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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-ninth session, 18–27 March 2024

Opinion No. 17/2024 concerning Salwa Hassan Salem Ali (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,[1] on 28 July 2023 the Working Group transmitted to the Government of Egypt a communication concerning Salwa Hassan Salem Ali. The Government replied to the communication on 25 September 2023. 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).

* Miriam Estrada Castillo did not participate in the discussion of the case.
[1] A/HRC/36/38.

1. Submissions

(a) Communication from the source

4. Salwa Hassan Salem Ali is a national of Egypt born on 2 February 1972. She is a widow, the mother of five children and usually resides in Al-Janayen, Suways Governorate. She is reportedly related to an individual who was arrested in October 2017.

(i) Context

5. According to the source, over the past decade the number of women detained in prison has increased exponentially in Egypt, resulting in poor detention conditions, such as overcrowding and a lack of proper ventilation, sanitation and medical services.

6. The source reports that Ms. Ali's arrest should be understood in the context of a broader pattern of detentions of innocent civilians, aimed at instilling fear and discouraging the emergence of voices that are critical of the current Government and that would threaten its security and stability. The source alleges that the 2015 amendments to the counter-terrorism law (No. 94 of 2015) significantly broadened the definitions of the terms "terrorist entity" and "terrorist act", which has resulted in a proliferation of arbitrary detentions and enforced disappearances and a widespread crackdown on ordinary citizens' fundamental freedoms. There are no empirical or evidentiary grounds for the terrorism charges brought against Ms. Ali, which are similar to those used in the cases of thousands of other detainees in order to exercise control over society. In the past nine years, the human rights situation in Egypt has deteriorated to a level unseen in the country's modern history. Multiple violations of human rights, including torture, enforced disappearance and extrajudicial killings, are committed by the State with total impunity under the pretext of countering terrorism.

7. Reportedly, Ms. Ali was held in Al-Qanater prison for women until she was transferred to the Tenth of Ramadan Prison in May 2023. The source reports that Al-Qanater prison for women is especially notorious for its inhuman detention conditions and the ill-treatment meted out there to female detainees through violations of bodily autonomy, including strip searches, beatings and insults.

(ii) Arrest and detention

8. The source reports that at 2 p.m. on 24 October 2020, Ms. Ali's house was raided and searched by State security forces and police officers, some of whom were in uniform and others in plain clothes. The authorities did not present a search warrant. They proceeded to arrest Ms. Ali in front of her relatives, without presenting an arrest warrant or any legal documentation justifying her arrest. Reportedly, the officers claimed that they would interrogate Ms. Ali for an hour and that she would be released immediately afterwards.

9. According to the source, following her arrest, Ms. Ali was forcibly disappeared in an unofficial and secret detention location for three months, from 24 October 2020 to 18 January 2021. Ms. Ali's family filed official complaints requesting information on her whereabouts from the Attorney General and the head of the Human Rights Office in the Ministry of the Interior. Their complaints reportedly remain unanswered. During her enforced disappearance, State security forces subjected Ms. Ali to physical and psychological torture, including beatings and electrocution. In addition, in order to exert psychological pressure on her, the authorities subjected one of Ms. Ali's close relatives to enforced disappearance for a week. Such treatment was inflicted with the aim of forcing Ms. Ali to confess that she was involved in the financing of terrorist groups.

10. Ms. Ali first appeared before the prosecution on 18 January 2021. Allegedly, the authorities did not acknowledge the period of her enforced disappearance and recorded her arrest as having occurred on that day. She was reportedly charged in case No. 810 of 2020 with joining a banned group and financing a terrorist organization.

11. The source alleges that Ms. Ali had no access to a lawyer during her enforced disappearance, until her first appearance before the prosecution. This dramatically hampered

her access to effective legal counsel and casts doubt upon the possibility of guaranteeing Ms. Ali a fair trial.

12. The source reports that Ms. Ali was transferred from Al-Qanater prison for women to Tenth of Ramadan Prison in May 2023. Ms. Ali's family was first able to visit her on 4 February 2021 in Al-Qanater prison. The last visit she received from her family reportedly took place on 15 June 2023.

