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

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-seventh session, 28 August–1 September 2023**

### **Opinion No. 36/2023 concerning Islam Nasser Abdulnabi Abdulmoneim, Anas Hassan Ahmed Shafiq Mohamed Abu Zakary, Abdurahman Osama Mohamed Alaqeed, Mostafa Ahmed Ali Shaaban, Mohamed Ezzat Taha Omran, Mohamed Nasr Abdulhamid Ibrahim, Gehad Ayed Soliman Ayad, Mohamed Salah Ahmed Bayomi, Ahmed Yossri Rabea Abdulghany and Gehad Abdulkhaiq Awda Saeed (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 51/8.

2. In accordance with its methods of work,<sup>1</sup> on 16 May 2023 the Working Group transmitted to the Government of Egypt a communication concerning Islam Nasser Abdulnabi Abdulmoneim, Anas Hassan Ahmed Shafiq Mohamed Abu Zakary, Abdurahman Osama Mohamed Alaqeed, Mostafa Ahmed Ali Shaaban, Mohamed Ezzat Taha Omran, Mohamed Nasr Abdulhamid Ibrahim, Gehad Ayed Soliman Ayad, Mohamed Salah Ahmed Bayomi, Ahmed Yossri Rabea Abdulghany and Gehad Abdulkhaiq Awda Saeed. 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);

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<sup>1</sup> [A/HRC/36/38](#).

(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).

## 1. Submissions

### (a) Communication from the source

4. Islam Nasser Abdalnabi Abdulmoneim is an Egyptian national born on 6 September 1990. He usually resides in Kerdasa, Giza Governorate, Egypt. He was an accountant for a medical supplies company.

5. Anas Hassan Ahmed Shafiq Mohamed Abu Zakary is an Egyptian national born on 6 February 1995. He is a university student and usually resides in Ain Shams, Cairo Governorate, Egypt.

6. Abdurahman Osama Mohamed Alaqeed is an Egyptian national born on 2 March 1987. He worked in a real estate marketing office and usually resides in Fakous, Al-Sharqiyah Governorate, Egypt.

7. Mostafa Ahmed Ali Shaaban is an Egyptian national who was 31 years old at the time of his arrest. He is an engineer and usually resides in Haram district, Giza Governorate, Egypt.

8. Mohamed Nasr Abdulhamid Ibrahim is an Egyptian national who was 28 years old at the time of his arrest. He used to be an engineer and is the brother-in-law of Mr. Shaaban.

9. Mohamed Ezzat Taha Omran is an Egyptian national who was 23 years old at the time of his arrest. He usually resides in the Fifth district, 6th of October City, Giza Governorate, Egypt.

10. Gehad Ayed Soliman Ayad is an Egyptian national who was 22 years old at the time of his arrest. He is a farmer and usually resides in Al-Sheikh Zuweid City, North Sinai Governorate, Egypt.

11. Mohamed Salah Ahmed Bayomi is an Egyptian national who was 33 years old at the time of his arrest. He is a salesman and usually resides in the Al-Agouza district, Giza Governorate, Egypt.

12. Ahmed Yossri Rabea Abdulghany is an Egyptian national who was 35 years old at the time of his arrest. He used to be a merchant. He usually resides in the Aswan Governorate, Egypt.

13. Gehad Abdulkhaiq Awda Saeed is an Egyptian national born on 14 June 1989. He is a farmer and usually resides in Al-Qantara Sharq, Isma'iliyah Governorate, Egypt.

#### (i) Context

14. According to the source, there exists a pattern in Egypt whereby the authorities re-imprison individuals who have been subjected to enforced disappearance or have continuously been detained under fabricated charges in political cases, to keep them detained indefinitely. The source also explains that individuals are subjected to acts of torture, mainly during the period of their enforced disappearance, to punish and coerce them into confessing to crimes that they did not commit in order to provide predetermined confessions to the prosecution. In such cases, the source contends that no actions were taken by the prosecution despite the individuals testifying about their enforced disappearance and torture.

15. The source argues that the present case is part of a large-scale crackdown by the authorities on the political opposition, on the basis of flimsy or absent evidence. The source reports that, in 2019, a whistle-blower and contractor posted videos online calling for protests

against the Government, amidst revelations about the financial management of State funds by government and military figures. Following those videos, several demonstrations reportedly took place. According to the source, between August and October 2019, many people were stopped randomly in the streets and arrested on the suspicion that they had taken part or would take part in those demonstrations. According to the source, the above-mentioned 10 individuals were charged with terrorism-related acts in order to silence them from speaking out about the violations that they had been exposed to and to engender fear among all citizens.

