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Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session, 18-27 April 2016

Opinion No. 7/2016 concerning Abdullah Ahmed Mohammed Ismail Alfakharany, Samhy Mostafa Ahmed Abdulalim, Mohamed Mohamed Aladili, Waleed Abdulraoof Shalaby, Ahmed Sabii, Youssouf Talat Mahmoud Mahmoud Abdulkarim, Hani Salheddin, Mosaad Albarbary and Abdo Dasouki (Egypt)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 22 September 2015, the Working Group transmitted a communication to the Government of Egypt concerning Abdullah Ahmed Mohammed Ismail Alfakharany, Samhy Mostafa Ahmed Abdulalim, Mohamed Mohamed Aladili, Waleed Abdulraoof Shalaby, Ahmed Sabii, Youssouf Talat Mahmoud Mahmoud Abdulkarim, Hani Salheddin, Mosaad Albarbary and Abdo Dasouki. The Government replied to the communication on 25 November 2015. 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 D);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

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(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 rights (category V).

Submissions

Communication from the source

4. The case submitted by the source involves nine male journalists who are all citizens of Egypt. According to the source, the nine journalists were prosecuted in a mass trial known as the “Rabaa Operations Room” case.

5. On 11 April 2015, eight of the nine journalists were sentenced by the Cairo Criminal Court to life imprisonment, while one was sentenced to death. The nine journalists have appealed their sentences to the Court of Cassation. According to the source, the journalists have been held for over two years in detention, during which they have all been subjected to torture and ill-treatment. The detention and trial of the nine journalists is described below.

Detention and trial of Abdullah Ahmed Mohammed Ismail Alfakharany, Samhy Mostafa Ahmed Abdulalim and Mohamed Mohamed Aladili

6. Abdullah Ahmed Mohammed Ismail Alfakharany is a 25-year-old student. He was born in the United Arab Emirates but holds Egyptian nationality. Mr. Alfakharany is a journalist and co-founder of Rassd News Network, a prominent news outlet in Cairo, and a human rights activist. He is also a project officer at Euro-Mid Observer for Human Rights and a member of the American Middle Eastern Network for Dialogue at Stanford University.

7. Samhy Mostafa Ahmed Abdulalim is a 27-year-old journalist and member of the Rassd News Network Board.

8. Mohamed Mohamed Aladili is a 31-year-old journalist. Before his arrest, he worked for Misr 25 and Amjad television channels as a technical producer. He was expected to begin working for Al-Jazeera had he not been detained.

9. On 25 August 2013, Messrs. Alfakharany, Abdulalim and Aladili went to visit and interview a friend who had been shot in the arm on 16 August 2013 during the violent dispersal from Rabaa al-Adawiya Square in Cairo of supporters of the Muslim Brotherhood. The source states that the three journalists were gathering information on this incident in order to report about it.

10. According to the source, shortly after Messrs. Alfakharany, Abdulalim and Aladili entered their friend’s home, it was raided by 15 to 20 members of the Egyptian security forces wearing civilian clothes. The officers were looking for the friend’s father, but he was not present at the time. The officers questioned the four men for half an hour and beat them, before taking them to Basateen Police Station to verify their identities. The officers did not

produce a warrant. The three journalists were reportedly placed in a cell and held incommunicado until warrants were issued by the prosecutor on 26 August 2013. The source claims that the official police file states that the three journalists were arrested on 26 August 2013, but they were in fact arrested the day before.

11. The source reports that Messrs. Alfakharany, Abdulalim and Aladili were later placed in custody together with approximately 70 other convicted defendants in a confined cell, which was so crowded that they were forced to stand up. The three journalists reported that they received death threats, were repeatedly beaten and subjected to degrading and humiliating treatment by wardens during their first days of detention and were not provided with sufficient food. According to the source, they reported this ill-treatment to the Public Prosecutor, who took no action to follow up the complaints, despite being required to do so under Egyptian law.

12. On 31 August 2013, Messrs. Alfakharany, Abdulalim and Aladili were transferred in overcrowded minivans to Wadi al-Natrum Prison. The source alleges that they were tortured for six hours at the prison. On 1 September 2013, they were brought back to Basateen Police Station and held in deplorable conditions. On 14 September 2013, they were transferred to Tora Prison.

