Covenant, Egypt has a duty to safeguard the personal freedoms, liberties and due process rights of its citizens, while protecting them from arbitrary detention. The authorities must ensure that the pretrial detention regime and practices do not violate article 9 (3) of the Covenant, which states that "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power" and that detainees "shall be entitled to trial within a reasonable time or to release". In considering what is reasonable, the judicial officer must ask whether the justification put forward for detaining the accused can justify the time the accused has spent in detention prior to the adjudication. The diligence of the prosecuting or investigating authority in bringing the case to trial, the complexity of the case, the conduct of the accused, and the proportionality of the detention period to the penalty that may be imposed, are all factors to be considered. In the present case, the authorities reportedly renewed the pretrial detention of Mr. Santawy in his absence and without the participation of his lawyers.

21. The source notes that the Human Rights Committee, in its general comment No. 8 (1982), explained the notion of "promptly" by reference to a period of a few days. Furthermore, pretrial detention cannot be arbitrary: it must be based on grounds and procedures established by law; it must be backed by information on the reasons for such detention; court control of the detention must be available; and compensation in the case of a breach must be provided. Even after a detainee has been brought before a judge to make detention renewal determinations, the absence of satisfactory explanations as to why a detainee continues to be in pretrial detention without having been tried is unreasonable and a violation of article 9 (3) of the Covenant. The source adds that the African Commission on Human and Peoples' Rights has similarly stated that the need for continued pretrial detention should be based on an assessment of whether there are sufficient legal reasons, whether the investigating authorities are exercising due diligence, whether detention pending trial is necessary and proportionate, and what measures can be taken to safeguard the well-being of the detainee. The Commission has also held that the failure or negligence of security agents to scrupulously adhere to the requirement that they submit reasons for the arrest of a detainee and inform him promptly of any charges against him is a violation of the right to a fair trial.

22. The source alleges that the provisions of the Egyptian Criminal Procedure Code on pretrial detention are based on guidelines that are vague and subject to excessive discretion, facilitate pretrial detention for disproportionately lengthy periods, and leave little to no recourse to challenge the continued detention – all of which violate the international and regional human rights obligations of Egypt. The source adds that categories allowing pretrial detention employ terms such as "security" or "public order", leaving overly broad discretion and subjective determinations to officials aligned with the Government, who are unlikely to make determinations in favour of detainees.

23. In this respect, the source notes that the Working Group on Arbitrary Detention has stated that article 134 of the Criminal Procedure Code provides for overly broad grounds for pretrial detention, such as harming national security or public order. The Working Group has further noted that "article 134 of the Criminal Procedure Code does not establish a sufficient legal basis for deprivation of liberty for the purpose of article 9 (1) of the Covenant".<sup>2</sup>

24. The source also notes that following a country visit to Egypt, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged Egypt to abolish any legal provisions allowing for administrative detention. He stressed that any detention without charge or trial should be explicitly prohibited,

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<sup>2</sup> See opinion No. 83/2017.

including by provisions in the proposed anti-terrorism law, and that any exceptional detention procedures applied against terrorist suspects should entail strict guarantees ensuring full compliance with articles 9 and 14 of the Covenant.<sup>3</sup>

25. The source alleges that the fact that pretrial detainees are only allowed to appeal their detentions via court hearings, many of which they are prevented from attending, and via formal complaints to the Prosecutor-General, who is generally part of the crackdown against prisoners of conscience, ensures that pretrial detainees are left without effective recourse and their cases without independent or impartial review.

26. The source further argues that the provisions governing the crimes of spreading false news from abroad about the domestic situation in Egypt that could disturb security and public order, joining a terrorist group with knowledge of its aims, and misusing social media, all of which Mr. Santawy could be accused of: (a) are vague and legally problematic; and (b) have increasingly been used by the State against academics, researchers and ordinary citizens in contexts in which the accused persons have committed no crime and there has been no legal basis by which to detain them. The source adds that the Penal Code provisions on terrorism and the subsequent Terrorism Law include terms that are overly broad, in violation of international law, resulting in a legal framework in which protestors and political opponents can be tried for “terrorist” crimes just for holding non-violent and political opinions.

ii. Category II

27. According to the source, although the authorities have failed to charge Mr. Santawy with any crime, statements by the officers and questions asked during his interrogations reveal that Mr. Santawy’s arrest and detention resulted from the exercise of his rights to freedom of opinion and expression, as a researcher, an academic and a private citizen. During Mr. Santawy’s interrogation before the Supreme State Security Prosecution, he was accused of using a social media account to spread false news and anti-government posts. In addition, the prosecutors questioned Mr. Santawy about his academic work and studies, including his work on Islam and abortion.