(ii) *Arrests and detentions*

a. Mr. Abdulmoneim

16. At approximately 2 p.m. on 24 September 2019, Mr. Abdulmoneim was reportedly returning from work when he was stopped near Al-Qasr al-Aini Hospital, Cairo. Police officers in uniforms and national security forces in plain clothes proceeded to arrest him in front of passers-by. The source notes that the officers failed to present a warrant or provide a reason for the arrest. They reportedly took Mr. Abdulmoneim's motorcycle and, from the date of his arrest until 9 April 2020, he was subjected to enforced disappearance in an unknown location. The source reports that, during that period, Mr. Abdulmoneim was subjected to physical and psychological torture in the form of electroshocks to different parts of his body and threats to arrest members of his family if he refused to confess to the crimes that he had been accused of.

17. During the enforced disappearance of Mr. Abdulmoneim, while his family was looking for him in police stations, one of his relatives reportedly saw his motorcycle in the car park of a police station. However, the officers at the police station denied that he was on the premises. When the relative returned the next day, the motorcycle was gone and the officers continued to deny that Mr. Abdulmoneim was on the premises. Reportedly, several complaints were sent to the Attorney General and the Ministry of the Interior, but all remain unanswered.

18. The source notes that the national security arrest report indicates that Mr. Abdulmoneim was arrested on 24 March 2020 in an apartment in Cairo. However, he was reportedly first brought before a court on 9 April 2020 when he appeared before the prosecution of the South Cairo Court and was accused of joining a banned group and trying to overthrow the Government. He was then placed in pretrial detention at Al Khalifa police station.

19. The source explains that, on 10 September 2020, Mr. Abdulmoneim was transferred to Tora Prison and, on 25 November 2020, he was included in pending case No. 520/2015 on the basis of similar charges.

20. In detention, Mr. Abdulmoneim was reportedly able to receive a visit from one family member once a month, through a class barrier, and for 20 minutes. The source reports that Mr. Abdulmoneim suffers from poor vision and made a request for medical glasses, which was denied. According to the source, the family of Mr. Abdulmoneim is unsure of whether the food and other necessities that they send him are delivered to him unless they are able to visit him.

21. On 8 December 2021, Mr. Abdulmoneim was reportedly added to case No. 520/2021 on the basis of similar charges. While the court had reportedly ordered his release in case No. 520/2015, those new accusations effectively renewed his pretrial detention for another 45 days, pending investigation.

22. According to the source, Mr. Abdulmoneim has not been referred to trial; in March 2022, he completed the maximum term for his pretrial detention in case No. 520/2021.

b. Mr. Abu Zakary

23. Reportedly, Mr. Abu Zakary was arrested on 25 September 2017 on Maher Badawi Street in Ain Shams, Cairo Governorate. The source reports that uniformed and plain-clothes police and national security officers arrested Mr. Abu Zakary without showing any warrant

or explaining the reasons for his arrest. Individuals who witnessed the arrest reported the incident to the family.

24. According to the source, from the day of Mr. Abu Zakary's arrest until November 2017, he was subjected to enforced disappearance in an unknown location believed to be in a mountainous area. During that time, he reportedly endured severe physical torture, such as electroshocks and beatings.

25. In November 2017, Mr. Abu Zakary was reportedly brought before the prosecution and charged, in case No. 148/2017, with belonging to a banned group, promoting a terrorist act and attempting to assassinate President Abdel Fattah al-Sisi. He was tried before a military court on 21 June 2019 and sentenced to three years in prison, which he served in Tora Reception Prison.

26. According to the source, the family of Mr. Abu Zakary was first able to see him in December 2017, while he was detained in Tora Reception Prison. While prison regulations allow visits twice a month, the source reports that, owing to the state of emergency in the country due to the coronavirus disease (COVID-19) pandemic, visits were reduced to once a month. However, Mr. Abu Zakary was reportedly denied any visit as a measure of reprisal against individuals accused of terrorist acts, such as himself.

27. The source notes that Mr. Abu Zakary was supposed to be released in 2020, following the end of his three-year prison sentence. However, from November 2019 until February 2020, Mr. Abu Zakary was reportedly subjected to another period of enforced disappearance in an unknown location. In February 2020, his relatives learned that he was being detained in the Ain Shams police department, where he remained detained for seven months, awaiting release. He was then subjected to another period of enforced disappearance from March to 13 July 2020, during which his relatives knew nothing about his whereabouts.

