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

## **Opinions adopted by the Working Group on Arbitrary Detention at its eighty-ninth session, 23–27 November 2020**

### **Opinion No. 79/2020 concerning Ahmed Yasser Mahmoud Ahmed Hassan (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 (A/HRC/36/38), on 28 February 2020, the Working Group transmitted to the Government of Egypt a communication concerning Ahmed Yasser Mahmoud Ahmed Hassan. The Government submitted a late response on 1 June 2020. 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).

## Submissions

### *Communication from the source*

4. Ahmed Yasser Mahmoud Ahmed Hassan is a citizen of Egypt, born in 1992. He is a university student and previously worked in sales in a real estate company. His residence is in Cairo Governorate, Egypt.

a. Arrest and detention

5. According to the source, on 20 December 2017, Mr. Hassan was arrested near his home while on his way to work. As his family was not aware of his whereabouts, on 21 December 2017, they contacted the Prosecutor-General and the Ministry of the Interior. They received no response.

6. For the following five months, Mr. Hassan was reportedly subjected to enforced disappearance. His family continuously searched for him in police stations in their district, but officers at all stations denied having him in custody and did not help the family to locate him. It appears that during that time, Mr. Hassan was being held on the premises of State security forces in Abbassia.

7. The source reports that, on 22 May 2018, Mr. Hassan was seen for the first time since his disappearance, in the Tora prison complex. The source also explains that, on that date, Mr. Hassan was charged with belonging to Harakat Sawa'd Misr, known as "HASM", in a case referred to as "HASM 123 (2018)". For the source, this means that he had been brought before a military prosecutor prior to that date.

8. The source explains that the case is before the East Cairo military felonies court, and has been widely reported on in the media. It reports that the case involves 278 individuals who have been charged with joining entities designated by the State as terrorist organizations – HASM and Liwa al-Thawra – and committing terrorist acts against the State. The trial concerns two related cases, No. 420 of 2017 and No. 1074 of 2017, which, through a decision in 2018, the Supreme State Security Prosecution referred to the military court.

9. According to the source, the charges against Mr. Hassan can be summarized as follows: (a) joining a terrorist group; (b) funding a terrorist organization; (c) using the Internet to spread the ideas of a terrorist group; (d) plotting with and supporting other defendants in committing terrorist acts against the State; (e) possessing firearms and explosive devices; and (f) possessing or printing flyers that spread the views of a terrorist group.

10. The source explains that the case is still ongoing and the trial process is being carried out sporadically, with frequent decisions to renew his detention pending investigations or witness hearings.

11. The source also explains that in May 2018, when Mr. Hassan first appeared before a prosecutor for the renewal of his detention, his lawyer was not present, nor was the lawyer informed of the appearance. At the trial hearings, Mr. Hassan is placed behind a glass barrier. Mr. Hassan's lawyer has never been able to speak to his client in person, and never sees him except during trial hearings, behind the glass barrier.

12. Since the arrest, Mr. Hassan's family has reportedly not been allowed to contact, see or visit him in prison. He has not yet seen his child, who was born during the period of his disappearance. Given this lack of contact, and the fact that his lawyer is also unable to speak with him, it is unknown what exactly happened to Mr. Hassan during his disappearance and afterwards. Thus no one knows whether Mr. Hassan has made any confession and, if he has, whether the confession was made under coercion.

13. It has been reported that Mr. Hassan appears to have had a problem with his leg since June 2018, but no one has been able to obtain information in that regard. The source also states that Mr. Hassan's relatives have not been allowed to send him food or clothes in prison.

14. Since his arrest, members of Mr. Hassan's family have allegedly made multiple complaints to the Prosecutor-General, the Minister of the Interior and human rights organizations, to no avail.

b. Legal analysis

15. The source argues that the detention of Mr. Hassan falls under category III, given the violations of his fair trial rights.