28. The source recalls that articles 19 of both the Covenant and the Universal Declaration of Human Rights provide for the right to freedom of opinion and expression. The Human Rights Committee, emphasizing the essential nature of the rights, noted in its general comment No. 34 (2011) that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society, and constitute the foundation stone for every free and democratic society. With regard to the enabling nature of the rights, the Committee also states in the general comment that the freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights, including freedom of assembly and association, and the right to vote.<sup>4</sup> The source adds that in addition to these obligations under international law, Egypt is bound by article 65 of its own Constitution to respect the right of its citizens to freedom of opinion “verbally, in writing, through imagery, or by other means of expression and publication”.

29. The source notes that although both rights are usually paired, “opinion” is conceptually distinct from “expression”. The internal aspect of opinion is closely connected to privacy, thought, belief and conscience, as compared with the external aspects of expression, public assembly and religious manifestation.<sup>5</sup> In fact, while the Covenant recognizes enumerated restrictions to freedom of expression, freedom of opinion is absolute. Highlighting the absolute nature of freedom of opinion, the Human Rights Committee states in its general comment No. 34 (2011): “All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion.” However, both rights are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions. Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds. The source notes that the Committee has determined that the right to freedom of

<sup>3</sup> See [A/HRC/13/37/Add.2](#).

<sup>4</sup> See the Committee’s general comment No. 34 (2011), para. 4.

<sup>5</sup> See [A/75/261](#).

expression extends to political discourse, commentary of one's own and on public affairs, canvassing and discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse. The right equally protects all means of dissemination, including Internet-based means of expression.

30. According to the source, freedom of opinion and expression are essential components and enablers of academic freedom. Article 19 of the Covenant recognizes the right to hold opinion without interference and to seek, receive and impart information and ideas of all kinds, all of which are critical to academic freedom. While there is no specific reference to academic freedom in the Covenant or the Universal Declaration of Human Rights, the Human Rights Committee has determined that the right to freedom of opinion and expression encompasses teaching, scientific and political discourse, human rights, journalism, and cultural and artistic expression, all of which are fields of scholarship.<sup>6</sup>

31. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that "academic freedom should be understood to include the freedom of individuals, as members of academic communities (e.g. faculty, students, staff, scholars, administrators and community participants) or in their own pursuits, to conduct activities involving the discovery and transmission of information and ideas, and to do so with the full protection of human rights law".<sup>7</sup> The Special Rapporteur highlights the essential role played by academics and academic institutions in democratic societies and recommends that States refrain from attacks on academic institutions and those who constitute academic communities, and protect them from attacks – insulating them from assault – by third parties.

32. The source notes that the right to freedom of expression is not absolute and that international law permits limited restrictions to it. Article 19 (3) of the Covenant allows for restrictions that are provided by law, necessary "for respect of the rights or reputations of others" or "for the protection of national security or of public order, or of public health or morals". The source adds that under international human rights law, any restriction to freedom of expression must meet a three-part test, namely that it is provided for by law, it serves to protect a legitimate and recognized interest and it is necessary to protect that interest. Freedom of opinion is absolute, and as such, international law does not permit any restrictions on opinion.

33. The source submits that the Egyptian authorities have made no argument to legally justify Mr. Santawy's detention based on the three-part test, and that given the circumstances of the case and the trend of arbitrary detention in Egypt, no plausible argument exists to legally justify Mr. Santawy's arrest and detention. While the country's Criminal Procedure Code allows for extended pretrial detention pending investigation in certain cases, there is no legitimate purpose recognized under international law that could form the grounds for Mr. Santawy's detention. The source thus submits that the detention of Mr. Santawy, based on unsubstantiated accusations of spreading false news through social media and on his academic research, is arbitrary and is in violation of both his domestic and international fundamental rights to freedom of opinion and expression.

### iii. Category III

34. The source also submits that the Egyptian authorities violated Mr. Santawy's right only to be detained by virtue of a judicial order. Article 9 (1) of the Covenant and principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment prohibit arbitrary arrest and detention and state that no one is to be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. Under article 54 of the Constitution of Egypt, unless a detainee is caught in flagrante delicto, it is not permissible to arrest or detain him or her except by virtue of a judicial order.