13. On 25 January 2014, the case against Messrs. Alfakharany, Abdulalim and Aladili was referred to the Cairo Criminal Court. The source states that all three journalists were initially charged with “disturbing the peace”. However, in February 2014, the charges were changed without explanation by the Public Prosecutor to “spreading false information” and “spreading chaos”. Messrs. Alfakharany, Abdulalim and Aladili were accused of having formed “an operations room to the Muslim Brotherhood to defy the Government” during their coverage of events at Rabaa al-Adawiya Square. The matter thus became known as the “Rabaa Operations Room” case. The three journalists were also alleged to have instructed the protesters at the square to cause chaos.

14. According to the source, the first hearing was held on 1 April 2014. The trial was then continuously postponed over the course of a year. Messrs. Alfakharany, Abdulalim and Aladili were finally sentenced to life imprisonment on 11 April 2015 by the Cairo Criminal Court. Although the trial was held in the presence of the three journalists, the source reports that they were not able to follow the proceedings because they were locked in soundproof glass cages. The source also reports that they were forbidden to speak to the judge to challenge their detention and that the judgment was partially based on secret evidence and only the evidence provided by prosecution witnesses was considered.

Detention and trial of Waleed Abdulraoof Shalaby

15. Waleed Abdulraoof Shalaby is a 52-year-old journalist. On 28 September 2013, he was arrested while staying at his relative’s home. According to the source, members of the security forces broke into the home without a warrant and conducted a search for evidence to incriminate Mr. Shalaby. No evidence was found, but the officers removed an Islamic book. The officers then took Mr. Shalaby to his own home, where they confiscated several personal items, including his papers.

16. Mr. Shalaby was then taken to the Al-Sharqia security forces facility, where he stayed for the remainder of the day before being transferred to Al-Aqrab Prison. The source alleges that, at Al-Aqrab Prison, Mr. Shalaby was placed in solitary confinement for six months and forbidden to leave his cell. Another inmate was later put into his cell because of overcrowding in other cells. Mr. Shalaby’s personal items were confiscated by the guards, who reportedly regularly humiliated him. According to the source, on 1 February 2014, guards entered Mr. Shalaby’s cell and stripped him of his clothes, leaving him naked. The

guards also took his mattress and food. Mr. Shalaby's family was subsequently forbidden from seeing him for two months. Visits were also denied from 3 July to 14 August 2014.

17. At the beginning of the "Rabaa Operations Room" trial, Mr. Shalaby reported that he had been ill-treated and had received death threats while in detention, but this was not taken into account by the judge. On 11 April 2015, Mr. Shalaby was sentenced to death. He was the only one of the nine journalists sentenced to death.

Detention and trial of Ahmed Sabii

18. Ahmed Sabii is a 41-year-old journalist and member of the Egyptian Journalists Syndicate. Before his arrest, he was the manager of Al-Aqsa television channel. According to the source, on 4 October 2013, at least 15 armed men came to Mr. Sabii's home, arrested him without a warrant and threatened his wife and children. Mr. Sabii was taken to Helwan Prison. He was brought before the Public Prosecutor for interrogation the next morning and formally charged in relation to the "Rabaa Operations Room" case.

19. Mr. Sabii was subsequently moved to Heliopolis Police Department, where he was detained for 13 months, before being moved to Al-Aqrab Prison in November 2014. The source alleges that Mr. Sabii was subjected to particularly harsh conditions of detention at Al-Aqrab Prison, including placed in solitary confinement, deprived of his clothes and forced to sleep on the floor without a mattress. The source reports that the guards often confiscated Mr. Sabii's food and denied him the right to go out to exercise. On 11 April 2015, Mr. Sabii was sentenced to life imprisonment. At the time that the present communication was received from the source, he was detained in Al-Aqrab Prison.