16. According to the source, the facts show that Mr. Hassan was arrested and never allowed to inform any third person of his arrest or where he was being held. He was thus subjected to enforced disappearance for five months, from 20 December 2017 to 22 May 2018. His family was eventually informed by lawyers, through social media, of his whereabouts, not through any official means. Moreover, the source alleges that officials at several police stations denied having him in their custody throughout the period of his disappearance and did not help the family to locate him.

17. The source further claims that, since his arrest, Mr. Hassan has not been allowed to see or communicate with his family or lawyer. Therefore, after the enforced disappearance period, he has remained in incommunicado detention. This continuous denial of any form of contact with the outside world severely harms Mr. Hassan and leaves him vulnerable to torture and ill-treatment. His family and lawyer still do not know what happened to him during the period of his disappearance or how he is being treated at the moment. This lack of information makes it impossible for the family or lawyer to raise an official complaint with the State about any mistreatment he has suffered or may suffer.

18. Moreover, the source considers that this incommunicado detention constitutes, in itself, cruel and inhuman treatment. It has been observed that Mr. Hassan is suffering from a problem with his leg. Prison authorities have denied the attempts by his family to send him food and clothes. He is reportedly not allowed to leave his cell. These circumstances demonstrate, to the source, that Mr. Hassan's detention conditions are cruel and inhuman.

19. The source also claims that Mr. Hassan's right to be assisted by a lawyer has been severely violated. The source reiterates that Mr. Hassan's lawyer was not present when he was questioned, or when his detention was renewed during his first appearance before a judicial body, after the five-month enforced disappearance period.

20. Furthermore, Mr. Hassan has never been allowed to speak to his lawyer, in private or otherwise. The lawyer has been attending further renewals of detention where his client is present, but he only sees him from afar, through the glass barrier. The source thus argues that Mr. Hassan has never had adequate time or facilities to prepare a defence or discuss his conditions of detention. This leaves him vulnerable to, and lacking protection from, human rights abuse, since he cannot inform his lawyer or family of any abuse he may have suffered or is still suffering from.

*Response from the Government*

21. On 28 February 2020, the Working Group transmitted the allegations made by the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 28 April 2020, detailed information about the situation of Mr. Hassan and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Mr. Hassan's physical and mental integrity.

22. On 15 April 2020, the Government sought an extension of the deadline to submit its response. In conformity with paragraph 16 of its methods of work, the Working Group granted an extension of one month for the Government to submit its response by 28 May 2020. The Working Group regrets that, despite the extension of the deadline, it did not receive a timely response, as the Government submitted its response on 1 June 2020. The Working Group cannot accept the late response as if it were presented within the time limit. In accordance with paragraph 16 of its methods of work, the Working Group will render its opinion based on all the information it has obtained.

*Further observations from the source*

23. On 16 June 2020, the source submitted a reply to the late submission by the Government.

## Discussion

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

25. In determining whether Mr. Hassan'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 requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68).

### *i. Category I*

26. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis being invoked.

27. The source submits, and the Government does not substantiate its claim to the contrary, that Mr. Hassan was not presented with an arrest warrant or informed of the reasons for his arrest at the time of the arrest on 20 December 2017.

28. In order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant, which the Working Group is not convinced was implemented in the case of Mr. Hassan. The Working Group therefore finds that the deprivation of liberty of Mr. Hassan violates articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>1</sup>

29. According to the source, on 22 May 2018, Mr. Hassan was seen for the first time since his disappearance, in the Tora prison complex. The source also explains that on that date – five months after his arrest – Mr. Hassan was charged with belonging to HASM in a case referred to as “HASM 123 (2018)”, which has not been contested by the Government. For the source, this means that Mr. Hassan had been brought before a military prosecutor prior to that date. The Working Group finds that, in order to invoke a legal basis for the deprivation of liberty of Mr. Hassan, the authorities should have informed him of the reasons for his arrest, at the time of arrest, and promptly informed him of the charges.<sup>2</sup> Their failure to do so violates article 9 of the Universal Declaration of Human Rights and article 9 (2) of the Covenant, as well as principle 10 of the Body of Principles, and renders his arrest devoid of any legal basis. The Working Group observes that Mr. Hassan was not brought promptly before a court – that is, within 48 hours of his arrest barring absolutely exceptional circumstances, in accordance with the international standard.<sup>3</sup> Therefore, the Government