28. Reportedly, Mr. Abu Zakary's relatives later learned from his lawyer that the Supreme State Security Prosecution had charged him, in case No. 1752/2020, with joining a terrorist group and promoting a terrorist act. Due to his alleged enforced disappearance, he could not attend the legal proceedings and was sentenced in absentia to a year in prison. According to the source, Mr. Abu Zakary was also added to case No. 1915/2020 on the basis of similar charges and was sentenced by a criminal court to 15 years in prison on 28 March 2021. Following his appeal, he was acquitted in case No. 1915/2020, but remains, nonetheless, in detention at Tora Reception Prison.

29. The source reports concerns regarding Mr. Abu Zakary's health as the water given to the detainees is reportedly contaminated and not potable. The source notes that his kidneys have started to deteriorate and that he is denied medical care.

30. According to the source, the family of Mr. Abu Zakary sent several complaints to the Attorney General regarding his repeated enforced disappearances. Reportedly, no reply has ever been received.

c. Mr. Alaqeed

31. According to the source, at approximately 11 a.m. on 23 February 2014, Mr. Alaqeed went to report violations by the prison administration of the rights of one of his relatives detained in prison. Reportedly, after meeting with a State security officer, he was detained and taken to an unknown place.

32. The source reports that Mr. Alaqeed was subjected to enforced disappearance from 23 February to 24 April 2014, during which time he was subjected to severe torture, such as electroshocks all over his body, being stripped naked and being hung on the ceiling by his feet. The source notes that during the disappearance of Mr. Alaqeed, his house was raided and searched without the presence of its inhabitants and without a search warrant.

33. On 24 April 2014, Mr. Alaqeed was reportedly transferred to Tora Maximum Security Prison and detained for three years. After a court ordered his release, he was transferred to Al Khalifa police station, where he was detained for two months. The source reports that, on 6 June 2017, Mr. Alaqeed was secretly transferred to a police station and held incommunicado until 27 August 2017 before being added to case No. 760/2017 on charges

of belonging to a terrorist group. Mr. Alaqeed was reportedly sentenced to three years in prison in that case and transferred back to Tora Prison, where he was held in solitary confinement until his release on 15 August 2018.

34. According to the source, on 10 February 2019, Mr. Alaqeed attended a probation session at the Police Institute court in Tora Prison and was arrested by national security forces without being shown an arrest warrant. He was reportedly taken to an unknown location, which was later discovered to be the premises of the National Security Agency in Abbassia. According to the source, Mr. Alaqeed was forcibly disappeared for four months until 13 June 2019 when he appeared at the Fifth Settlement police station, where he remained detained for a month after being added to case No. 800/2019 on charges of belonging to and financing a terrorist organization. As a result of those new charges, he was reportedly transferred to Tora Prison, where he remains detained.

35. The source reports that relatives of Mr. Alaqeed received death threats and were harassed by agents of the National Security Agency. Nevertheless, they filed complaints, including to the Ministry of the Interior, the Office of the President and the Attorney General, on 14 February 2019, regarding the detention of Mr. Alaqeed.

d. Mr. Shaaban

36. Reportedly, on 24 August 2019, several agents of the National Security Agency raided the home of a relative of Mr. Shaaban and seized the individual's phone and the phone of the individual's family member without showing a search warrant. Mr. Shabaan was allegedly arrested at the relative's home, without being shown an arrest warrant or having the reasons for his arrest explained, and taken to an unknown location where he was subjected to enforced disappearance for a few days. During that period, Mr. Shabaan was reportedly subjected to severe torture, including being stripped, beaten and electrocuted until he fainted, to gain information about one of his relatives. It was later discovered that he had been taken to the premises of the National Security Agency.

37. According to the source, as a result of many hours of torture, Mr. Shaaban's eye bled and he could not move his hand or leg. He was reportedly taken to another location, where he was examined by a doctor who concluded that he needed urgent surgery. Nonetheless, the source reports that Mr. Shaaban remained the subject of enforced disappearance for three months. He was then taken to the premises of the National Security Agency in Al-Minya Governorate, where he remained until 26 January 2023, when he was brought before the Supreme State Security Prosecution.