35. According to the source, the authorities arrested Mr. Santawy at the offices of the National Security Agency during a visit. Mr. Santawy was requested to go to the National Security Agency after numerous State security agents raided his parents' home without a warrant. The source adds that despite the circumstances surrounding the National Security

<sup>6</sup> See the Committee's general comment No. 34 (2011).

<sup>7</sup> See [A/75/261](#).

Agency request and the trend of arbitrary detention in Egypt, Mr. Santawy wilfully honoured the National Security Agency's request in good faith. Since he was not arrested while committing a crime, there cannot be any justification under Egyptian law for his arrest and continued detention without a judicial order. The source alleges that the circumstances surrounding his arrest provide compelling evidence against any presumption that the authorities intended to follow due process in the case.

36. The source also submits that the continued failure of the authorities to produce formal charges against Mr. Santawy, coupled with their failure to produce any judicial order or warrant meriting the excessive length of detention, violates Mr. Santawy's due process rights.

37. The source further argues that the Egyptian authorities violated Mr. Santawy's right to be informed of the reasons for his arrest. Under article 9 (2) of the Covenant, it is mandatory to ensure that persons who are arrested are informed of the reasons for their arrest and are promptly informed of the charges brought against them. Article 14 (3) (a) of the Covenant also prescribes that the accused is to be promptly informed of the charges brought against him or her.

38. According to the source, the authorities did not inform Mr. Santawy of the reason for his arrest on 1 February 2021. Mr. Santawy was only informed about the allegations against him during his interrogation and at subsequent hearings before the Supreme State Security Prosecution. Despite repeated requests, Mr. Santawy's family and lawyers have not been granted access to any documentation regarding the potential charges he may face. The source notes that the absence of legal documents or of any official communication regarding Mr. Santawy's detention contributes to a lack of legal transparency, which negatively affects Mr. Santawy's due process rights at the most essential level.

39. The source also submits that the failure of the police to inform Mr. Santawy of the reasons behind his detention, and the continued failure of the authorities to charge Mr. Santawy, violate his due process rights.

40. The source further submits that the Egyptian authorities violated Mr. Santawy's right to be promptly brought before a judge. Article 9 (3) of the Covenant, which affirms this right, states that "it shall not be the general rule that persons awaiting trial shall be detained in custody". Article 14 (3) (c) of the Covenant reiterates the right of the accused to be tried without undue delay.

41. According to the source, Mr. Santawy has been subjected to interrogation by the Supreme State Security Prosecution, which extended his pretrial detention at least 10 times. The authorities often renewed Mr. Santawy's pretrial detention in his absence and continue to restrict access by his family and lawyers to the proceedings.

42. The source argues that by keeping Mr. Santawy in pretrial detention for over 134 days and preventing Mr. Santawy or his lawyers from being present at his detention renewals, the Egyptian authorities violated his right to be brought before a judge and to be tried without undue delay.

43. Moreover, the source argues that the Egyptian authorities violated Mr. Santawy's right to be granted an opportunity to appeal the lawfulness of his ongoing detention, as well as his right to prepare an adequate defence. Under article 9 (4) of the Covenant, Egypt is reportedly mandated to bring Mr. Santawy before a court in order for the court to determine the lawfulness of his detention without delay. Furthermore, article 54 of the Constitution states that every person whose freedom is restricted has the opportunity to file a grievance before a court; decisions on the grievance are to be made within one week of the date of action, otherwise the detainee is to be released. Under principle 11 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, "a judicial or other authority shall be empowered to review as appropriate the continuance of detention". On the matter of the right to a defence, article 14 (3) (b) of the Covenant guarantees the right to have adequate time and facilities for the preparation of a detainee's defence. Although adequate time depends on the circumstances of the particular case, facilities must include access to documents and other evidence that the accused requires to prepare his case.

44. The source argues that, by holding detention renewal hearings for Mr. Santawy during his absence from the courtroom, Egyptian authorities have deprived him of the opportunity

to partake in the process by which decisions regarding his continued detention were made. Holding these sessions despite Mr. Santawy's unwilling absence from the courtroom denied him of the right to appeal these decisions and the right to be informed of all decisions affecting him.

45. Furthermore, because Mr. Santawy was absent from the courtroom, he was denied full access to the information regarding his case, thus impeding his ability to have the time and facilities necessary to prepare a proper and adequate defence. Thus, Mr. Santawy and his attorneys were severely and adversely impacted in their ability to provide an adequate defence; in fact, they were often left guessing as to the possible charges being levied against him, the State's justification for his continued detention renewals, and the best strategy by which to challenge his lengthy time in pretrial detention.