13. The source reports that Ms. Ali suffers from severe cartilage pain and from sciatica. However, she is reportedly only given painkillers and is unable to access proper treatment. While she was detained in Al-Qanater prison, the prison administration refused to allow her the vascular surgery she needs. It is not known whether she will be able to undergo this surgery given her prison transfer in May 2023.

(iii) Legal analysis

14. The source argues that the arrest and detention of Ms. Ali are arbitrary under categories I and III of the working methods of the Working Group.

a. Category I

15. According to the source, the arrest of Ms. Ali is arbitrary under category I in so far as it is illegal and she was subjected to enforced disappearance.

16. The source argues that Ms. Ali was arrested without being shown an arrest warrant or informed of the legal basis for her arrest. It notes that article 9 of the Universal Declaration of Human Rights prohibits arbitrary arrests and that such arrests violate article 3 of the Universal Declaration of Human Rights. It recalls that article 9 of the Covenant enshrines the right to liberty and security of person and the right to be free from arbitrary detention. As the Human Rights Committee established in its general comment No. 35 (2014), the requirement in article 9 (2) of the Covenant that anyone who is arrested must be informed, at the time of the arrest, of the reasons for the arrest, applies broadly to the reasons for any deprivation of liberty (para. 24). The source also recalls that principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment stipulates that anyone who is arrested must be informed at the time of arrest of the reason for the arrest and must be promptly informed of any charges against him or her. Similarly, article 14 (3) of the Arab Charter on Human Rights provides that anyone who is arrested must be informed, at the time of arrest, of the reasons for the arrest and must be promptly informed of any charges against him or her. Article 6 of the African Charter on Human and Peoples' Rights also protects the right of every individual to liberty and security of person, emphasizing that no one may be deprived of their freedom except for reasons and conditions previously laid down by law, and in particular, that no one may be arbitrarily arrested or detained.

17. The source submits that the arrest of Ms. Ali without any warrant and without explaining the reasons for her arrest violated her right to liberty and security. It further alleges that her detention is arbitrary in so far as the only evidence existing against Ms. Ali is her confession, which was obtained under torture.

18. In addition, the source contends that Ms. Ali was subjected to enforced disappearance for three months, from 24 October 2020 to 18 January 2021. It explains that the Egyptian authorities systematically and routinely subject individuals to enforced disappearance. Allegedly, when Ms. Ali was brought before the prosecution on 18 January 2021, her enforced disappearance was not acknowledged. Ms. Ali's whereabouts between 24 October 2020 and 18 January 2021 remain undisclosed to this day.

19. The source recalls that the right not to be enforcedly disappeared is a non-derogable right. It notes that articles 17 and 18 of the International Convention for the Protection of All Persons from Enforced Disappearance provide that any person deprived of liberty must be held solely in officially recognized and supervised places of deprivation of liberty, that no one can be held in secret detention and that States parties must provide the detainee's family and lawyer with accurate information on the detention.

20. As a result, the source concludes that the enforced disappearance of Ms. Ali violated her right to liberty and security of person. Therefore, the source considers that Ms. Ali's detention is arbitrary under category I.

b. Category III

21. The source argues that the detention of Ms. Ali is arbitrary under category III in so far as she did not benefit from effective legal assistance, she was subjected to torture and other cruel and inhuman treatment and her right to a fair trial was violated.

22. The source recalls that, in accordance with principle 15 of the Body of Principles, communication of the detained or imprisoned individual with the outside world, and in particular the individual's family or counsel, must not be denied for more than a matter of days. Furthermore, in its general comment No. 32 (2007), the Human Rights Committee stated that the right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. Furthermore, lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter (para. 34).

23. In addition, the source notes that principle 2 of the Basic Principles on the Role of Lawyers guarantees the right to effective assistance of legal counsel by requiring that the competent authorities ensure lawyers' access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Moreover, such access should be provided at the earliest appropriate time. The effectiveness of legal counsel is fundamentally related to the principle of equality of arms, as enshrined in the Universal Declaration of Human Rights, and the right of detainees to be given the time and facilities necessary to prepare and present their defence with counsel.

24. The source submits that Ms. Ali was not allowed to receive visits from her lawyer during her enforced disappearance and she was denied visits while in detention, in violation of her right to access and to have private communications and meetings with her counsel.