38. The source reports that Mr. Shabaan was charged, in case No. 145/2023, with joining a terrorist group. Reportedly, although he testified that he had been subjected to enforced disappearance for more than three years, the prosecution disregarded his testimony and his request to be examined by a forensic doctor.

39. The source notes that the family's many complaints to the Public Prosecutor and the Minister of the Interior remain unanswered.

e. Mr. Omran and Mr. Ibrahim

40. According to the source, Mr. Omran and Mr. Ibrahim were both arrested by agents of the National Security Agency on 25 August 2019 in Marina Gardens, North Coast City. They were reportedly not shown an arrest warrant and were subjected to enforced disappearance for more than three years. It was later discovered that they had been held on the premises of the National Security Agency in Sheikh Zayed City.

41. On 24 January 2023, Mr. Omran and Mr. Ibrahim were reportedly brought before the Supreme State Security Prosecution and charged, in case No. 145/2023, with joining a terrorist group. The prosecution reportedly disregarded their prolonged enforced disappearance.

42. The source notes that the families of both Mr. Omran and Mr. Ibrahim sent official complaints to the Public Prosecutor and the Minister of the Interior, but received no response.

43. Reportedly, Mr. Omran is currently detained in Badr I Prison and Mr. Ibrahim in Kilo 10.5 Prison. According to the source, they are allowed to receive visits from their families but not from their lawyers.

f. Mr. Ayad

44. The source reports that Mr. Ayad was arrested in June 2021 in Al-Qantara City, Isma‘iliyah Governorate, while he was visiting one of his relatives. He was reportedly not shown an arrest warrant or explained the reasons for his arrest and was taken to the premises of the National Security Agency in Isma‘iliyah, where he was questioned about a relative. According to the source, after a month, he was moved to what was later discovered to be the premises of the National Security Agency in Arish, where he remained under enforced disappearance for more than a year.

45. On 5 February 2023, Mr. Ayad was reportedly brought before the Supreme State Security Prosecution and charged, in case No. 203/2023, with joining and funding a terrorist group. The source notes that the prosecution disregarded his enforced disappearance and that his family had sent an official complaint to the Ministry of the Interior, which remains unanswered.

46. Reportedly, Mr. Ayad is currently detained in Badr I Prison, where he is allowed to receive visits from his family but not from his lawyer.

g. Mr. Bayomi

47. Mr. Bayomi was reportedly arrested on 3 January 2020 at his home in the Al-Gouza district of Giza without being shown any arrest warrant or having the reasons for his arrest explained. He was reportedly subjected to enforced disappearance for three years. It was later discovered that he had been held in the premises of the National Security Agency in Sheikh Zayed. On 31 January 2023, he was brought before the Supreme State Security Prosecution and charged, in case No. 192/2023, with joining a terrorist group.

48. According to the source, the prosecution disregarded the testimony of Mr. Bayomi that he had been subjected to enforced disappearance. Furthermore, the official complaints of Mr. Bayomi’s family to the Public Prosecutor allegedly remain unanswered.

49. Reportedly, Mr. Bayomi is currently detained in Badr I Prison, where he is allowed to receive visits from his family but not from his lawyer.

h. Mr. Abdulghany

50. Mr. Abdulghany was reportedly arrested in the Aswan Governorate on 16 December 2019, without being shown an arrest warrant. He was allegedly subjected to enforced disappearance for three years at what was later discovered to be the premises of the National Security Agency in Aswan. According to the source, on 22 December 2022, he was brought before the Supreme State Security Prosecution, which disregarded his claims concerning enforced disappearance and charged him, in case No. 2572/2022, with joining and funding a terrorist group.

51. Mr. Abdulghany’s relatives reportedly sent official complaints to the Public Prosecutor and the Minister of the Interior but received no reply.

52. According to the source, Mr. Abdulghany is also detained in Badr I Prison, where he is allowed to receive visits from his family but not from his lawyer.

i. Mr. Saeed

53. According to the source, Mr. Saeed was stopped at a police checkpoint on 10 December 2018, near his place of residence in Isma‘iliyah Governorate. Reportedly, the police officer asked to check Mr. Saeed’s identification card and, upon discovering that he had been born in North Sinai, arrested him without showing him an arrest warrant or providing him with the reasons for his arrest. Mr. Saeed was driven to the Al-Qantara Sharq police station and taken, the next day, to the premises of the National Security Agency in

Arish. There, he was reportedly questioned about the conditions in North Sinai and about whether he had any relations with terrorist groups in Sinai.

