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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-third session, 19–23 November 2018

#### Opinion No. 82/2018 concerning Ezzat Ghoneim (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 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 6 August 2018 the Working Group transmitted to the Government of Egypt a communication concerning Ezzat Ghoneim. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

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

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



## Submissions

### *Communication from the source*

4. Ezzat Eid Taha Fadl, known as Ezzat Ghoneim, is a 41-year-old Egyptian citizen. He is a human rights lawyer and the Executive Director of the Egyptian Association for Rights and Freedoms, a human rights organization. Before his arrest, his address was 4 Omar bin al-Khattab, Faisal, Cairo. Mr. Ezzat is married and has three children.

### Arrest and detention

5. According to the source, on 1 March 2018, at 6.30 p.m., Mr. Ezzat was abducted from the Uber car he was in. Two black jeep cars stopped the Uber car at the Al-Harm Circular Road. Agents of the National Security Agency took Mr. Ezzat out of the car and blindfolded and handcuffed him.

6. The source alleges that, from 1 March to 4 March 2018, Mr. Ezzat was imprisoned in National Security Agency premises in Sheikh El-Zayed City in Giza Governorate and was subjected to enforced disappearance. The source indicates that, during that period, Mr. Ezzat was not the victim of physical torture, but agents of the National Security Agency used unlawful threats and psychological torture against him.

7. The source claims that on 4 March 2018, Mr. Ezzat was brought for the first time before the State Security Prosecution in the Fifth Settlement for investigation, without the presence of his lawyer. Following his appearance before the State Security Prosecution, his family and lawyer learned of his whereabouts. On 5 March 2018, Mr. Ezzat's lawyer was allowed to attend the second investigation before the State Security Prosecution. On that day, Mr. Ezzat was charged with joining an illegal group and promoting its ideas, publishing false news, and supplying international institutions with false information. Although none of the charges have been proven, the State Security Prosecution continues to renew Mr. Ezzat's detention for 15 days on a rolling basis pending investigations on case No. 441/2018. This case is also known publicly as the Media Action Case.

8. According to the source, since 4 March 2018, Mr. Ezzat has been held in Tora Investigation Prison. His family was only allowed to visit him on 15 March 2018. During the first two weeks of his detention, Mr. Ezzat was prevented from contacting his family and his lawyer.

9. The source reports that, on 16 March 2018, the Ministry of Interior released a video entitled *The Spider's Web* promoting the State's efforts to combat terrorism. A section of the film is titled "Rights terrorism". It shows Mr. Ezzat's picture, in which he appears extremely distressed, as well as excerpts from a British Broadcasting Corporation (BBC) documentary on human rights abuses in Egypt, featuring the logos of Human Rights Watch and Amnesty International.

10. The source alleges that Mr. Ezzat was compulsorily filmed for the video while wearing civilian clothes. He was unaware of the purpose or the content of the video, which was also filmed without the knowledge of the State Security Prosecution. According to the source, he was threatened and psychologically tortured to take part in the video.

11. The source alleges that, on 18 March 2018, Mr. Ezzat's lawyer filed a complaint with the State Security Prosecution against the video and the circumstances of its production.

12. In addition, the source indicates that, after Mr. Ezzat's arrest and disappearance, his lawyer and family members sent telegraphs to the Prosecutor-General and to the Ministry of Interior, and sent complaints to the National Commission on Human Rights and to the Lawyers' Syndicate to ask for his release. In addition, the source reports that Mr. Ezzat made a request to the State Security Prosecution to be provisionally or definitively released, during his questioning.

## Legal analysis

13. The source argues that Mr. Ezzat's arrest and detention are arbitrary and fall under categories II and III.

14. First of all, the source claims that Mr. Ezzat was arrested for practising his legitimate and universally protected rights to freedom of expression and freedom of assembly and association. This renders the detention arbitrary under category II.