25. Furthermore, the source recalls that article 7 of the Covenant enshrines the right to be free from torture and cruel, inhuman or degrading treatment and punishment. Similarly, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment enshrines the right to be free from any act that could cause severe pain or suffering, whether physical or mental, and that is inflicted intentionally on a person. The Committee against Torture has stated that the right to freedom from torture and other ill-treatment or punishment is absolute, applies in all circumstances irrespective of the offence allegedly committed and may never be restricted, including in times of war or states of emergency.[2] The source notes that no exceptional circumstances, including threats of terrorism or other violent crime, may be invoked to justify torture or other ill-treatment.

26. The source alleges that Ms. Ali underwent physical and psychological torture at the hands of State security forces. The authorities forcibly disappeared a close family member of hers in order to exert psychological pressure on her and she was subjected to beatings and electrocution. Ms. Ali was tortured so that she would confess that she was involved in the financing of terrorist groups.

27. According to the source, despite the fact that Ms. Ali's confession was obtained under torture, the State prosecution admitted it into evidence to order the indefinite detention of Ms. Ali. This casts doubt upon the court's independence, impartiality and neutrality, which constitute fundamental pillars of a fair trial. Statements obtained under duress are unreliable. Article 15 of the Convention against Torture forbids the admission into evidence of confessions obtained under torture. That prohibition is central to the right to a fair trial and the right not to incriminate oneself. The source concludes that by admitting into evidence Ms.

[2] Committee against Torture, general comment No. 4 (2017), para. 8.

Ali's confession, even though it was obtained under duress, the authorities violated her right to a fair trial under article 14 of the Covenant.

28. As a result, the source argues that the detention of Ms. Ali is arbitrary under category III.

(b) Response from the Government

29. On 28 July 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, by 26 September 2023, detailed information about the current situation of Ms. Ali and to clarify the legal provisions justifying her continued detention, as well as the compatibility of the detention with the obligations of Egypt under international human rights law, particularly with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Egypt to ensure Ms. Ali's physical and mental integrity.

30. On 25 September 2023, the Government replied to the communication denying the allegations from the source and offering explanations of the chronology of events and its legal position.

31. The Government explains that Ms. Ali was apprehended based on a warrant issued by the public prosecution to arrest her and search her person and residence, in connection with case No. 865 of 2020, a high-level national security case. According to the Government, she was subsequently presented to the public prosecution, which is an impartial and independent judicial authority that operates under the supervision of the Attorney General in accordance with the provisions of the Constitution and the law.

32. The Government asserts that Ms. Ali was interrogated in accordance with the provisions of article 36 of the Criminal Procedure Code and in compliance with the international treaties signed by Egypt, particularly article 9 (2) and (3) of the Covenant. Prior to the interrogation, all legal safeguards for individuals undergoing such procedures were reportedly observed. The Government contends that Ms. Ali was informed of the charges against her and was afforded a full opportunity to present her substantive defence, as required by article 124 of the Criminal Procedure Code.

33. The Government asserts that the charges against Ms. Ali include involvement in a terrorist group with the intent of carrying out terrorist activities, spreading fear among citizens, damaging public interest, obstructing the application of laws and the Constitution, hindering State institutions from performing their duties and inciting chaos, all while having knowledge of the group's objectives. It adds that Ms. Ali has been charged with committing a terrorism financing crime by providing financial support and using the profits of several economic entities to support the terrorist group. Under article 12 (2) of the counter-terrorism law, joining terrorist organizations in any form and participating in any way, including by providing financial support, disseminating information or promoting their violent purposes, constitute a crime, which the Government argues aligns with the international obligations of Egypt regarding criminalizing assistance to terrorist activities.

34. According to the Government, the public prosecution ensured that Ms. Ali had the right to express her defence and make statements during the investigations, and lawyers were present with her during the investigation procedures as mandated by the Criminal Procedure Code. The public prosecution issued a decision to detain her on a provisional basis pending the investigations. Subsequently, periodic sessions were reportedly held to reconsider the extension of her provisional detention before the competent judge, during which she and her defence were given the opportunity to make oral arguments, present requests and raise objections, in accordance with the appropriate legal procedures and timelines as stipulated in articles 134, 142 and 143 of the Criminal Procedure Code.