Detention and trial of Youssouf Talat Mahmoud Mahmoud Abdulkarim

20. Youssouf Talat Mahmoud Mahmoud Abdulkarim is a 32-year-old television presenter and Director of Al-Shabab television channel. On the night of 19 August 2013, while Mr. Abdulkarim was at work, the offices of Al-Shabab were raided by the security forces. The source alleges that the officers broke filming equipment and did not produce a warrant. They arrested Mr. Abdulkarim, forcibly pushed him to the ground and handcuffed him. They also hit him on the head with a rifle, causing intense bleeding, and struck him on other parts of his body.

21. According to the source, during Mr. Abdulkarim's first days in detention inside a security forces facility, he was severely tortured, which caused permanent damage. As a result of the torture, Mr. Abdulkarim is no longer able to stand up. His family asked the authorities to allow him to see a doctor or at least have an x-ray performed so as to clearly evaluate his injuries, but these requests were denied. The source reports that, despite suffering from regular fainting, Mr. Abdulkarim has not been provided with any medical attention and medication brought by his relatives is always confiscated. He was only allowed to receive visits on a weekly basis for a maximum of five minutes.

22. On 11 April 2015, Mr. Abdulkarim was sentenced to life imprisonment in the "Rabaa Operations Room" case. At the time that the present communication was received from the source, he was being detained in Tora Prison.

Detention and trial of Hani Salheddin

23. Hani Salheddin is a 47-year-old syndicated journalist. Before his arrest, he was the head of a department at Misr 25 television channel and a former editor at *Youn 7*. He is a member of the Arab Journalists Union. On 28 November 2013, Mr. Salheddin was waiting at Cairo airport for a flight to Lebanon to undergo eye surgery, when he was arrested by police officers and taken to the Liman section of Tora Prison.

24. According to the source, while in detention at Tora Prison, Mr. Salheddin has been denied medical treatment. He has been forced to sleep on the floor without a mattress and has developed a painful hernia that has not been treated. His family was prevented from visiting him for a month and a half. The source reports that Mr. Salheddin has been subjected to ill-treatment, including the placement of dogs inside his cell to frighten him, deprived of sleep by the guards and generally subjected to deplorable detention conditions.

25. On 11 April 2015, Mr. Salheddin was sentenced to life imprisonment in the “Rabaa Operations Room” case. At the time that the present communication was received from the source, he was being detained in the Liman section of Tora Prison.

Detention and trial of Mosaad Albarbary

26. Mosaad Albarbary is a 41-year-old journalist. Before his arrest, he was the Executive Director and Vice-President of Misr 25 television channel. On 2 April 2014, Mr. Albarbary was arrested by the Lebanese security forces in Beirut at the request of the Egyptian authorities. The source states that there was no official extradition procedure to return Mr. Albarbary to Egypt. Instead, he was detained for one week in a security forces building before being handed over to the Egyptian intelligence services and deported to Cairo. The source alleges that the Egyptian intelligence services falsely reported that Mr. Albarbary had been arrested at Cairo Airport in order to have the records of his arrest show that he was arrested on Egyptian territory. Mr. Albarbary was interrogated for five hours at the airport.

27. The source reports that Mr. Albarbary was then held in custody for two and a half months in the Giza Migration Department in particularly harsh conditions. His cell had no ventilation and was extremely overcrowded. Mr. Albarbary was then transferred to the Istiqbal section of Tora Prison where he was denied regular meals, medication and visits.

28. On 11 April 2015, Mr. Albarbary was sentenced to life imprisonment in the “Rabaa Operations Room” case. At the time that the present communication was received from the source, he was being detained in the Istiqbal section of Tora Prison.

Detention and trial of Abdo Dasouki

29. Abdo Dasouki is a 39-year-old journalist. Before his arrest, Mr. Dasouki was the Director of Ikhwan wiki, an Arabic wiki encyclopedia established by the Egyptian Muslim Brotherhood.

30. Mr. Dasouki was arrested on 16 August 2013, the day that supporters of the Muslim Brotherhood were dispersed from Rabaa al-Adawiya Square. At the time of his arrest, Mr. Dasouki was in the vicinity of the Fateh Mosque, after the police and the army had dispersed protesters from Ramses Square. The source alleges that Mr. Dasouki was brought to a police station in Cairo where he was tortured for several hours. Mr. Dasouki was charged in relation to the “Rabaa Operations Room” case. According to the source, he was transferred to Tora Prison where he was again tortured by officers.