15. According to the source, there is sufficient evidence that the authorities are punishing Mr. Ezzat for practising his right to freedom of expression and his work as a human rights defender. This is demonstrated by (a) the content of the charges against Mr. Ezzat – namely, promoting the ideas of an illegal group, spreading false news, and providing false information to international organizations; and (b) the use of excerpts from a documentary showing Mr. Ezzat taking part in a discussion about human rights violations in Egypt in a video produced by the Ministry of Interior depicting Mr. Ezzat as a “rights terrorist”. Yet, the authorities have not addressed any of the overwhelming evidence of the existence of human rights violations, such as enforced disappearance and torture, gathered by Mr. Ezzat and other Egyptian human rights defenders. Instead, they have punished Mr. Ezzat for informing the public about the human rights violations taking place in Egypt. This demonstrates a violation both of Mr. Ezzat's right to impart information and of the right of the Egyptian public to receive information.

16. In addition, the source recalls that it is stated explicitly in article 19 (3) of the Covenant that freedom of expression may be subjected to certain restrictions; “these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (*ordre public*), or of public health or morals”. However, in the present case, the source argues that it is difficult to see how the protection of national security and public order, or respect of the rights of others, can be accomplished through the arrest and prosecution of a human rights defender. Should any of the information provided by Mr. Ezzat have been false, the Egyptian State should have used its media reach to correct the record, and openly address allegations against it and provide the public with evidence to support its claims.

17. Turning to other alleged violations, the source recalls that the Committee against Torture calls for detainees to be given access to a lawyer, a doctor and their family members from the time that they are taken into custody, including police custody. In addition, anyone who is arrested, detained or imprisoned has the right to inform, or have the authorities notify, someone in the outside world that they have been taken into custody, and where they are being held. The Human Rights Committee has clarified that intentional failure by the authorities to disclose the fate of an arrested person for a prolonged period effectively places that person outside the protection of the law. In cases of enforced disappearance, where the State refuses to acknowledge the detention or conceals the fate or whereabouts of the individual concerned, the Human Rights Committee has concluded that such practices violate rights, including the right to be recognized as a person before the law.

18. The source claims that Mr. Ezzat was subjected to enforced disappearance from 1 March to 4 March 2018. He was not allowed to inform anyone about his arrest or where he was being held. In addition, Egyptian State officials never informed the family of his whereabouts. His family was informed that he had appeared before the State Security Prosecution in the Fifth Settlement – not through State officials but through the private efforts of the lawyers present, who recognized Mr. Ezzat and informed his relatives of the appearance. Even after the family had learned of his whereabouts and where he was being held, they were only allowed to visit him 11 days thereafter. During his period of enforced disappearance, Mr. Ezzat was also subjected to threats and psychological torture as he was separated from the outside world and left at the mercy of agents of the National Security Agency.

19. Finally, the source recalls that everyone arrested or detained, regardless of the criminal charge, has the right to the assistance of a legal counsel. Human rights monitoring mechanisms have clarified that the provisions of the Covenant on the right to counsel apply to the pretrial phase. Therefore, all suspects and accused persons should have access to and the assistance of counsel from the very start of a criminal investigation. A person arrested

or detained should have access to a lawyer as soon as he or she is deprived of liberty. This includes the assistance of a counsel during questioning by the police or by an investigating judge, even if the person arrested or detained exercises the right to remain silent.

20. Bearing this in mind, the source argues that Mr. Ezzat's right to legal counsel was severely violated. Indeed, the source claims that he was brought before the prosecution and questioned for the first time without the presence of his lawyer. In addition, the first questioning took place after three days of enforced disappearance. In addition, while Mr. Ezzat had his lawyer present with him the following time he was questioned, he did not have time to consult with his lawyer confidentially.

#### *Response from the Government*

21. On 6 August 2018, the Working Group transmitted the allegations made by the source to the Government through its regular communication procedure. The Working Group requested the Government to provide, by 5 October 2018, detailed information about the current situation of Mr. Ezzat and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Mr. Ezzat's physical and mental integrity.

22. The Working Group regrets that it did not receive a response from the Government to that communication, nor did the Government request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

#### **Discussion**

23. 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.

24. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

25. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty of person and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and other applicable international or regional instruments.<sup>1</sup> Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and obliged to assess the judicial proceedings and the law itself to determine whether such detention is also consistent with the relevant rules and standards of international human rights law.<sup>2</sup>

26. The Working Group also wishes to reiterate that it applies a heightened standard of review in cases where the rights to freedom of movement and residence, freedom to seek asylum, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association, participation in political and public affairs, legal equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities, are restricted or where human rights defenders are

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<sup>1</sup> See General Assembly resolution 72/180, fifth preambular paragraph; Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para. 15; Human Rights Council resolutions 6/4, para. 1 (a), and 10/9, para. 4 (b); and opinions No. 38/2018, para. 60; No. 94/2017, para. 59; No. 88/2017, para. 32; No. 83/2017, paras. 51 and 70; No. 76/2017, para. 62; No. 28/2015, para. 41; and No. 41/2014, para. 24.

<sup>2</sup> See opinions No. 38/2018, para. 60; No. 94/2017, paras. 47–48; No. 33/2015, para. 80; No. 1/2003, para. 17; No. 5/1999, para. 15; and No. 1/1998, para. 13.

involved.<sup>3</sup> Mr. Ezzat's role as a prominent human rights lawyer and Executive Director of the Egyptian Association for Rights and Freedoms human rights organization requires the Working Group to undertake such scrutiny.<sup>4</sup>

#### *Category I*

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

28. At the outset, the Working Group expresses its grave concern at Mr. Ezzat's enforced disappearance for three days from 1 March to 4 March 2018 after his initial arrest. It is the Working Group's view that there can hardly be a valid legal basis for this type of deprivation of liberty which places the detainee outside the protection of the law, under any circumstance, particularly because it deprived him of his right to challenge the legality of his detention, in violation of articles 6 and 8 of the Universal Declaration of Human Rights and articles 2 (3) and 9 (4) of the Covenant.

29. The source also submits, and the Government does not refute, that Mr. Ezzat was arrested without being shown an arrest warrant. The Working Group recalls that the international norms on detention include the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant as well as under principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>5</sup> Any form of detention or imprisonment should be ordered by, or be subject to the effective control of, a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

30. The Working Group also finds that, in order to ascertain a legal basis for deprivation of liberty, the authorities should have informed Mr. Ezzat of the reasons for his arrest, at the time of arrest, and of the charges against him promptly; their failure to do so violates article 9 of the Universal Declaration of Human Rights and article 9 (2) of the Covenant.

31. The Working Group also notes that Mr. Ezzat was not brought promptly before a judge or afforded the right to take proceedings before a court so that it may decide without delay on the lawfulness of his detention in accordance with article 9 (3) and (4) of the Covenant. This also deprived him of an effective judicial remedy for the violation of his rights and freedoms provided in articles 8 and 10 of the Universal Declaration of Human Rights and articles 2 (3) and 14 (1) of the Covenant. Pretrial detention without an individualized determination of the risk of flight, of interference with the evidence or of recurrence of the crime, and without consideration of less intrusive alternatives, such as bail, electronic bracelets or other conditions, in accordance with the principle of necessity and proportionality, is devoid of legal basis.<sup>6</sup>

<sup>3</sup> See opinions No. 13/2018, para. 22; No. 3/2018, para. 40; No. 94/2017, para. 49; No. 57/2017, para. 46; No. 41/2017, para. 95; No. 67/2012, paras. 56–57; No. 65/2012, paras. 39–40; No. 62/2012, para. 39; No. 54/2012, para. 29; No. 64/2011, para. 20; and No. 21/2011, para. 29. Domestic authorities and international supervisory bodies should apply the heightened standard of review of government action, especially when there are claims of a pattern of harassment (opinion No. 39/2012, para. 45). See also the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 9 (3).

<sup>4</sup> Human rights defenders, in particular, have the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through those and other appropriate means, to draw public attention to such matters (see General Assembly resolution 53/144, annex, art. 6 (c)). See also opinion No. 8/2009, para. 18.

<sup>5</sup> See opinion No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39. See also art. 6 of the African Charter on Human and Peoples' Rights and article 14 (1) of the Arab Charter on Human Rights.

<sup>6</sup> See opinion No. 61/2018, para. 50.

32. The Working Group therefore considers that Mr. Ezzat's arrest and detention lack a legal basis and are thus arbitrary, falling under category I.