54. The source reports that Mr. Saeed was subjected to enforced disappearance for three years before being transferred to Arish Central Prison, where he remained detained for approximately two and a half years.

55. Reportedly, on 19 March 2023, Mr. Saeed was brought for the first time before the Supreme State Security Prosecution and charged, in case 1391/2022, with joining and funding a terrorist group.

(iii) *Access to legal representation*

56. The source notes that, while Mr. Abdulmoneim, Mr. Abu Zakary and Mr. Alaqeed each had a lawyer when appearing before the prosecution, their lawyers were only present for formalities as they did not have access to their client's complete file and were not allowed to defend their clients in court. The source adds that confidential meetings and visits are not allowed in prison.

57. The source explains that the seven other individuals had legal representation during their appearances before the prosecution, but are denied any confidential meetings with or visits from their lawyers in their places of detention.

(iv) *Legal analysis*

58. The source argues that the 10 individuals have been detained arbitrarily under categories I and III.

a. *Category I*

59. The source recalls that articles 3 and 9 of the Universal Declaration of Human Rights protect the right to liberty. Furthermore, in its general comment No. 35 (2014), the Human Rights Committee stated that any person arrested should be informed, at the time of arrest, of the reasons for the arrest, and that that requirement applied broadly to the reasons for any deprivation of liberty.

60. The source adds that principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that all those arrested should be informed at the time of the arrest of the reason for the arrest and should be promptly informed of the charges against them. The source also notes that article 14 (3) of the Arab Charter on Human Rights, which has been ratified by Egypt, requires that all those arrested should be informed of the reasons for the arrest and the charges against them.

61. The source alleges that none of the individuals were shown an arrest warrant or informed of the reasons for their arrest at the time of their arrest.

62. In addition, the source recalls that the prohibition of enforced disappearance is non-derogable, even during states of emergency. The source notes that, in accordance with articles 17 and 18 of the International Convention for the Protection of All Persons from Enforced Disappearance, persons deprived of their liberty must only be held in officially recognized places of detention and States must ensure that no one is held in secret detention and must provide the detainee's family and lawyer with accurate information about the person's detention.

63. The source alleges that all 10 individuals were subjected to long periods of enforced disappearance before being brought before the prosecution and that their families were prevented from knowing their fate and whereabouts.

b. *Category III*

64. The source contends that the 10 individuals were denied the right to a trial by a competent, independent and impartial tribunal established by law. The source notes that the Supreme State Security Prosecution is a particular branch of the Public Prosecution with more powers to detain suspects. When indicted, defendants are reportedly referred to one of three special courts: emergency State security courts, terrorism courts or military courts.

65. The source recalls that, in accordance with principle 5 of the Basic Principles on the Independence of the Judiciary and sections A (4) (e) and L (c) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, special courts should not be created to displace the jurisdiction of ordinary courts. The source adds that, when special courts are created, they should be independent, impartial and respect fair trial standards. The source notes that, while the Covenant and regional human rights treaties do not prohibit the establishment of special or specialized courts, they require such courts to be competent, independent and impartial. The source recalls general comment No. 13 (1984), in which the Human Rights Committee raised concerns regarding the nature of military or special courts and stated that, quite often, the reason for the establishment of such courts was to enable exceptional procedures to be applied that did not comply with normal standards of justice.

66. The source contends that special courts must remain exceptional. In particular, the source alleges that fair trial rights are more likely to be violated in proceedings before such courts, including the right to a trial before an independent and impartial court, the prohibition of evidence obtained under torture or other ill-treatment and the right to appeal to a higher tribunal.

67. In the cases at hand, the source alleges that the Supreme State Security Prosecution, which investigated them, is a special form of prosecution that refers cases to special security-related courts, in which standards regarding a fair trial, evidence and due process are disregarded. The source contends that such courts are used by the Government to intimidate its opponents and prevent them from enjoying their freedoms and rights.

68. Furthermore, the source contends that Mr. Shaaban, Mr. Abdulmoneim, Mr. Alaqeed and Mr. Abu Zakary were all subjected to severe acts of torture during the time that they were disappeared. The source argues that such practices violate their right, which is guaranteed under article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to be free from any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person. The source recalls that the right to be free from torture and other ill-treatment or punishment is absolute, applies in all circumstances and may never be restricted, including in times of war and during states of emergency. The source adds that no exceptional circumstances, including threats of terrorism or other violent crime, may be invoked to justify torture or other ill-treatment, and that such a prohibition applies irrespective of the offence allegedly committed by the person.