31. The source reports that Mr. Dasouki complained to the Public Prosecutor about his ill-treatment, but every time he did so, the officers at Tora Prison retaliated by putting him in solitary confinement. According to the source, the Public Prosecutor did not take any action to stop the torture or to investigate it.

32. On 11 April 2015, Mr. Dasouki was sentenced to life imprisonment in the “Rabaa Operations Room” case. At the time that the present communication was received from the source, he was being detained in the Liman section of Tora Prison.

Submissions regarding arbitrary detention

33. The source submits that the detention of Messrs. Alfakharany, Abdulalim, Aladili, Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki is arbitrary under categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

34. The source reiterates that the nine individuals who were arrested and are currently detained are all journalists who were covering events relating to the dispersal of protesters from Rabaa al-Adawiya Square on 16 August 2013. As noted above, Messrs. Alfakharany, Abdulalim and Aladili were interviewing a victim of the events in the square at the time of their arrest. Messrs. Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki were all working for media channels, newspapers or websites allegedly affiliated with the Muslim Brotherhood that opposed the military coup of July 2013 and their media outlets were covering the events in the square. Their arrests stemmed from their work with these media outlets that opposed the behaviour of the Egyptian authorities. The source argues that the sole fact of working for media and websites linked to the Muslim Brotherhood was sufficient reason for the authorities to arrest them because these media outlets were considered to be disseminating false information, regardless of what the journalists may or may not have done.

35. The source therefore argues that the charges against the nine journalists in relation to the “Rabaa Operations Room”, including the charge of “spreading false information”, were directly related to their coverage of that event, in violation of their rights to freedom of opinion and expression under article 19 (1) and (2) of the International Covenant on Civil and Political Rights. The source states that the Egyptian authorities often resort to criminal charges to suppress independent voices, especially journalists, and that this is a form of censorship and an infringement of the right to form and hold opinions, and receive and impart information. The source submits that the vagueness of the charges against the nine journalists suggests that they were arrested to impede them from independently and impartially carrying out their work as journalists.

36. In addition, the source refers to allegations that the nine journalists had formed a group aimed at undermining the Government of Egypt in an attempt to overthrow it. The source argues that, given that there was no evidence presented to support such allegations, it is clear that the authorities only wanted to prevent the journalists from disclosing information relating to the events of 16 August 2013 in Rabaa al-Adawiya Square. Finally, the source notes that all of the journalists reported that they had been tortured and subjected to ill-treatment in retaliation for their work as journalists, which demonstrates that they were only arrested to suppress their freedom of expression.

37. The source also submits that there had been numerous violations of due process during the arrest, detention and trial of Messrs. Alfakharany, Abdulalim, Aladili, Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki. The source argues that the violations were of such gravity as to render their deprivation of liberty arbitrary under category III of the arbitrary detention categories defined by the Working Group. The alleged violations include:

(a) Failure to present a warrant when the nine journalists were arrested, contrary to article 9 (1) of the International Covenant on Civil and Political Rights;

(b) Failure to inform the journalists of the charges against them, contrary to article 9 (2) of the Covenant: the journalists were not informed of the charges against them during their first days in custody and some of them remained in detention without charges for several months. With the exception of Mr. Shalaby, the charge of belonging to the “Rabaa Operations Room” group was only brought against the journalists in February 2014, six months after most of them had been arrested in August 2013;

(c) Change of the dates of arrest to hide the time spent by the journalists in incommunicado detention, contrary to article 9 of the Covenant. In the case of Messrs. Alfakharany, Abdulalim and Aladili, the authorities changed the official date of their arrest, stating that they had been arrested on 26 August 2013 and not 25 August 2013. Similarly, Mr. Albarbary was detained by the intelligence services in Lebanon for one week before the authorities brought him back to Egypt and it was falsely reported that he had been arrested on Egyptian territory;