#### *Category II*

33. The Working Group recalls that the rights to freedom of movement and residence, freedom to seek asylum, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association, participation in political and public affairs, legal equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities, are among the most fundamental human rights, deriving from the inherent dignity of the human person, reaffirmed and ensured by the international community in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant.

34. The source claims, and the Government has not rebutted, that Mr. Ezzat was arrested for practising his legitimate and universally protected rights to freedom of thought, freedom of expression and freedom of assembly and association. With his colleagues, Mr. Ezzat had been seeking, receiving and imparting information about the extensive human rights violations, including enforced disappearances and torture, occurring in his country. After having done so, Mr. Ezzat was charged with joining an "illegal" group and promoting its ideas, publishing false news, and supplying international institutions with false information, and he was forced to appear in the "Rights terrorism" section of a Ministry of Interior video in relation to his human rights activism.

35. The Working Group recalls that freedom of opinion and expression is not without limitations; article 29 (2) of the Universal Declaration of Human Rights provides that the only legitimate limitations to the exercise of one's rights and freedoms are for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Similarly, the Covenant lists the few legitimate limitations in its articles 12 (3), 18 (3), 19 (3), 21 and 22 (2).

36. Further, the Working Group notes the observation by the Human Rights Committee, in paragraph 34 of its general comment No. 34 (2011) on the freedoms of opinion and expression, that restrictions on the freedom of expression must not be overbroad and must conform to the principle of proportionality: they must (a) be appropriate to achieve their protective function; (b) be the least intrusive instrument among those which might achieve their protective function; and (c) be proportionate to the interest to be protected. Moreover, the Committee emphasized that States parties should not prohibit criticism of institutions, such as the administration (see para. 38), and that the penalization of a media outlet, publishers or journalists solely for being critical of a government or of the political or social system espoused by a government can never be considered to be a necessary restriction of freedom of expression (see para. 42).<sup>7</sup>

37. In the same vein, the Working Group notes that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has reiterated that the right to freedom of expression includes the expression of views and opinions that offend, shock or disturb.<sup>8</sup> Even statements considered by the authorities to be unacceptable, disrespectful and in very bad taste are entitled to protection. In addition, the Human Rights Council, in its resolution No. 12/16 (para. 5 (p) (i)), has stated that restrictions on discussion of government policies and political debate are not consistent with article 19 (3) of the Covenant.

38. In the Working Group's view, the principle of necessity and proportionality that inheres in the freedom of opinion and expression is equally inherent in other fundamental human rights. The Working Group, in its deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law, confirmed that

<sup>7</sup> See opinions No. 61/2018, para. 55; and No. 83/2018, para. 71. See also 27-2(A) KCCR 700, 2013 Hun-Ga 20, 21 October 2015 (Republic of Korea).

<sup>8</sup> A/HRC/17/27, para. 37.

the notion of “arbitrary” *stricto sensu* includes both the requirement that a particular form of deprivation of liberty is taken in accordance with the applicable law and procedure and that it is proportional to the aim sought, reasonable and necessary (A/HRC/22/44, para. 61). In its jurisprudence, with regard to the application of the principle of proportionality, the Working Group has applied the four-pronged test of (a) whether the objective of the measure is sufficiently important to justify the limitation of a protected right; (b) whether the measure is rationally connected to the objective; (c) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and (d) whether, balancing the severity of the measure’s effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.<sup>9</sup>

39. In the Working Group’s view, punishment for publishing false news or supplying international institutions with false information, even if true, serves no legitimate aim or objective in a democratic society that may justify interference with the rights guaranteed under articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the Covenant. Moreover, the Ministry of Interior’s depiction of Mr. Ezzat as a “rights terrorist” in a video, made and released by the Government, gives further weight to the view that the other charges against him result from his public criticism of the Government’s human rights record.

40. The Working Group likewise finds no legitimate aim or objective in a free and democratic society that would be served by curtailing Mr. Ezzat’s rights to freedom of association and to take part in the conduct of public affairs, under articles 20 and 21 of the Universal Declaration of Human Rights and articles 21 and 25 of the Covenant, by imprisoning him.