## **(b) Response from the Government**

69. On 16 May 2023, 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 it, by 17 July 2023, with detailed information about the situation of the 10 individuals and clarify the legal provisions justifying their 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.

70. The Government requested an extension in accordance with paragraph 16 of the Working Group's methods of work, which was granted with a new deadline of 17 August 2023. The Working Group regrets that, despite this, it has received no reply from the Government.

## **2. Discussion**

71. 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.

72. In determining whether the detention of Islam Nasser Abdulnabi Abdulmoneim, Anas Hassan Ahmed Shafiq Mohamed Abu Zakary, Abdurahman Osama Mohamed Alaqeed, Mostafa Ahmed Ali Shaaban, Mohamed Ezzat Taha Omran, Mohamed Nasr Abdulhamid Ibrahim, Gehad Ayed Soliman Ayad, Mohamed Salah Ahmed Bayomi, Ahmed Yossri Rabea Abdulghany and Gehad Abdulkhaiq Awda Saeed is 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>2</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

73. The source has argued that the detention of the 10 individuals is arbitrary and falls under categories I and III. The Working Group shall proceed to examine these in turn.

**(a) Category I**

74. The source has argued that all 10 individuals were detained without an arrest warrant. Mr. Abdulmoneim was reportedly arrested on 24 September 2019 and not informed of the reasons for his arrest or the charges against him until 9 April 2020. In the case of Mr. Abu Zakary, he was allegedly arrested on 25 September 2017 and not presented with any reasons for his arrest or charges against him until November 2017. In the case of Mr. Alaqeed, after being arrested on 23 February 2014, it remains unclear when or if he was informed of the reasons for his arrest until he was further detained for three years; nevertheless, after further periods of enforced disappearance, he was again arrested on 10 February 2019 without an arrest warrant. Mr. Shaaban, Mr. Omran and Mr. Ibrahim were reportedly arrested on 24 September 2019 and not informed of the reasons for their arrests or the charges against them. They were then reportedly subjected to enforced disappearance for more than three years. The same absence of any arrest warrant or information about the reasons for arrest and detention is reported in the case of Mr. Ayad, arrested in June 2021, Mr. Bayomi, arrested on 3 January 2020, Mr. Abdulghany, arrested on 16 December 2019, and Mr. Saeed, arrested on 10 December 2018.

75. The Working Group recalls that a detention is considered arbitrary under category I if it lacks a legal basis. As it has previously stated, for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.<sup>3</sup> This is typically<sup>4</sup> done through an arrest warrant or arrest order (or equivalent document).<sup>5</sup> In addition, 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, the status and tenure of which should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles. Noting the lack of any response from the Government, the Working Group finds that this was denied to all 10 individuals mentioned above, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.

76. Moreover, it is reported that, following their respective arrests, all 10 individuals were subjected to enforced disappearance for different periods, ranging from several months to several years. These allegations were put to the Government, which has chosen not to contest them. The Working Group therefore finds that the 10 individuals were subjected to enforced disappearance following their respective arrests, in breach of article 9 (1) of the Covenant. Enforced disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention.<sup>6</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 their right to be recognized as persons

<sup>2</sup> A/HRC/19/57, para. 68.

<sup>3</sup> In cases of in flagrante delicto, the opportunity to obtain a warrant will not be typically available.

<sup>4</sup> Human Rights Committee, general comment No. 35 (2014), para. 23. See also opinions No. 3/2018, para. 43; No. 30/2018, para. 39; and No. 20/2023, para. 67. See further Arab Charter on Human Rights art. 14 (1).

<sup>5</sup> Human Rights Committee, general comment No. 35 (2014), para. 27; and opinion No. 30/2017, paras. 58 and 59.

<sup>6</sup> Human Rights Committee, general comment No. 35 (2014), para. 17. See also opinions No. 5/2020, No. 6/2020, No. 11/2020, No. 13/2020, No. 77/2020, No. 38/2021, No. 25/2022 and 20/2023.

before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.<sup>7</sup>

77. Furthermore, the Working Group recalls that article 9 (2) of the Covenant requires that all those who are arrested are not only informed of the reasons for their arrest, but also promptly informed of any charges against them. The right to be promptly informed of charges concerns notice of criminal charges and, as noted by the Human Rights Committee 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>8</sup>

78. Lacking any explanation from the Government on that issue, the Working Group cannot but conclude that the authorities violated article 9 (2) of the Covenant in respect of all 10 individuals.