46. The continued failure of the Egyptian authorities to provide fair, transparent and speedy procedures by which Mr. Santawy can appeal his continued detention, and the lack of transparency and information regarding the process, have reportedly impeded the ability of Mr. Santawy to seek redress and to build an adequate defence, and is thus a violation of his due process rights.

47. The source also submits that the Egyptian authorities have violated the right of Mr. Santawy to be presumed innocent until proven guilty. Under article 14 (2) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights, every individual has the right to be presumed innocent. In its general comment No. 12 (1984), the Human Rights Committee stated that "the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial." Article 10 (2) (a) of the Covenant states: "Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons."

48. By detaining Mr. Santawy in Tora Prison, Egyptian authorities have reportedly subjected him to treatment that is similar to that received by charged and sentenced persons. Rather than ensuring that Mr. Santawy receives treatment that reflects his innocent status, Egyptian authorities have placed him side by side with charged and sentenced persons. Additionally, by raiding his family's home, assaulting Mr. Santawy and denying him access to his family and lawyers, authorities have treated Mr. Santawy as guilty from the very beginning of his detention. The source notes that the decision to detain Mr. Santawy in the absence of a single piece of evidence, and the failure to charge him for several months while in pretrial detention, indicate the Government's approach to Mr. Santawy's case and its intent to treat him as guilty well before charge and sentencing.

49. According to the source, the authorities have violated the right of Mr. Santawy to be equal before the courts and tribunals under article 14 (1) of the Covenant. According to the Human Rights Committee, this provision ensures that the parties to the proceedings in question are treated without any discrimination, and the principle of equality of arms.

50. By depriving Mr. Santawy of full due process rights, including the right to appear before the presiding judge and the right to be informed of the possible charges, the authorities have allegedly taken punitive measures against him. The source notes that the authorities continue to use Mr. Santawy's pretrial detention as an opportunity to take disproportionate punitive action against him for the exercise of his right to freedom of opinion and expression, as an Egyptian citizen and academic. The source adds that the tendency to treat academics in an especially egregious manner and to deprive such detainees of their full due process rights creates an inequity in the legal system.

51. The source further alleges that Egyptian authorities have violated the right of Mr. Santawy to be free from cruel, inhuman or degrading treatment or punishment. Article 7 of the Covenant, article 5 of the Universal Declaration of Human Rights, articles 52 and 55 of the Constitution of Egypt and principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment collectively establish this prohibition on torture. Defining this prohibition, the Body of Principles states that it "should be interpreted so as to extend the widest possible protection against abuses, whether physical or



mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time". Further, article 10 (1) of the Covenant and principle 1 of the Body of Principles state that persons deprived of their liberty are to be treated with humanity and with respect for the inherent dignity of the human person. In addition, article 51 of the Constitution states that dignity is a right of every human being, that it may not be violated, and the State must respect and protect it.

52. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Egypt is a State party, prohibits the infliction of physical or mental pain or suffering by a public official with the intention to intimidate or coerce. Article 55 of the Constitution of Egypt further reiterates that any statements made by the detainee after torture, intimidation, coercion, or physical or moral harm, are to be disregarded and are not to be relied upon; article 14 (3) (g) of the Covenant additionally states that no one is to be compelled to testify against himself or to confess guilt. Similarly, principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment prohibits the compulsion of detainees to confess or incriminate themselves.

53. When Mr. Santawy was detained, he was allegedly blindfolded and beaten by National Security Agency agents. The source submits that the consistent failure of the Egyptian authorities to appropriately investigate the torture allegations, to take measures to halt the abusive treatment that Mr. Santawy has been forced to endure and to provide compensation to Mr. Santawy for torture violate his domestic and international due process rights. Furthermore, the failure of the Egyptian authorities to explicitly discard the filmed confession that they extracted from Mr. Santawy as a direct result of his torture allegedly adds yet another egregious element to the due process violations that Mr. Santawy has undergone.

iv. Category V

54. The source alleges that the detention of Mr. Santawy due to his political opinions, political participation and status as an academic is arbitrary under category V.

55. According to the source, even though the authorities have failed to charge Mr. Santawy with any crime, statements by the officials and questions asked at his interrogations allegedly reveal that Mr. Santawy's arrest and detention resulted from the exercise of his rights to freedom of opinion and expression as a researcher/academic and a private citizen. During Mr. Santawy's interrogation before the Supreme State Security Prosecution, the prosecutors reportedly accused him of using a social media account to spread false news and anti-government posts. In addition, the prosecutors questioned Mr. Santawy about his academic work and studies, including his work on Islam and abortion.