41. The Working Group is therefore of the opinion that Mr. Ezzat’s deprivation of liberty is arbitrary, falling within category II, as it violated articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 22 and 25 of the Covenant.<sup>10</sup>

### *Category III*

42. Given its finding that Mr. Ezzat’s deprivation of liberty is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Ezzat should have taken place. However, as the trial did take place, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give his deprivation of liberty an arbitrary character so that it falls within category III.

43. The Working Group wishes to point out that the Government failed to respect Mr. Ezzat’s right to legal assistance, in violation of article 9 of the Universal Declaration of Human Rights and article 14 (3) (b) and (d) of the Covenant. Mr. Ezzat was deprived of his right to legal counsel at a critical stage of the criminal proceedings, which exposed him to the risk of coerced confession. In this regard, the Working Group notes that his lawyer was only able to assist him as of the second investigation before the prosecution, and that he was not allowed to consult with his lawyer confidentially.

44. The Working Group is also concerned that although Mr. Ezzat was not subjected to physical torture, his interrogators employed unlawful threats and psychological pressure against him, in breach of article 14 (3) (g) of the Covenant.

45. The Working Group also expresses its grave concern at the portrayal of Mr. Ezzat as a “rights terrorist” in the Ministry of Interior’s publicly released video, as this severely undermines the presumption of innocence for criminal defendants guaranteed under article

<sup>9</sup> See opinions No. 88/2017, para. 35; No. 76/2017, para. 68; No. 58/2017, para. 48; No. 56/2017, para. 51; No. 41/2017, para. 86; and No. 54/2015, para. 89. See also *Bank Mellat v. Her Majesty’s Treasury* (No. 2), UKSC 39, 19 June 2013 (United Kingdom); and *R. v. Oakes*, 1 SCR 103, 28 February 1986 (Canada).

<sup>10</sup> See also arts. 9, 10 and 11 of the African Charter on Human and Peoples’ Rights and arts. 24 (5) and (6), 30 and 32 of the Arab Charter on Human Rights.

11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.<sup>11</sup> The Working Group recalls that all public officials have a duty to refrain from prejudging the outcome of a trial – for example, by abstaining from making public statements affirming the guilt of the accused.<sup>12</sup> While the presumption of innocence needs to be balanced with the public's right to know in a democratic society, the latter must be proportionate to the former.<sup>13</sup> The near-automatic extension of Mr. Ezzat's pretrial detention by courts with no regard for his due process and fair trial rights is a serious abuse of power that violates the right to personal liberty, the right not to be subjected to arbitrary detention, and the right to a fair trial and to presumption of innocence under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.<sup>14</sup>

46. In view of the above, the Working Group concludes that the violations of the rights to a fair trial and to due process are of such gravity as to give the deprivation of liberty of Mr. Ezzat an arbitrary character that falls within category III.

#### *Category V*

47. The Working Group now proceeds to examine whether Mr. Ezzat's deprivation of liberty constitutes illegal discrimination under international law for the purpose of category V.

48. Firstly, the Working Group notes that Mr. Ezzat is a human rights lawyer and is Executive Director of the Egyptian Association for Rights and Freedoms, a human rights organization. Mr. Ezzat has been collecting evidence of human rights violations in his country, including enforced disappearances and torture, and publicizing them, with his fellow human rights defenders.

49. The Working Group notes the Government's continuing crackdown on human rights defenders, such as Mr. Ezzat. In this regard, the Working Group is mindful that special procedures of the Human Rights Council recently expressed their grave concern at human rights defenders' prolonged periods of detention, reportedly arising from their peaceful and legitimate defence of human rights, and warned that the systematic targeting of human rights defenders is yet another indication that the Government of Egypt is operating a zero-tolerance approach to dissent, which is often suppressed under the pretext of countering terrorism.<sup>15</sup>

50. Given this pattern, the Working Group is of the view that discrimination by the Government on the basis of Mr. Ezzat's professed human rights activism is the only plausible explanation for his arrest and detention. The Working Group therefore concludes that Mr. Ezzat's deprivation of liberty is arbitrary, falling within category V, as it violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant.

51. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

<sup>11</sup> See also art. 7 (1) (b) of the African Charter on Human and Peoples' Rights and art. 16 of the Arab Charter on Human Rights.

<sup>12</sup> See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30. See also Human Rights Committee, *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997), paras. 3.5 and 8.3.

<sup>13</sup> See opinions No. 26/2018, para. 64; No. 83/2017, para. 79; and No. 33/2017, para. 86 (e). See also Human Rights Committee, general comment No. 32, para. 30; *Gridin v. Russian Federation*, paras. 3.5 and 8.3; Bundesverfassungsgericht judgment, BVerfGE 35, 202–245, 5 June 1973 (Germany); and 26-1(A) KCCR 534, 2012 Hun-Ma 652, 27 March 2014 (Republic of Korea).

<sup>14</sup> Opinion No. 37/2018, para. 32.

<sup>15</sup> Office of the United Nations High Commissioner for Human Rights, "Egypt: UN experts condemn 'systematic targeting' of human rights defenders", 28 September 2018, available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23658&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23658&LangID=E).



52. The Working Group recalls that the corollary obligations *erga omnes* of protection “bind all the States which compose the organized international community” in a horizontal dimension and “bind both the organs and agents of (State) public power, and the individuals themselves (in the inter-individual relations)” in a vertical dimension.<sup>16</sup> Hence, the duty to comply with international human rights standards that are peremptory and *erga omnes* norms, such as the prohibition of arbitrary detention, rests with all bodies and representatives of the State, all officials, including judges, prosecutors, police and security officers, and prison officers with relevant responsibilities, and all other natural and legal persons.<sup>17</sup> No person can contribute to human rights violations.

53. The Working Group notes that the present opinion is only one of many other opinions issued in the past five years in which the Working Group has found the Government of Egypt to be in violation of its international human rights obligations.<sup>18</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.

### Disposition

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

The deprivation of liberty of Ezzat Ghoneim, being in contravention of articles 2, 3, 7, 8, 9, 10, 11, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 14, 18, 19, 21 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

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

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

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

58. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on

<sup>16</sup> See Inter-American Court of Human Rights, “Juridical condition and rights of undocumented migrants”, advisory opinion OC-18/03, 17 September 2003, requested by Mexico, concurring opinion of Judge A. A. Cançado Trindade, paras. 74–85, available at [www.corteidh.or.cr/docs/opiniones/seriea\\_18\\_ing.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.pdf).

<sup>17</sup> See opinions No. 40/2018, para. 49; No. 94/2017, para. 73; No. 91/2017, para. 102; No. 83/2017, para. 90; No. 76/2017, para. 85; No. 1/2016, para. 43; No. 37/2014, para. 42; No. 36/2014, para. 21; No. 35/2014, para. 19; No. 34/2014, para. 34; No. 27/2014, para. 32; No. 22/2014, para. 25; No. 48/2013, para. 14; No. 36/2013, paras. 34 and 36; No. 35/2013, paras. 35 and 37; No. 34/2013, paras. 33 and 35; No. 9/2013, para. 40; No. 60/2012, paras. 20–21; No. 54/2012, para. 38; No. 50/2012, para. 27; No. 47/2012, paras. 19 and 22; No. 38/2012, para. 33; No. 64/2011, para. 25; No. 49/2011, para. 12; No. 39/2011, para. 17; No. 38/2011, para. 16; No. 37/2011, para. 15; No. 21/2011, para. 39; No. 20/2011, para. 25; No. 16/2011, para. 5; No. 15/2011, para. 5; No. 13/2011, para. 12; and No. 5/2011, para. 6.

<sup>18</sup> See, for example, opinions No. 27/2018, No. 26/2018, No. 83/2017, No. 78/2017, No. 30/2017, No. 60/2016, No. 54/2016, No. 42/2016, No. 41/2016, No. 7/2016 and No. 6/2016.

the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

59. The Working Group encourages the Government to ratify the Optional Protocols to the International Covenants.

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

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

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

62. 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.

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

64. 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 21 November 2018]*

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<sup>19</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.