79. Furthermore, as the Working Group has consistently stated,<sup>9</sup> in order to establish that detention is indeed legal, those detained have the right to challenge the legality of their detention before a court, as envisaged by article 9 (4) of the Covenant. 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>10</sup> That right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty<sup>11</sup> and 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 arrest, house arrest, solitary confinement, detention for vagrancy or drug addiction and detention of children for educational purposes.<sup>12</sup>

80. The Working Group finds that all 10 individuals were denied the right to challenge the legality of their detention, in violation of article 9 (4) of the Covenant.

81. The Working Group considers that judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis. Given that the 10 individuals were not able to challenge their continued detention, their 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.

82. Lastly, the Working Group recalls that it is a well-established norm of international law that pretrial detention should be the exception and not the rule and that it should be ordered for as short a time as possible.<sup>13</sup> Article 9 (3) of the Covenant provides that it should not be the general rule that persons awaiting trial should be detained, but release may be subject to guarantees to appear for trial or at any other stage of the judicial proceedings. It

<sup>7</sup> See article 1 of the Declaration on the Protection of All Persons from Enforced Disappearance, in which any act of enforced disappearance is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in that field; and 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. 6/2020, para. 43; No. 11/2020, para. 41; and No. 20/2023, para. 69.

<sup>8</sup> Human Rights Committee, general comment No. 35 (2014), para. 29.

<sup>9</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.

<sup>10</sup> [A/HRC/30/37](#), paras. 2 and 3.

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

<sup>12</sup> *Ibid.*, annex, guideline 1, para. 47 (a).

<sup>13</sup> Opinions No. 28/2014, para. 43; No. 49/2014, para. 23; No. 57/2014, para. 26; No. 1/2020, para. 53; and No. 8/2020, para. 54. See also Human Rights Committee, general comment No. 35 (2014), para. 38; and [A/HRC/19/57](#), paras. 48–58.

follows that liberty is recognized as a principle and detention as an exception in the interests of justice. Moreover, according to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge should be brought promptly before a judge. 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 the arrest and any longer delay must remain absolutely exceptional and be justified under the circumstances.<sup>14</sup> In the present case, the 10 individuals do not appear to have been brought before a judicial authority within 48 hours of arrest. Rather, they were arrested and subjected to long periods of enforced disappearance. As regards the periods of pretrial detention of the 10 individuals thus far: Mr. Abdulmoneim, Mr. Zakary, Mr. Shaaban, Mr. Omran, Mr. Ibrahim and Mr. Abdulghany have each been detained for approximately four years; Mr. Alaheed three years on the basis of the initial charges against him and now an additional four years in respect of new charges; Mr. Ayad approximately two years; Mr. Bayomi approximately three years; and Mr. Saeed close to five years. The Working Group thus finds that the authorities violated article 9 (3) of the Covenant in respect of all 10 individuals.

83. The Working Group notes the source’s uncontested allegations that the detention of the 10 individuals was repeatedly ordered and renewed by the Supreme State Security Prosecution, the same authority that led the investigation. Recalling the views of the Human Rights Committee expressed in its general comment No. 35 (2014), the Working Group considers that such prosecuting authorities cannot be considered independent, objective and impartial in ensuring the proper exercise of judicial power.<sup>15</sup> The Working Group finds that the failure by the authorities to bring the 10 individuals before an independent, objective and impartial judicial authority violates article 9 (3) of the Covenant.

84. Noting all the above, the Working Group considers that the arrests and pretrial detention of the 10 individuals are contrary to articles 3 and 9 of the Universal Declaration of Human Rights, article 9 of the Covenant and principles 11, 37 and 38 of the Body of Principles.

85. Accordingly, the Working Group considers that the arrests and subsequent detention of all 10 individuals are arbitrary under category I.

**(b) Category III**

86. The Working Group will now consider whether the alleged violations of the right of the 10 individuals to a fair trial and due process were grave enough so as to render their deprivation of liberty arbitrary under category III.