<sup>1</sup> The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See, for example, decisions No. 1/1993, paras. 6–7; No. 3/1993, paras. 6–7; No. 4/1993, para. 6; No. 5/1993, paras. 6, 8 and 9; No. 27/1993, para. 6; No. 30/1993, paras. 14 and 17 (a); No. 36/1993, para. 8; No. 43/1993, para. 6; and No. 44/1993, paras. 6–7. For more recent jurisprudence, see opinions No. 38/2013, para. 23; No. 48/2016, para. 48; No. 21/2017, para. 46; No. 63/2017, para. 66; No. 76/2017, para. 55; No. 83/2017, para. 65; No. 88/2017, para. 27; No. 93/2017, para. 44; No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; and No. 82/2018, para. 29.

<sup>2</sup> See, for example, opinion No. 10/2015, para. 34. See also opinions No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; and No. 46/2019, para. 51.

<sup>3</sup> Human Rights Committee, general comment No. 35 (2014), para. 33, citing *Kovsh v. Belarus* (CCPR/C/107/D/1787/2008), paras. 7.3–7.5. See also CCPR/C/79/Add.89, para. 17; CCPR/CO/70/GAB, para. 13; and CCPR/C/SLV/CO/6, para. 14. For the Working Group's jurisprudence, see, for example, opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; No. 20/2019, para. 66; No. 26/2019, para. 89; No. 30/2019, para. 30; No. 36/2019, para. 36; No. 42/2019, para. 49; No. 51/2019, para. 59; No. 56/2019, para. 80; No. 76/2019, para. 38; and No. 82/2019, para. 76.

has also violated article 9 (1) and (3) of the Covenant as well as principles 11, 37 and 38 of the Body of Principles.

30. The source further maintains, and the Government does not dispute, that Mr. Hassan has been subjected to enforced disappearance and incommunicado detention for five months from the time of his arrest on 20 December 2017 to 22 May 2018. The source adds that, since the enforced disappearance period, Mr. Hassan has remained in incommunicado detention. The Working Group recalls that enforced disappearances violate numerous substantive and procedural provisions of the Covenant, including articles 9 and 14, and constitute a particularly aggravated form of arbitrary detention.<sup>4</sup> Such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention, lacks any valid legal basis under any circumstance and is inherently arbitrary as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.<sup>5</sup>

31. It is the established practice of the Working Group that holding persons incommunicado violates the right to be brought before a court under article 9 (3) of the Covenant and to challenge the lawfulness of the detention before a court under article 9 (4) of the Covenant.<sup>6</sup> This view is consistent with that of the Human Rights Committee, which has argued that incommunicado detention that prevents prompt presentation before a judge inherently violates article 9 (3).<sup>7</sup>

32. The Working Group recalls that judicial oversight of detention is a fundamental safeguard of personal liberty<sup>8</sup> and is essential in ensuring that detention has a legal basis. Given that Mr. Hassan was unable to contact anyone, and especially his lawyer, which is an essential safeguard to ensure the ability of any detainee to personally challenge his or her 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.

33. The Working Group further observes that Mr. Hassan was not afforded the right to take proceedings before a court so that it could decide without delay on the lawfulness of his detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights, articles 2 (3) and 9 (4) of the Covenant, and principles 11, 32 and 37 of the Body of Principles. In this regard, the Working Group recalls that 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>9</sup> That right, which in fact constitutes a peremptory norm of international law, applies to all forms of deprivation of liberty<sup>10</sup> and applies to all situations of deprivation of liberty.<sup>11</sup>