(d) Holding the journalists in incommunicado detention, which is a prima facie form of arbitrary detention, contrary to article 10 of the Covenant and article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They were also detained with convicted criminals, even though they had not yet been tried, in violation of article 10 (2) (a) of the Covenant;

(e) Denial of the right to challenge the lawfulness of detention, contrary to article 9 (4) of the Covenant. The journalists' lawyers were not granted the right to challenge the lawfulness of their detention, even though they had requested the Public Prosecutor to do so;

(f) Failure to try the journalists without undue delay, contrary to article 14 (3) (c) of the Covenant. The first hearing of the case before a judge was on 1 April 2014, nearly seven months after the respective arrests of the journalists. Their trial was held over the course of one year owing to regular and vaguely justified postponements by the judge or the prosecution;

(g) Failure to provide a fair trial, contrary to article 14 of the Covenant. Most of the evidence against the journalists was brought to the judge by the intelligence services and was not communicated to their lawyers, rendering it impossible for them to challenge its veracity. Only prosecution witnesses testified in court, giving the appearance that the trial was not impartial, contrary to article 14 (1) and (3) (e) of the Covenant;

(h) Torture and other ill-treatment of the journalists, contrary to article 1 of the Convention against Torture. All of the journalists reported that they had been subjected to torture and/or ill-treatment during their detention, were still at a high risk of being ill-treated and were being detained in harsh conditions. Furthermore, all of the reports made to the Public Prosecutor regarding these violations were dismissed and no investigations were launched into the complaints, in violation of article 12 of the Convention;

(i) Failure to try the journalists in their presence, contrary to article 14 (3) (d) of the Covenant. Not all the journalists were inside the courtroom — some were at the entrance — when they were sentenced. They were nevertheless considered as being present.

38. On 20 August 2015, the source provided the Working Group with an update on the situation of the nine journalists. According to the source, the first session of their appeal was expected to be held on 1 October 2015. Messrs. Alfakharany, Abdulalim and Aladili remained in detention in Tora Prison, but it was not possible for the source to determine where the other six journalists were being detained. At the time that this update was received, Messrs. Alfakharany, Abdulalim and Aladili had been allowed to receive visits from their families and from their lawyers.

Response from the Government

39. On 22 September 2015, the Working Group transmitted the source's allegations to the Government of Egypt through its regular communication procedure. The Working Group requested the Government to provide detailed information by 23 November 2015 about the situation of Messrs. Alfakharany, Abdulalim, Aladili, Shalaby, Sabii,

Abdulkarim, Salheddin, Albarbary and Dasouki. The Working Group also requested the Government to clarify the legal provisions justifying their continued deprivation of liberty.

40. In its response, the Government forwarded a copy of the verdict issued by the Cairo Criminal Court in this case. The Government also requested an extension of time, which was granted under paragraph 16 of the Working Group's methods of work. The deadline was extended to 23 December 2015, but the Government did not forward any further information by that date.

41. The translation (from Arabic) of the verdict that was forwarded by the Government in November 2015 was received on 8 April 2016, in time for the seventy-fifth session of the Working Group. The verdict contains a list of 37 individuals who had been convicted by the Cairo Criminal Court (North Giza), including the nine men involved in the present case. It also includes information on the sentences handed down to each of the nine men.

Further comments from the source

42. On 10 December 2015, the source notified the Working Group that, on 3 December 2015, the Court of Cassation had rendered its decision in the appeals brought by the nine men in this case. According to the source, the Court of Cassation revoked all of the sentences previously imposed on the nine men (including the death penalty imposed on Mr. Shalaby) and ordered a retrial by the Cairo Criminal Court. The nine men remain in custody pending the retrial.

43. The first retrial session was due to be held on 8 February 2016. However, the source informed the Working Group that the nine men were never brought to court by the authorities and that the judge had postponed the retrial to 1 March 2016, then to 7 March 2016. In an update dated 2 March 2016 the source expressed concern that Messrs. Alfakharany, Abdulalim and Aladili had been transferred to the high security section of Al-Aqrab prison, where many detainees were on a hunger strike to protest against their conditions of detention and the no-visit policy established by the prison personnel.