87. The Working Group notes that all 10 individuals were, as previously mentioned, held under enforced disappearance for periods ranging from several months to several years following their arrests by the authorities. As a consequence, they were not able to prepare their defence because they were placed outside the protection of the law and were not given access to lawyers. The Working Group finds that, in addition to its finding above, holding the 10 individuals incommunicado also violated their right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant. It is also contrary to their right to contact with the outside world under principles 15, 16 (1) and 19 of the Body of Principles and rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

88. The Working Group recalls that article 14 (3) (b) of the Covenant guarantees the right of all persons charged with a criminal offence to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. Furthermore, principle 9 and guideline 8 of 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 provide that persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention,

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

<sup>15</sup> Human Rights Committee, general comment No. 35 (2014), para. 32. See also opinions No. 53/2022, para. 64; and No. 12/2023, para. 93.

including immediately after apprehension, and must be promptly informed of this right upon apprehension; and access to legal counsel should not be unlawfully or unreasonably restricted.

89. The Working Group notes that, according to the source, the 10 individuals did not have an adequate opportunity to consult their lawyers in advance to challenge the legality of their detention. The source alleges that none of the 10 individuals are able to have confidential meetings with or visits from their lawyer in detention. Those allegations were put to the Government, which chose not to contest them. The Working Group therefore finds that the authorities violated article 14 (3) (b) and (d) of the Covenant in respect of all 10 individuals.

90. Moreover, the Working Group expresses its gravest concern at the allegations of torture of Mr. Shaaban, Mr. Abdulmoneim, Mr. Alaqeed and Mr. Abu Zakary, which appear to constitute violations of articles 5 and 25 (1) of the Universal Declaration of Human Rights and articles 7 and 10 (1) of the Covenant. In the Working Group's view, not only is torture a grave violation of human rights per se, but it also undermines the ability of persons to defend themselves and hinders their exercise of the right to a fair trial, especially in the light of the right to be presumed innocent under article 14 (2) of the Covenant and the right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant. The treatment described also 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, the Body of Principles and the Nelson Mandela Rules.

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

92. Given the foregoing, the Working Group concludes that the violations of the right of the 10 individuals to a fair trial and due process are of such gravity as to give their deprivation of liberty an arbitrary character under category III.

**(c) Concluding remarks**

93. The Working Group wishes 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 that denial of medical assistance constitutes a violation of the Nelson Mandela Rules, in particular rules 18, 22, 24, 25, 27, 30 and 42, as well as principle 24 of the Body of Principles.

94. The Working Group notes that the present opinion is only one of many opinions in recent years in which it has found the Government to be in violation of its international human rights obligations.<sup>16</sup> It 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>17</sup> 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>18</sup> The Working Group has alluded to this possibility in its past cases concerning Egypt.

<sup>16</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, 14/2020, No. 80/2020, No. 45/2021, No. 79/2021, No. 83/2021, No. 23/2022, No. 34/2022, No. 53/2022, No. 60/2022, No. 12/2023, No. 20/2023 and No. 31/2023.

<sup>17</sup> Opinions No. 47/2018, para. 85; and No. 14/2020, para. 74.

<sup>18</sup> A/HRC/13/42, para. 30. See also, for example, opinions No. 1/2011, para. 21; No. 51/2017, para. 57; and No. 56/2017, para. 72.

### 3. Disposition

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

The deprivation of liberty of Islam Nasser Abdalnabi Abdulmoneim, Anas Hassan Ahmed Shafiq Mohamed Abu Zakary, Abdurahman Osama Mohamed Alaqeed, Mostafa Ahmed Ali Shaaban, Mohamed Ezzat Taha Omran, Mohamed Nasr Abdulhamid Ibrahim, Gehad Ayed Soliman Ayad, Mohamed Salah Ahmed Bayomi, Ahmed Yossri Rabea Abdulghany and Gehad Abdulkhaiq Awda Saeed, being in contravention of articles 3, 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 9, 10, 14 and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

96. The Working Group requests the Government of Egypt to take the steps necessary to remedy the situation of the 10 individuals 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.

97. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the 10 individuals immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

98. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the 10 individuals and to take appropriate measures against those responsible for the violation of their rights.

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

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

### 4. Follow-up procedure

101. 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. Abdulmoneim, Mr. Abu Zakary, Mr. Alaqeed, Mr. Shaaban, Mr. Omran, Mr. Ibrahim, Mr. Ayad, Mr. Bayomi, Mr. Abdulghany and Mr. Saeed have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to them;

(c) Whether an investigation has been conducted into the violation of their 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.

102. 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.

103. 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 of any failure to take action.

104. 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>19</sup>

*[Adopted on 28 August 2023]*

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Advance Edited Version

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<sup>19</sup> Human Rights Council resolution 51/8, paras. 6 and 9.