56. The facts allegedly indicate that Mr. Santawy was detained in light of his perceived political and academic opinions; by extension, the source claims that his detention is discriminatory based on his political opinions and his status as a human rights defender. The prosecution's inability and failure to charge Mr. Santawy with a single crime over a period of more than 134 days reportedly confirm the arbitrary nature of his detention under category V.

*Response from the Government*

57. On 18 August 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 18 October 2021, detailed information about the current situation of Ahmed Samir Santawy and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Egypt under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Egypt to ensure his physical and mental integrity.

58. On 14 October 2021, the Government sought an extension in accordance with paragraph 16 of the Working Group's methods of work, which was granted with a new deadline of 15 November 2021. The Working Group regrets that, despite this, it has not received a reply from the Government.

## Discussion

59. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

60. In determining whether Mr. Santawy's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>8</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

61. The source has submitted that the arrest and detention of Mr. Santawy is arbitrary and falls under categories I, II, III and V. The Government, while it had the opportunity, has chosen not to address these submissions. The Working Group will proceed to examine the submissions in turn.

### *Category I*

62. The Working Group notes the uncontested allegations that Mr. Santawy was arrested on 1 February 2021 when he arrived at the police station as instructed on 30 January 2021. The Working Group is mindful that this is not the first time that Mr. Santawy was thus summoned, as the same happened on 23 January 2021 when his family home was searched without a warrant and he was requested to appear at the police station on 30 January 2021. Furthermore, it is not contested that upon his detention on 1 February 2021, Mr. Santawy was held incommunicado for five days.

63. Given these uncontested submissions, it is clear to the Working Group that the authorities clearly intended to arrest Mr. Santawy, and while, in principle, it is possible that a person is arrested without a warrant, for example following discovery of information during an interrogation, it is evident that this was not the case of Mr. Santawy. The authorities requested Mr. Santawy to appear at the police station a number of times and finally detained him, without a warrant, and placed him in incommunicado detention.

64. The Working Group recalls that a detention is considered arbitrary under category I if it lacks legal basis. As it has previously stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law which may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.<sup>9</sup> Indeed, the international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation, under articles 3 and 9, respectively, of the Universal Declaration of Human Rights, under article 9 of the Covenant, and under principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>10</sup> Any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

65. This did not take place in the case of Mr. Santawy, and the Working Group therefore finds a breach of article 9 (1) of the Covenant.

66. Moreover, it is not contested that Mr. Santawy was held incommunicado for five days following his detention on 1 February 2021. As the Working Group has consistently argued, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9 (4) of the Covenant.<sup>11</sup> The Working Group considers that

<sup>8</sup> A/HRC/19/57, para. 68.

<sup>9</sup> See, for example, opinions No. 79/2018, No. 35/2018, No. 93/2017, No. 75/2017, No. 66/2017 and No. 46/2017.

<sup>10</sup> Opinions No. 30/2018, para. 39; No. 3/2018, para. 43; and No. 88/2017, para. 27.

<sup>11</sup> See, for example, opinions No. 28/2016 and No. 79/2017.

judicial oversight of detention is a fundamental safeguard of personal liberty<sup>12</sup> and is essential in ensuring that detention has a legal basis. Given that Mr. Santawy was not able to challenge his detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

67. Furthermore, when summoned to the police station a number of times and even when arrested on 1 February 2021, Mr. Santawy was not informed of the reasons for his arrest, and in fact, did not find out about the charges against him until his trial commenced on 1 June 2021. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested be not only informed of the reasons for arrest but also promptly informed of any charges against him or her. The right to be informed of charges concerns notice of criminal charges, and as the Human Rights Committee has noted in its general comment No. 35 (2014), this right “applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment”.<sup>13</sup> As this did not take place in the case of Mr. Santawy, the Working Group finds a breach of article 9 (2) of the Covenant.

68. Turning to the pretrial detention of Mr. Santawy, the Working Group observes the uncontested allegations that this was ordered and renewed on numerous occasions by the Supreme State Security Prosecution, a prosecutorial authority, and the Working Group observes that Mr. Santawy did not appear before a judicial authority until the start of his trial on 1 June 2021.

69. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to be brought promptly before a judge or other judicial authority. As the Human Rights Committee has stated, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge following his or her arrest, and any longer delay must remain absolutely exceptional and be justified under the circumstances.<sup>14</sup> In the present case, Mr. Santawy was only presented before the Supreme State Security Prosecution, and thus did not appear before a judicial authority within 48 hours of his arrest. As the Working Group has stated, a prosecutorial body cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.<sup>15</sup> As a result, the legal basis for the detention of Mr. Santawy was not established in accordance with the requirements of the Covenant,<sup>16</sup> since he was not presented before a judicial body that was competent to examine the reasonableness and proportionality of his pretrial detention, and the Working Group finds a breach of article 9 (3) of the Covenant.

70. The Working Group also notes that Mr. Santawy was held in pretrial detention on the basis of article 134 of the Criminal Procedure Code, which the Working Group has already established provides for overly broad grounds for pretrial detention such as “harming national security or the public order”. Therefore, article 134 of the Criminal Procedure Code does not establish a sufficient legal basis for deprivation of liberty for the purpose of article 9 (1) of the Covenant.<sup>17</sup>

71. Finally, noting that Mr. Santawy was not brought before a judge until the start of his trial on 1 June 2021, his right to challenge the legality of his detention under article 9 (4) of the Covenant was also violated. As the Working Group has consistently argued,<sup>18</sup> in order to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant.

<sup>12</sup> See the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court ([A/HRC/30/37](#)), para. 3.

<sup>13</sup> See para. 29.

<sup>14</sup> Human Rights Committee, general comment No. 35 (2014), para. 33; and [CAT/C/GAB/CO/1](#), para. 10.

<sup>15</sup> Human Rights Committee, general comment No. 35 (2014), para. 32; opinions No. 41/2020, para. 60; No. 5/2020, para. 72; and No. 14/2015, para. 28. See also [A/HRC/45/16/Add.1](#), para. 35.

<sup>16</sup> See opinions No. 60/2020 and No. 64/2020; see also Human Rights Committee, general comment No. 35 (2014), para. 38.

<sup>17</sup> Opinion No. 83/2017, para. 68.

<sup>18</sup> See, for example, opinions No. 1/2017, No. 6/2017, No. 8/2017, No. 30/2017, No. 2/2018, No. 4/2018, No. 42/2018, No. 43/2018 and No. 79/2018.

The Working Group wishes to recall that according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.<sup>19</sup> This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,<sup>20</sup> and applies to “all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes”.<sup>21</sup>

72. This was violated in the case of Mr. Santawy; he was also denied access to a lawyer during his initial detention, which adversely impacted his ability to exercise his rights, including the right to challenge the legality of his detention. The Working Group therefore finds a further breach of this provision.

73. Recalling the uncontested submission that Mr. Santawy’s pretrial detention hearings took place in his absence, the Working Group considers that his right to be presented before a judge in person under article 9 (3) and (4) was also violated.<sup>22</sup>

74. Noting all the above, the Working Group finds that the detention of Mr. Santawy was arbitrary and falls under category I as lacking legal basis.

#### *Category II*

75. The source has argued that the detention of Mr. Santawy was purely because of his peaceful exercise of freedom of expression. In this respect, the source notes that during the interrogation before the Supreme State Security Prosecution, the authorities accused Mr. Santawy of using a social media account to spread false news and anti-government posts, and the prosecutors questioned Mr. Santawy about his academic work and studies, including his work on Islam and abortion. While the Government had the opportunity to rebut these allegations, it has chosen not to do so.

76. The Working Group firstly notes that freedom of opinion and freedom of expression as expressed in article 19 of the Covenant are indispensable conditions for the full development of the person; they are essential for any society and in fact constitute the foundation stone for every free and democratic society.<sup>23</sup> According to the Human Rights Committee, no derogations can be made to article 19, simply because “it can never become necessary to derogate from it during a state of emergency”.<sup>24</sup>

77. Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and this right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.<sup>25</sup> Moreover, article 19 (2) of the Covenant protects all forms of expression and the means of their dissemination, including all forms of audiovisual as well as electronic and Internet-based modes of expression.<sup>26</sup>

78. The Government had the opportunity to, but did not explain, the threat posed by Mr. Santawy’s conduct to the legitimate interests that States might invoke under articles 18 (3) and 19 (3) of the Covenant, namely respect for the rights, freedoms or reputations of others, national security, public safety, public order, public health or morals, and how the arrest and

<sup>19</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings before a Court ([A/HRC/30/37](#)), paras. 2–3.

<sup>20</sup> *Ibid.*, para. 11.

<sup>21</sup> *Ibid.*, para. 47 (a).

<sup>22</sup> Human Rights Committee, general comment No. 35 (2014), para. 34.

<sup>23</sup> Human Rights Committee, general comment No. 34 (2011), para. 2.