34. The Working Group also observes that Mr. Hassan was effectively deprived of his right to legal counsel and representation, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary detention, in violation of articles 3 and 9 of the Universal Declaration of Human rights and article 9 (1) of the Covenant as well as principles 15, 17 and 18 of the Body of Principles and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers. In accordance with principle 9 and guideline 8 of

<sup>4</sup> A/HRC/16/48/Add.3, para. 21. See also Human Rights Committee, general comment No. 35, para. 17, as well as opinions No. 82/2018, para. 28; No. 18/2019, para. 33; No. 22/2019, para. 67; No. 26/2019, para. 88; No. 28/2019, para. 61; No. 29/2019, para. 54; No. 36/2019, para. 35; No. 41/2019, para. 32; No. 42/2019, para. 48; No. 51/2019, para. 58; No. 56/2019, para. 79; No. 5/2020, para. 74; and No. 6/2020, para. 43.

<sup>5</sup> See, for example, opinions No. 82/2018, para. 28; No. 51/2019, para. 58; and No. 56/2019, para. 79.

<sup>6</sup> See, for example, opinions No. 45/2017, No. 46/2017, No. 79/2017, No. 11/2018 and No. 35/2018.

<sup>7</sup> Human Rights Committee, general comment No. 35, para. 35.

<sup>8</sup> A/HRC/30/37, para. 3. See also opinions No. 35/2018, para. 27; No. 83/2018, para. 47; No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64.

<sup>9</sup> A/HRC/30/37, paras. 2–3.

<sup>10</sup> *Ibid.*, para. 11.

<sup>11</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, annex), para. 47 (a). See also opinion No. 39/2018, para. 35.

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, persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and must be promptly informed of this right upon apprehension; and access to legal counsel should not be unlawfully or unreasonably restricted.<sup>12</sup> The Working Group notes that access to legal counsel from the outset of detention is an essential safeguard in ensuring that a detainee can challenge the legal basis for his or her detention.<sup>13</sup>

35. For these reasons, the Working Group considers that Mr. Hassan's deprivation of liberty lacks a legal basis and is thus arbitrary, falling under category I.

*ii. Category III*

36. According to the source, the detention of Mr. Hassan is also arbitrary under category III due to the violations of his fair trial and due process rights. In this respect, the source maintains that since his arrest, Mr. Hassan has not been allowed to see or communicate with his family or lawyer. After the enforced disappearance period, he has thus allegedly remained in incommunicado detention. However, the Government states that Mr. Hassan's lawyer was present during the first appearance before a prosecutor and denies that restrictions have been placed on Mr. Hassan's ongoing communication with his lawyer.

37. The Working Group considers that the Government failed to provide evidence that Mr. Hassan's lawyer was present at the first appearance of his client before the prosecutor in May 2018 or that the lawyer had been informed of the appearance, and that it also failed to provide a substantiated response to the claim that Mr. Hassan had been attending the trial behind a glass barrier and that, to date, Mr. Hassan's lawyer had not been able to speak to his client in person or see him face to face, except during trial hearings from behind the glass barrier.

38. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access is to be provided without delay.<sup>14</sup> In the Working Group's view, by restricting his access to legal counsel, the Government failed to respect Mr. Hassan's right to legal assistance, which is inherent in the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant. In addition, Mr. Hassan was not afforded his right to adequate time and facilities for the preparation of his defence and to communicate with counsel of his choosing in accordance with article 14 (3) (b) of the Covenant, or his right to present an effective defence in accordance with article 14 (3) (d) of the Covenant.<sup>15</sup> The Working Group considers that this violation substantially undermined and compromised Mr. Hassan's capacity to defend himself in any subsequent judicial proceedings.

39. The Working Group also notes that the "HASM and Liwa al-Thawra" case, involving Mr. Hassan and 277 other individuals, is before the East Cairo military felonies court, and that the defendants in that case have been charged with joining HASM and Liwa al-Thawra, entities designated by the State as terrorist organizations, and committing terrorist attacks against the State. As the Working Group has recently emphasized, mass trials are incompatible with the interests of justice and do not meet the standards of a fair trial, given

<sup>12</sup> See also Human Rights Committee, general comment No. 32 (2007), para. 34. In a recent report to the Human Rights Council, the Working Group reiterated that the right to legal assistance was one of the key safeguards in preventing the arbitrary deprivation of liberty (A/HRC/45/16, paras. 50–55).