44. On 11 March 2016, the source submitted that the Cairo Criminal Court verdict submitted by the Government in November 2015 was not a copy of the Court's ruling, but a document from the Public Prosecutor that had not been used during the trial. The source submits that this document had been written after the Court's decision in this case and did not address any of the observations made by the source in its original communication to the Working Group. The Working Group has not received any further update on the status of the retrial of the nine men. In any event, the Working Group does not require that domestic remedies be exhausted before it can consider a communication and render an opinion.

Discussion

45. The Working Group considers that the Government's submission that was received on 25 November 2015 did not respond to any of the allegations made by the source. The Working Group also notes that the Government did not provide further information by the extended deadline. In accordance with paragraph 16 of its methods of work, the Working Group may render an opinion on the basis of all the information it has obtained, even if no reply has been received upon expiry of the time limit set.

46. In its jurisprudence, the Working Group has established the ways in which it deals with evidentiary issues.¹ Where the source has established a prima facie case for breach of

¹ See, for example, A/HRC/19/57, para. 68; and opinion No. 52/2014.

international requirements constituting arbitrary detention, the burden of proof rest on the Government if it wishes to refute the allegations.

47. The Working Group has taken into account all of the allegations made by the nine journalists in relation to the “Rabaa Operations Room” case. Even though the nine journalists were arrested and detained at different times and under different circumstances, their accounts are similar in all material respects, which lends credibility to their allegations. The Working Group is therefore of the view that the case submitted by the source is credible.

48. The Working Group also took into account other reliable information that supports the source’s claims and demonstrates that there is a systemic problem of arbitrary deprivation of liberty of journalists in Egypt. The Working Group refers to its previous opinions concerning individual communications from various sources regarding arbitrary arrests and detention in Egypt.² In these cases, The Working Group found that journalists and bloggers had been subjected to arbitrary detention for peacefully exercising their rights to freedom of opinion and expression under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

49. Furthermore, on 11 November 2015, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders issued a joint statement that was endorsed by the Working Group, in which they expressed “grave concern at the situation of fear and intimidation of journalists and human rights defenders which inhibit the legitimate exercise of their rights and the performance of their work in Egypt”. Referring to the detention and recent release of a journalist, they noted that, “according to credible reporting, we understand that dozens of reporters are being held by Egyptian authorities today”.³ This statement followed an earlier expression of concern by the Special Rapporteur on the right to freedom of opinion and expression in September 2015, which was also endorsed by the Working Group, about the arrest, detention and sentencing of three Al-Jazeera journalists in Egypt. In that statement, the Special Rapporteur said that, “with nearly two dozen other journalists in jails, according to reliable information, these sentences reinforce the sense that freedom of expression is under attack in Egypt”.⁴

50. The Working Group considers that the Government has not rebutted the prima facie reliable assertion made by the source that the nine journalists were arrested, detained and sentenced solely for peacefully exercising their right to freedom of opinion and expression, in violation of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. Their deprivation of liberty therefore

² See, for example, opinions No. 50/2011 and No. 35/2008.

³ See Office of the United Nations High Commissioner for Human Rights (OHCHR), “Egypt: UN experts welcome release of Hossam Bahgat but concerns remain on the situation of journalists and rights defenders”, press release (Geneva, 11 November 2015), available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16738&LangID=E.

⁴ See OHCHR, “Egypt/Al Jazeera trial: UN rights expert condemns sentence, urges immediate release of detained journalists”, press release (Geneva, 1 September 2015), available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16370&LangID=E. The statement was made in relation to the case of Mohamed Fahmy, Bahar Mohamed and Peter Grete. The Special Rapporteur also noted that “the broadcasting of information should never be restricted, certainly not without evidence of a serious immediate threat to a legitimate national security interest.” In the present case, the Working Group notes that the Government has not provided any evidence to show evidence of such a threat in the case of the nine journalists or that its response to the perceived threat was necessary and proportionate.

falls within category II of the arbitrary detention categories referred to by the Working Group when considering communications submitted to it.