<sup>24</sup> *Ibid.*, para. 5.

<sup>25</sup> *Ibid.*, para. 11.

<sup>26</sup> *Ibid.*, para. 12.

detention of Mr. Santawy was necessary to protect any of those interests. Importantly, there is no information to suggest that Mr. Santawy's various social media posts advocated violence or war, or incited discrimination or hostility. There has also been no evidence presented that these had the effect of incitement, nor has Mr. Santawy ever been accused of any form of violence or incitement to violence that would justify restriction of his activities as religious hate speech under article 20 of the Covenant.

79. The source has also submitted and the Government has not denied that Mr. Santawy has been charged with the crime of "spreading false news from abroad about the domestic situation in Egypt that could disturb security and public order". The Working Group considers that such provisions are not formulated with the requisite degree of legal certainty and clarity, and in fact have the effect of negating Mr. Santawy's legitimate right to freedom of expression.<sup>27</sup> The Working Group reiterates that the principle of legality requires that laws be formulated with sufficient precision so that individuals may have access to and understand the law and regulate their conduct accordingly,<sup>28</sup> and calls upon the Government to bring its legislation into line with these requirements.

80. On that basis, noting all the above, the Working Group concludes that the arrest and subsequent detention of Mr. Santawy resulted from his exercise of the rights and freedoms guaranteed by article 19 of the Covenant, and therefore falls under category II. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for appropriate action.

### *Category III*

81. Given its finding that the deprivation of liberty of Mr. Santawy is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Santawy should have taken place. However, the trial did take place and the source has submitted that there were severe violations of the fair trial rights of Mr. Santawy, and that his subsequent detention therefore falls under category III.

82. The source has argued and the Government has not contested that although Mr. Santawy was arrested on 1 February 2021, he did not learn of the charges in either of the cases against him until the start of his trial on 1 June 2021. Moreover, access to his case file was also not granted until the start of the trial, while the trial itself was conducted before a court whose verdicts cannot be appealed. The source has also submitted and the Government has not rebutted that Mr. Santawy's pretrial detention renewal hearings were conducted without him being present.

83. The Working Group recalls that article 14 (3) (a) of the Covenant requires that everyone has the right to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him. This was denied to Mr. Santawy, and the Working Group thus finds a violation of this provision.

84. Furthermore, access to Mr. Santawy's case file was not granted until the start of the trial. The Working Group recalls that, in principle, access to the case file must be provided from the outset.<sup>29</sup> Every individual deprived of liberty has the right to access material related to his or her detention.<sup>30</sup> However, that right is not absolute, and the disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, and if the State has demonstrated that less restrictive

<sup>27</sup> In Vienna, on 3 March 2017, several experts (including the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression) stated: "General prohibitions on the dissemination of information based on vague and ambiguous ideas, including 'false news' or 'non-objective information', are incompatible with international standards for restrictions on freedom of expression ... and should be abolished." Organization for Security and Cooperation in Europe, "Joint declaration on freedom of expression and 'fake news', disinformation and propaganda", document FOM.GAL/3/17, para. 2 (a). Available at [www.osce.org/files/f/documents/6/8/302796.pdf](http://www.osce.org/files/f/documents/6/8/302796.pdf). See also opinion No. 46/2020.

<sup>28</sup> See, for example, opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59.

<sup>29</sup> See opinions No. 77/2020, No. 67/2020, No. 29/2020 and No. 78/2019.

<sup>30</sup> United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings before a Court, principle 12 and guidelines 11 and 13.

measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.<sup>31</sup> The Government did not provide any justification for denying access to the case files. This violated the right of Mr. Santawy under articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1) and (3) (b) and (e) of the Covenant to a fair hearing and to adequate time and facilities for the preparation of a defence.<sup>32</sup>

85. Article 14 (5) of the Covenant requires that everyone convicted of a crime has the right to have his or her conviction and sentence reviewed by a higher tribunal according to law. The source has argued that this is not possible in the case of Mr. Santawy, since he was tried by the Emergency State Security Court, the verdicts of which cannot be appealed (see para. 14 above). In the absence of any rebuttal from the Government, the Working Group finds a breach of article 14 (5) of the Covenant.

86. The Working Group is disturbed by the uncontested allegations that Mr. Santawy, when first detained and held incommunicado, was blindfolded and beaten by the officers. The source has also alleged that a filmed confession which was thus obtained was allowed as evidence during the proceedings against Mr. Santawy.

87. The Working Group considers that the treatment described reveals a prima facie breach of the absolute prohibition of torture, which is a peremptory norm of international law, as well as of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.