35. The Government adds that the decisions to detain Ms. Ali in pretrial detention were based on objective considerations, within the discretionary powers of the public prosecution, including concerns about potential harm to the investigation process, such as influencing victims and witnesses, tampering with physical evidence and clues, and the possibility of making agreements with other offenders to alter or obscure the truth.

36. The Government argues that the warrant issued by the public prosecution for Ms. Ali's arrest was based on sound legal grounds, in accordance with legal provisions. Ms. Ali was reportedly presented to the public prosecution within 24 hours of her arrest, in accordance with the legal period defined under the Criminal Procedure Code. The Government argues that this negates any claim of disappearance. It adds that the decision to detain Ms. Ali was taken in her presence and that of her lawyer, by the competent investigating authority and after hearing her defence, in accordance with article 36 of the Criminal Procedure Code (No. 150 of 1950).

37. The Government asserts that the orders renewing Ms. Ali's detention were issued by the competent judge exercising his discretionary authority, after deliberations with the members of the relevant panel, a review of the case file, including the evidence, and after having heard the public prosecution and Ms. Ali's defence. According to the Government, such orders are judicial acts, any challenge or disregard of which undermines the rule of law and the objectives outlined in international instruments relating to counter-terrorism.

38. Regarding the allegations of torture and Ms. Ali's health, the Government argues that the public prosecution initiated investigations by examining her immediately upon her presentation. Reportedly, no injuries were observed and Ms. Ali denied the presence of any non-apparent injuries. Furthermore, neither Ms. Ali, her defence or her relatives have filed any complaints with the public prosecution indicating any form of assault. The Government argues that this confirms the malicious nature of the allegations submitted. In this context, the Government notes that the Criminal Procedure Code establishes a legal framework that protects rights and freedoms. National law ensures the non-expiration of criminal proceedings over time, particularly for cases involving crimes against personal freedoms and bodily integrity and several other crimes listed in the Penal Code, in line with the international commitments of Egypt.

39. The Government contends that reports from relevant authorities indicate that Ms. Ali's general health is good and stable, with her vital signs within normal ranges. She is reportedly provided with all necessary health care and can request medical attention if needed. The Government notes that Ms. Ali is detained in Qanater Women's Prison, a public facility under the jurisdiction of the Prisons Authority that provides suitable living conditions, including adequate room size, ventilation, proper sanitary facilities and appropriate meals, as well as a library for inmates.

40. The Government submits that Ms. Ali receives comprehensive care in detention, including medical, social, cultural and religious services. She is reportedly granted daily periods of fresh air and exposure to sunlight, in accordance with the applicable regulations. According to the Government, no disciplinary measures have been taken against her and she is allowed to participate regularly in physical and cultural activities, just like other inmates.

41. The Government rejects the allegation that Ms. Ali is denied family visits and notes that she receives regular visits from her family and relatives, whether routine visits, visits on special occasions or visits specifically allowed by the public prosecution whenever requested. The Government asserts that all decisions concerning Ms. Ali are taken in line with international obligations, including those derived from the African Charter on Human and Peoples' Rights. It emphasizes that the exercise of rights and freedoms, as stipulated in international and regional human rights instruments, is not absolute but subject to limitations set by law to ensure the recognition, respect and protection of the rights and freedoms of others, as well as to uphold the requirements of public order, public interest and morality.

42. The Government notes that the case against Ms. Ali is still pending before the judiciary and no verdict has yet been issued. It alleges that Ms. Ali continues to exercise her right to defend herself and has not yet exhausted all available domestic remedies.

(c) Additional comments from the source

43. The Government's reply was sent to the source for further comments, which were provided on 9 October 2022.

44. The source reiterates that Ms. Ali was subjected to enforced disappearance for three months, from 24 October 2020 to 18 January 2021, and was subjected to psychological and

physical torture, including beatings and electrocution, to force her to confess that she was involved in "financing a terrorist organization". It adds that Ms. Ali's close relative was forcibly disappeared for a week to exert psychological pressure on her. The source argues that the authorities thereby violated article 36 (1) of the Criminal Procedure Code according to which suspects must be brought before the prosecution within 24 hours of their arrest, as well as article 9 (2) and (3) of the Covenant.