51. The Working Group also considers that the source's allegations disclose violations of the right to a fair trial, some of which apply to all of the journalists, while other allegations only applied to some of them (as outlined in the source's submissions above). The Government has not rebutted any of these allegations. The Working Group considers that the violations include the failure on the part of the arresting officers to present a warrant and denial of the journalists' rights to be informed promptly of the charges against them, to the opportunity to challenge the lawfulness of their detention,⁵ to be tried without undue delay by an independent and impartial tribunal and to be tried in their presence.

52. The Working Group considers that the breaches of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights in the case of the nine journalists are of such gravity as to give their deprivation of liberty an arbitrary character and it falls within category III of the arbitrary detention categories defined by the Working Group.

53. The Working Group is particularly concerned about the alleged torture and ill-treatment of the nine journalists. In particular, the Working Group refers to the allegations made by the source that they were beaten, subjected to degrading and humiliating treatment, including death threats, held incommunicado, held in solitary confinement for prolonged periods, subjected to retaliation after making complaints, detained in overcrowded and deplorable conditions with convicted criminals and denied medical treatment and medication, contrary to their rights under article 5 of the Universal Declaration of Human Rights and articles 7 and 10 of the International Covenant on Civil and Political Rights. Moreover, the Government did not address the source's allegations that the Public Prosecutor failed to investigate the journalists' reports of torture and ill-treatment. This conduct is contrary to the duty of prosecutors to respect and protect human dignity and uphold human rights⁶ and contrary to the obligations of Egypt under articles 12, 13 and 16 of the Convention against Torture. The Working Group will therefore refer the matter to the relevant Special Rapporteur for further consideration of the circumstances of the case and, if necessary, appropriate action.

54. Finally, the Working Group notes that the source alleged that the Lebanese security forces arrested Mr. Albarbary in Beirut at the request of the Egyptian authorities and detained him for one week. The Lebanese security forces then reportedly handed him over to the Egyptian intelligence services and he was deported to Egypt without any official extradition procedure. The Working Group recalls that it is possible for another State to share responsibility for human rights violations where its actions contribute to the arbitrary deprivation of liberty. However, in the present case, no evidence was submitted in relation to the conduct of the Lebanese authorities and the Working Group has decided not to pursue this matter.

⁵ See A/HRC/30/37, annex, principle 3, in which the Working Group notes that any individual who is deprived of liberty in any situation by or on behalf of a governmental authority at any level has the right to take proceedings before a court in the State's jurisdiction to challenge the arbitrariness and lawfulness of his or her deprivation of liberty and to receive without delay appropriate and accessible remedies.

⁶ See the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990, para. 12.

Disposition

55. In the light of the foregoing, the Working Group renders the following opinion:
56. The deprivation of liberty of Abdullah Ahmed Mohammed Ismail Alfakharany, Samhy Mostafa Ahmed Abdulalim, Mohamed Mohamed Aladili, Waleed Abdulraoof Shalaby, Ahmed Sabii, Youssouf Talat Mahmoud Mahmoud Abdulkarim, Hani Salheddin, Mosaad Albarbary and Abdo Dasouki is arbitrary, being in contravention of articles 5, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 7, 9, 10, 14 and 19 of the International Covenant on Civil and Political Rights, and falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.
57. Consequent upon the opinion rendered, the Working Group requests the Government to take the steps necessary to remedy the situation of Messrs. Alfakharany, Abdulalim, Aladili, Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki, without delay, and bring it into conformity with the standards and principles enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
58. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to release Messrs. Alfakharany, Abdulalim, Aladili, Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki immediately and accord them an enforceable right to compensation in accordance with article 9 (5) of the International Covenant on Civil and Political Rights.
59. The Working Group urges the Government to ensure that Messrs. Alfakharany, Abdulalim, Aladili, Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki are not subjected to further torture or ill-treatment. The Working Group also urges the Government to fully investigate the circumstances surrounding the arbitrary detention of the nine men and to take appropriate measures against those responsible for the violation of their rights.
60. In accordance with paragraph 33 (a) of its methods of work, the Working Group considers it appropriate to refer the allegations of torture and ill-treatment to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 19 April 2016]