<sup>13</sup> Opinion No. 40/2020, para. 29.

<sup>14</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 9 and guideline 8, and Human Rights Committee, general comment No. 35 (2014), para. 35.

<sup>15</sup> See also principles 15, 17 and 18 of the Body of Principles and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers. See also A/HRC/45/16, paras. 50–55.

that it is impossible during such proceedings to conduct a specific assessment of individual responsibility.<sup>16</sup>

40. Furthermore, the Working Group sees no justification for the trial of Mr. Hassan, who is a civilian, taking place in a military court that operates under the purview of the Ministry of Defence. It thus finds that the trial conducted by the military court violates the due process guarantees found in articles 10 and 11 (1) of the Universal Declaration of Human Rights and in article 14 of the Covenant, which affirm that everyone has the right to be tried by a competent, independent and impartial tribunal. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

41. The Working Group has previously warned that the intervention of a military judge who is neither professionally nor culturally independent is likely to produce an effect contrary to the enjoyment of human rights and the right to a fair trial with due guarantees.<sup>17</sup> The Working Group has set out and affirmed in its jurisprudence the following minimum guarantees for military justice, which the authorities failed to observe in the present case:

(a) Military tribunals should only be competent to try military personnel for military offences;

(b) If civilians have also been indicted in a case, military tribunals should not try military personnel;

(c) Military courts should not try military personnel if any of the victims are civilians;

(d) Military tribunals should not be competent to consider cases of rebellion, sedition or attacks against a democratic regime, because, in those cases, the victims are all citizens of the country concerned;

(e) Military tribunals should never be competent to impose the death penalty.<sup>18</sup>

42. Moreover, the source considers that the incommunicado detention of Mr. Hassan constitutes, in itself, cruel and inhuman treatment. The source also states that Mr. Hassan is apparently suffering from a problem with his leg, that prison authorities denied the attempts by his family to send him food and clothes and to visit him and that he is not allowed to leave his cell. The source submits that these circumstances demonstrate that Mr. Hassan's detention conditions are cruel and inhuman. The Working Group notes that the Government has not provided sufficient information to rebut these allegations.

43. The Working Group recalls that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.<sup>19</sup> The Government's alleged failure to take remedial measures under articles 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (which apply to other forms of cruel, inhuman or degrading treatment or punishment by virtue of article 16 of the Convention) and principle 33 of the Body of Principles compels the Working Group to refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.<sup>20</sup>

44. In the Working Group's view, not only are torture and ill-treatment grave violations of human rights per se, but they seriously undermine the ability of persons to defend themselves and hinder their exercise of the right to a fair trial, especially in the light of the

<sup>16</sup> Opinions No. 65/2019, para. 75, and No. 5/2020, para. 86.

<sup>17</sup> A/HRC/27/48, paras. 66–71 and 85–86; and E/CN.4/2006/58. See also opinions No. 44/2016, para. 32; No. 30/2017, para. 65; No. 51/2017, para. 44; No. 56/2017, para. 59; No. 3/2018, para. 58; No. 4/2019, para. 59; and No. 65/2019, para. 77.

<sup>18</sup> A/HRC/27/48, para. 69.

<sup>19</sup> General Assembly resolution 68/156.

<sup>20</sup> Opinions No. 39/2018, para. 42; No. 22/2019, para. 77; and No. 28/2019, para. 69.

rights to the presumption of innocence and to not to be compelled to testify against oneself or to confess guilt under article 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (g) of the Covenant.<sup>21</sup> Due to the fact that Mr. Hassan is being kept in incommunicado detention, it is not known clearly whether he has made any confessions, coerced or not. However, the Working Group reminds the Government that any incriminating statements should be made of the person's free will and in the presence of counsel.<sup>22</sup>

45. The Working Group also recalls that all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person, in accordance with article 10 (1) of the Covenant and principle 1 of the Body of Principles.