45. The source claims that the public prosecution accepted the confessions obtained under torture as the only evidence and legal grounds to indefinitely imprison Ms. Ali, in violation of article 15 of the Convention against Torture, Ms. Ali's right to a fair trial and her right not to self-incriminate.

46. In addition, the source notes that, had there been sufficient grounds to conclude that Ms. Ali had joined or financed a terrorist organization, the name of the organization would have been cited. The source recalls that since the 2015 amendments were made to the counter-terrorism law, broadening the definitions of the terms "terrorist entity" and "terrorist act", the authorities have multiplied the number of arbitrary detentions and enforced disappearances carried out and intensified their crackdown against fundamental freedoms. Ms. Ali's arrest is part of a broader pattern of detentions of innocent civilians to instil fear and discourage the emergence of any voices critical of or that would threaten the security and stability of the current Government. The terrorism charges brought against Ms. Ali do not have any empirical or evidential grounding and are similar to those used against thousands of other detainees in an attempt by the State to demonstrate force and control under the pretext of maintaining order and security.

47. The source notes that on 24 October 2023, it will be three years since Ms. Ali was placed in pretrial detention, contrary to the two-year limit prescribed by national and international law. The provisions of the Criminal Procedure Code used to hold Ms. Ali in pretrial detention permit the authorities to keep detainees in pretrial detention for a period of up to two years and leave little to no opportunity for detainees to challenge their detention, in stark violation of articles 9, 10 and 11 of the Covenant, article 6 of the African Charter on Human and Peoples' Rights and article 54 of the Constitution.

48. The source reiterates its initial allegations regarding the torture allegedly inflicted upon Ms. Ali, in particular the psychological pressure caused by the enforced disappearance of one of her close relatives.

2. Discussion

49. The Working Group thanks the source and the Government for their submissions.

50. In determining whether Mr. Ali's detention 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. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.[3]

51. The source argues that Ms. Ali's detention is arbitrary and falls under categories I and III. The Working Group will proceed to examine these in turn.

(a) Category I

(i) Arrest and detention

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

53. The source submits that Ms. Ali was arrested without being presented with a warrant and without receiving an explanation for her arrest. The Government denies these allegations by asserting that Ms. Ali was apprehended based on a warrant issued by the public

[3] A/HRC/19/57, para. 68.

prosecution to arrest her and to search her person and residence, in connection with case No. 865 of 2020. The Government adds that Ms. Ali was then presented to the Public Prosecutor and interrogated, in compliance with article 9 (2) of the Covenant. It adds that Ms. Ali was informed of the charges against her and was afforded a full opportunity to present her defence.

54. As the Working Group 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.[4] This is typically done through an arrest warrant or arrest order (or equivalent document).[5] This is inherent in the right to liberty and security and the prohibition of arbitrary deprivation of liberty under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[6] In addition, the Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is informed, at the time of arrest, of the reasons for the arrest and is promptly informed of any charges against him or her.

55. The information provided to the Working Group by the source and the Government is seemingly contradictory with regard to the question of whether or not a warrant was produced or shown to Ms Ali at the time of her arrest.

56. The Working Group recalls the manner in which it approaches evidentiary issues. Where the source establishes a prima facie case for breach of international law constituting arbitrary detention, the burden of proof is understood to rest upon the Government to refute the allegations.[7] In the present case, the Government has challenged the prima facie credible allegations made by the source. In these circumstances, it remains for the Working Group, on the totality of the circumstances, to make an assessment as to whether the Government has discharged its burden.