88. Moreover, as the Working Group has previously stated, confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.<sup>33</sup> Further, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.<sup>34</sup> The burden is on the Government to prove that statements were given freely,<sup>35</sup> but in this case it has not done so. The source has clearly referred to a filmed confession, extracted by torture, which the Government has not contested (see para. 53 above). Therefore, Mr. Santawy's right to be presumed innocent under article 14 (2) of the Covenant and his right not to be compelled to confess guilt under article 14 (3) (g), as well as his right to be tried by an impartial tribunal under article 14 (1), were violated. Noting especially the failure of the judicial and prosecutorial authorities to act upon the forced confession, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

89. The Working Group also notes that Mr. Santawy spent some 134 days in pretrial detention. While in itself this time period is not necessarily a prolonged pretrial detention that is in violation of the right to expeditious trial under article 14 (3) (c) of the Covenant, given its findings under category II above as well as under category V below, the Working Group considers that a breach of this provision also took place.

90. Given all the above, the Working Group finds that the violations of Mr. Santawy's right to a fair trial are of such gravity as to give his deprivation of liberty an arbitrary character, falling under category III.

<sup>31</sup> Ibid., guideline 13, paras. 80–81.

<sup>32</sup> Opinions No. 78/2018, paras. 78–79; and No. 18/2018, para. 53.

<sup>33</sup> A/HRC/45/16, para. 53. See also opinions No. 73/2019, para. 91; No. 59/2019, para. 70; No. 14/2019, para. 71; and No. 1/2014, para. 22; and E/CN.4/2003/68, para. 26 (e).

<sup>34</sup> Opinions No. 73/2019, para. 91; No. 59/2019, para. 70; No. 32/2019, para. 43; No. 52/2018, para. 79 (i); No. 34/2015, para. 28; and No. 43/2012, para. 51.

<sup>35</sup> Human Rights Committee, general comment No. 32 (2007), para. 41.

*Category V*

91. Finally, the source has argued and the Government has not rebutted that the detention of Mr. Santawy is arbitrary under category V as this detention resulted from the exercise of his rights to freedom of opinion and expression as a researcher/academic and a private citizen.

92. The Working Group notes that it is not contested that Mr. Santawy was called in for questioning and interrogation numerous times before his arrest on 1 February 2021 (see para. 5 above). On all those previous occasions, as well as on 1 February 2021, the authorities questioned Mr. Santawy about various expressions of his views, and the Working Group has already established that the sole reason for his arrest on 1 February 2021 and for the subsequent proceedings was his peaceful exercise of freedom of expression.

93. Noting the pattern of attitude on the part of the authorities towards Mr. Santawy, which is clear to see over a period of time, as well as the absence of any explanation from the Government, the Working Group concludes that Mr. Santawy's detention is a violation of international law on the grounds of discrimination based on his political or other opinion in violation of articles 2 and 7 of the Universal Declaration of Human Rights and article 2 (1), read in conjunction with articles 19 and 26, of the Covenant.

*Concluding remarks*

94. The Working Group is seriously concerned about Mr. Santawy's state of health, noting that on 23 June 2021 he went on hunger strike in protest at his treatment by the Egyptian authorities. The source submits that on 6 July 2021, Mr. Santawy was transferred to the prison hospital after his health deteriorated significantly, and his health reportedly continues to be at serious risk of decline.

95. The Working Group is obliged to remind the Government that, in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person, and it calls for his immediate release.

96. The source has also submitted, and the Government has chosen not to rebut, that Mr. Santawy is being held in Tora Prison, a facility that is designated for persons who have already been convicted. The Working Group reminds the Government that article 10 (2) of the Covenant requires that convicted persons be separated from persons who have not been convicted.

**Disposition**

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

The deprivation of liberty of Ahmed Samir Santawy, being in contravention of articles 2, 6, 7, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

98. The Working Group requests the Government of Egypt to take the steps necessary to remedy the situation of Mr. Santawy without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

99. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Santawy immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Santawy.

100. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Santawy and to take appropriate measures against those responsible for the violation of his rights.

101. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to (a) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, (b) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and (c) the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

102. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

#### **Follow-up procedure**

103. 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 action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Santawy has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Santawy;
- (c) Whether an investigation has been conducted into the violation of Mr. Santawy's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Egypt with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

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

105. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

106. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them 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.<sup>36</sup>

*[Adopted on 19 November 2021]*

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<sup>36</sup> Human Rights Council resolution 42/22, paras. 3 and 7.