46. The Working Group further notes the denial of Mr. Hassan's right to be visited by and to correspond with his family, subject to reasonable conditions and restrictions as specified by law or lawful regulations. As the Human Rights Committee has observed, giving prompt and regular access to family members, as well as independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture as well as protection against arbitrary detention and infringement of personal security.<sup>23</sup> The Working Group finds that these restrictions amounted to a violation of principles 15, 16 (1) and 19 of the Body of Principles and rules 43 (3) and 58 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).<sup>24</sup>

47. Given the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Mr. Hassan's deprivation of liberty an arbitrary character that falls within category III.

48. As noted above, the HASM and Liwa al-Thawra case before the East Cairo military felonies court also involves 277 other individuals. The Working Group urges the Government to take all measures necessary to ensure that those individuals are not subjected to fair trial and due process violations such as the ones identified in the present case.

49. The Working Group notes that the present opinion is only one of many opinions in recent years in which the Working Group finds the Government to be in violation of its international human rights obligations.<sup>25</sup> The Working Group is concerned that this indicates a systemic problem with arbitrary detention in Egypt, which, if it continues, may amount to a serious violation of international law.<sup>26</sup> The duty to comply with international human rights standards rests with all State organs, officers and agents as well as all other natural and legal persons. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>27</sup> The Working Group has alluded to this possibility in its past opinions concerning Egypt.

50. Lastly, the Working Group would welcome the opportunity to work constructively with the Government to address its concerns relating to arbitrary detention. The Working

<sup>21</sup> See also opinion No. 5/2020, para. 84.

<sup>22</sup> See Human Rights Committee, general comment No. 32, para. 41. See also opinions No. 48/2016, No. 3/2017, No. 6/2017, No. 29/2017 and No. 39/2018.

<sup>23</sup> General comment No. 35, para. 58.

<sup>24</sup> See, for example, opinions No. 35/2018, para. 39; No. 44/2019, paras. 74–75; and No. 45/2019, para. 76.

<sup>25</sup> See, for example, opinions No. 6/2016, No. 7/2016, No. 41/2016, No. 42/2016, No. 54/2016, No. 60/2016, No. 30/2017, No. 78/2017, No. 83/2017, No. 26/2018, No. 27/2018, No. 47/2018, No. 63/2018, No. 82/2018, No. 87/2018, No. 21/2019, No. 29/2019, No. 41/2019, No. 42/2019, No. 65/2019; No. 77/2019; No. 6/2020 and No. 14/2020.

<sup>26</sup> Opinion No. 47/2018, para. 85.

<sup>27</sup> A/HRC/13/42, para. 30; and opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; No. 9/2013, para. 40; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 36/2014, para. 21; No. 44/2016, para. 37; No. 60/2016, para. 27; No. 32/2017, para. 40; No. 33/2017, para. 102; No. 36/2017, para. 110; No. 51/2017, para. 57; and No. 56/2017, para. 72.



Group has previously made requests to the Government to undertake a country visit, and will continue to seek a positive response.

### **Disposition**

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

The deprivation of liberty of Ahmed Yasser Mahmoud Ahmed Hassan, being in contravention of articles 3, 6, 8, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 2 (3), 9 (1)–(4), 10 (1), 14 (1) and (3) (a)–(d) and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

52. The Working Group requests the Government of Egypt to take the steps necessary to remedy the situation of Mr. Hassan 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.

53. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Hassan 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. Hassan.

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

55. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

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

### **Follow-up procedure**

57. 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. Hassan has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Hassan;
- (c) Whether an investigation has been conducted into the violation of Mr. Hassan'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.

58. 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.

59. 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.

60. 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>28</sup>

*[Adopted on 25 November 2020]*

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<sup>28</sup> Human Rights Council resolution 42/22, paras. 3 and 7.