57. The version of events as narrated by the source is that on 24 October 2020, Ms. Ali's house was raided and searched by State security forces and police officers. When she was then arrested in the presence of her relatives, no arrest warrant or legal documentation was presented to justify her arrest. In addition, she was reportedly not given an explanation of the reasons for her arrest at the time of the arrest. In its response, the Government did not specifically refute the source's account of events, but merely stated that Ms. Ali was apprehended based on a warrant issued by the public prosecution to arrest her and to search her person and residence, in connection with case No. 865 of 2020, a high-level national security case. In this regard, the Working Group notes the distinction between issuing a warrant of arrest and showing it to or serving it on a suspect before the arrest. The Working Group further notes that the Government has not disputed the date of arrest or the circumstances of the arrest of Ms. Ali. Neither has it refuted the allegation that Ms. Ali was not given an explanation of the reasons for her arrest at the time of the arrest. In this regard, the Government has merely stated that Ms. Ali was informed of the charges against her prior to being interrogated. On the facts as presented, the Working Group is thus inclined to accept the account given by the source that no arrest warrant or equivalent document was shown to or served on Ms. Ali at the time of her arrest, in violation of article 9 (1) of the Covenant. The Working Group further concludes that the authorities failed to inform Ms. Ali of the reasons for her arrest at the time of the arrest, in violation of article 9 (2) of the Covenant.

58. The Working Group therefore finds that the authorities violated articles 3 and 9 of the Universal Declaration of Human Rights and article 9 of the Covenant.

[4] Opinions No. 9/2019, para. 29; No. 46/2019, para. 51; and No. 59/2019, para. 46.

[5] Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and 30/2018, para. 39. In cases of arrests made in flagrante delicto, the opportunity to obtain a warrant will typically not be available.

[6] Opinions No. 6/2020, para. 40; No. 89/2020, para. 54; No. 16/2021, para. 45; and No. 25/2022, para. 36.

[7] A/HRC/19/57, para. 68.

(ii) Enforced disappearance

59. The source has submitted that following her arrest, Ms. Ali was forcibly disappeared in an unofficial and secret detention location for three months, from 24 October 2020 to 18 January 2021. Reportedly, Ms. Ali's family filed official complaints requesting information on her whereabouts from the Attorney General and the head of the Human Rights Office in the Ministry of the Interior, all of which remain unanswered. The Government argues that Ms. Ali was presented to the Public Prosecutor within 24 hours of her arrest and that this disproves her enforced disappearance. However, it does not provide any information as to her whereabouts before that and does not specifically rebut the source's allegation that the authorities did not take her period of enforced disappearance into account when reporting her date of arrest.

60. The Working Group recalls that deprivation of liberty that entails a wilful refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention lacks any valid legal basis under any circumstances. It is also inherently arbitrary, as it places the person outside the protection of the law, in violation of article 16 of the Covenant and article 6 of the Universal Declaration of Human Rights.[8] The Government's failure to provide notification of the arrest and location of detention to their families is also contrary to principle 16 (1) of the Body of Principles.

61. Noting that the Government's information is insufficient to disprove the source's allegations or to establish Ms. Ali's whereabouts from 24 October 2020 to 18 January 2021, the Working Group finds that she was subjected to enforced disappearance during that period, 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.[9]

62. Judicial oversight of any detention is a central safeguard for personal liberty and is critical in ensuring that the detention has a legitimate basis. The Working Group recalls that holding persons at secret, undisclosed locations and in circumstances undisclosed to the person's family violates their right to contest the legality of their detention before a court or tribunal under article 9 (3) and (4) of the Covenant.

63. In the circumstances attending the incarceration of Ms. Ali at a secret location from 24 October 2020 to 18 January 2021, the Working Group finds that Ms. Ali was deprived of the right to challenge the legality of her detention before a court, in violation of article 9 (3) and (4) of the Covenant, and was placed outside of the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant. Consequently, her right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was violated.

64. The Working Group recalls that article 9 (3) of the Covenant provides that 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 to bring a detainee "promptly" before a judge following arrest and that any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.[10]

65. In the light of its finding above that Ms. Ali was subjected to a period of enforced disappearance from 24 October 2020 to 18 January 2021, the Working Group finds that she was not brought promptly before a judge following her arrest, contrary to article 9 (3) of the Covenant and principle 32 of the Body of Principles.

66. Consequently, the Working Group finds that the Government failed to establish a legal basis for Ms. Ali's arrest and detention. Her detention is thus arbitrary under category I.

[8] Opinions No. 13/2020, para. 51; and 56/2023, para. 92.

[9] Opinions No. 5/2020, No. 6/2020, No. 11/2020, No. 13/2020, No. 77/2020, No. 38/2021 and No. 53/2022. See also Human Rights Committee, general comment No. 35 (2014), para. 17.

[10] Human Rights Committee, general comment No. 35 (2014), paras. 32–33.

(b) Category III

67. The source claims that the deprivation of liberty of Ms. Ali is arbitrary under category III in so far as her right to a fair trial was violated. In particular, the source alleges that Ms. Ali did not benefit from the effective legal assistance of counsel and that she was subjected to torture and other cruel and inhuman treatment.

(i) Access to a lawyer

68. The source argues that the detention of Ms. Ali is arbitrary under category III in so far as she did not benefit from the effective legal assistance of counsel. The Government maintains that the public prosecution ensured that Ms. Ali was accorded all her rights and that lawyers were present with her during the investigation procedures as mandated by the Criminal Procedure Code.

69. 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 that such access is to be provided without delay.[11] The Working Group considers legal representation to be a core facet of the right to a fair trial. Legal assistance should be available at all stages of criminal proceedings, namely during the pretrial, trial and appellate stages, to ensure compliance with fair trial guarantees. Any denial of access to lawyers substantially undermines and compromises an accused individual's capacity to defend him or herself in any judicial proceedings.

70. The right to legal assistance is an essential element of the right to fair trial, as it serves to ensure that the principle of equality of arms is duly observed.[12] The Working Group recalls that access to counsel is a right enshrined under article 14 (3) of the Covenant, principles 11 (2), 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 61 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and reinforced by article 11 of the Universal Declaration of Human Rights. Article 14 (3) (b) of the Covenant guarantees the right to have adequate time and facilities for the preparation of one's defence and to communicate with counsel of one's own choosing.

71. In the light of its finding above that Ms. Ali was enforcedly disappeared following her arrest, the Working Group finds that the authorities violated her right to have access to a lawyer immediately upon her arrest, in violation of article 14 of the Covenant.

(ii) Torture, cruel and inhuman treatment

72. The source alleges that during her enforced disappearance, Ms. Ali was subjected to physical and psychological torture by State security forces, including beatings and electrocution. In addition, the source contends that, in order to exert psychological pressure on Ms. Ali and force her to confess to being involved in the financing of terrorist groups, the authorities subjected one of her close relatives to enforced disappearance for a period of one week. The Government denies the allegations of physical torture, stating that the public prosecution initiated investigations by examining Ms. Ali immediately upon her presentation. According to the Government, no injuries were observed, Ms. Ali denied the presence of any non-apparent injuries, and no complaint was ever filed with the public prosecution indicating any form of assault. The Government also notes that the Criminal Procedure Code establishes a legal framework that protects individuals' rights and freedoms.

73. The Working Groups notes that the response of the Government to the allegations of torture is focused primarily on the absence of injuries and other physical manifestation of assault on Ms. Ali's body. In this regard, the Working Group recalls the broad definition of torture in the Convention against Torture, which encompasses "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such

[11] 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; Human Rights Committee, general comment No. 35 (2014), para. 35; A/HRC/45/16, paras. 50–55; and A/HRC/48/55, para. 56. See also A/HRC/27/47, para. 13.

[12] See, for example, opinion No. 35/2019.

purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" (art. 1).

74. The Working Group notes that in its response, the Government does not address the allegations that Ms. Ali's close relative was subjected to enforced disappearance for one week in order to force Ms. Ali to confess. In addition, the Working Group considers that the Government's mere assertion that Ms. Ali showed no physical signs of torture when she was presented to the Public Prosecutor, which occurred after almost three months of enforced disappearance, is not in itself sufficient to rebut the source's prima facie credible allegations. The Working Group is inclined to conclude that the facts presented reveal a prima facie breach of the absolute prohibition of ill-treatment and torture.

75. Detainees should be protected from any practices that violate their right to be free from any act which could cause severe pain or suffering, whether physical or mental, and which is inflicted intentionally on a person. This is clearly stated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to the Committee against Torture, the right to be free from torture and other ill-treatment or punishment is absolute. It applies in all circumstances and it may never be restricted, including in times of war or states of emergency. No exceptional circumstances whatsoever, including threats of terrorism or other violent crime, may be invoked to justify torture or other ill-treatment. Such prohibition applies irrespective of the offence allegedly committed by the accused person. 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.

76. Furthermore, as the Working Group has stated previously, confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings. The Working Group wishes to remind the Government that the use of a confession extracted through ill-treatment in any proceedings is prohibited under article 15 of the Convention against Torture and principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and automatically renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.[13]

77. Considering the above, the Working Group finds that the right of Ms. Ali to be presumed innocent under article 14 (2) of the Covenant and article 11 of the Universal Declaration of Human Rights and her right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant have been violated, as has principle 21 of the Body of Principles, which protects a detainee from self-incrimination and being compelled to confess.

78. The Working Group therefore concludes that the violations of Ms. Ali's right to a fair trial and to due process are of such gravity as to render her detention arbitrary under category III.

(c) Concluding remarks

79. The Working Group expresses grave concern at the source's allegations regarding the prison conditions in Al-Qanater prison for women, including violations of bodily autonomy through strip searches, beatings and insults, overcrowding and lack of access to medical and sanitary services. The Working Group takes this opportunity to remind the Government of its obligation under article 10 of the Covenant to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person. As stated in its deliberation No. 12 on women deprived of their liberty, the Working Group considers that in

[13] Opinions No. 43/2012, para. 51; No. 34/2015, para. 28; No. 52/2018, para. 79 (i); No. 32/2019, para. 43; No. 59/2019, para. 70; and No. 73/2019, para. 91. See also opinions No. 48/2016, No. 3/2017, No. 6/2017, No. 29/2017 and No. 39/2018.

certain circumstances, conditions of detention may severely and adversely affect the ability of women to challenge the legality of their detention and to participate in their own defence, in violation of the principle of equality of arms and the right to a fair trial.[14] Furthermore, the Working Group recalls that, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), account must be taken of the distinctive needs of women prisoners. The Working Group calls on the Government to ensure strict adherence to these rules in all places of deprivation of liberty of women in Egypt.

80. Moreover, the Working Group notes the source's concerns regarding Ms. Ali's health and its allegations that Ms. Ali is not provided with proper care and treatment, which the Government denies. The Working Group stresses that the Nelson Mandela Rules, specifically rules 1, 24, 27 and 118, require that all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity as human beings, including by enjoying the same standards of health care that are available in the community.

81. In addition, the Working Group is dismayed at the source's serious allegation, which the Government has failed to address, that in order to exert psychological pressure on Ms. Ali, the authorities subjected one of her close relatives to enforced disappearance for a week. The Working Group reiterates that enforced disappearance is prohibited by international law and constitutes a particularly aggravated form of arbitrary detention, in flagrant violation of the person's right to liberty and security.

82. 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.[15] 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. 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.[16] The Working Group has alluded to this possibility in its past cases concerning Egypt.[17]

3. Disposition

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

> The deprivation of liberty of Salwa Hassan Salem Ali, being in contravention of articles 3, 6, 8, 9 and 11 of the Universal Declaration of Human Rights and articles 2, 9, 14 and 16 of the International Covenant on Civil and Political Rights, inter alia, is arbitrary and falls within categories I and III.

84. The Working Group requests the Government of Egypt to take the steps necessary to remedy the situation of Ms. Ali 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.

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

[14] A/HRC/48/55, annex, para. 22.

[15] 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, 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. 31/2023 and No. 40/2023.

[16] A/HRC/13/42, para. 30. See also, e.g., opinions No. 51/2017, para. 57; No. 56/2017, para. 72; and No. 53/2022, para. 95.

[17] See, for example, opinions No. 60/2016, para. 27; No. 26/2018, para. 81; No. 27/2018, para. 83; No. 29/2019, para. 69; No. 65/2019, para. 87; No. 79/2020, para. 49; No. 53/2022, para. 95; No. 12/2023, para. 107; No. 20/2023, para. 85; No. 26/2023, para. 94; and No. 70/2023, para. 102.

86. The Working Group urges the Government of Egypt to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Ali and to take appropriate measures against those responsible for the violation of her rights.

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

4. Follow-up procedure

88. 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 Ms. Ali has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Ms. Ali;

(c) Whether an investigation has been conducted into the violation of Ms. Ali'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.

89. 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.

90. 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.

91. 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.[18]

[*Adopted on 22 March 2024*]

[18] Human Rights Council resolution 51/8, paras. 6 and 9.