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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its seventy-sixth session, 22-26 August 2016****Opinion No. 42/2016 concerning Ahmed Yousry Zaky (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 17 June, the Working Group transmitted a communication to the Government of Egypt concerning Ahmed Yousry Zaky. 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 sentence or despite an amnesty law applicable to him) (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 International Covenant on Civil and Political Rights (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 for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation or disability or other status, that aims towards or can result in ignoring the equality of human rights (category V).

## Submissions

### *Communication from the source*

4. Mr. Ahmed Yousry Zaky, born in 1995, is a student at the University of Cairo. Mr. Zaky lives in Hadayek El Nozha, Madinat Essalam, Cairo Governorate, in Egypt.

5. On 3 May 2015, at approximately 1. 00 a.m., personnel from the Homeland Security forces accompanied by officers from the Security Forces raided Mr. Zaky's home, while he and his family were sleeping. They arrested Mr. Zaky and searched the house without showing any arrest or search warrant. The alleged perpetrators acted violently against Mr. Zaky's relatives. Mr. Zaky was handcuffed and forced into a car which took him to an unknown location.

6. It was later found out that Mr. Zaky was brought to the Homeland Security headquarters in Lazoghly. He was kept there in secret detention for a month during which he was repeatedly tortured and forced to make a confession. He was hanged by his hands and stripped naked. Mr. Zaky was electrocuted on the entire body including his genitals. He was also regularly beaten up with sticks, insulted and deprived of food, water and sleep.

7. When a doctor came to the cell at the headquarters of the Homeland Security to apply anti-inflammatory cream on Mr. Zaky, the doctor told Mr. Zaky that "they (the personnel from the Homeland Security) would not kill you but you will be tortured for as long as needed." Mr. Zaky was subjected to torture for several days more until he admitted to the crimes that he was forced to confess to.

8. Subsequently, on 4 June 2015, Mr. Zaky was brought before a military prosecutor of El Tagamo El Khames without access to any lawyer. He was charged under the anti-terrorism law which was later amended in August 2015, for "being affiliated to a terrorist group", "blocking traffic and roads", "sabotaging against power stations", "arson", "disturbing public order", and "participating to the murder of a police officer". Under the anti-terrorism law, some of these charges are punishable by the death penalty.

9. Even though Mr. Zaky is a civilian, his case was referred to the military court. According to the source, military courts in Egypt are not always competent to try civilians accused of terrorism-related crimes. However, Law No. 136 of 2014 for the Securing and Protection of Public and Vital Facilities has broadened the jurisdiction of military courts to try civilians as soon as the latter has been accused of attacking and/or damaging public properties or having committed a felony while being at a public facility (which also includes private properties providing a public service), which is the case for Mr. Zaky.

10. Concerns have been raised about the independence and impartiality of military courts in Egypt. According to the information received, in Egypt, military judges are not independent from the executive branch; they are in fact affiliated to the Ministry of Defense and they have to implement the orders from the Ministry. Moreover, military judges are military officers and are subjected to the same military disciplinary rules. They do not receive sufficient legal training. Every sentence issued by a military court has to be

reviewed by the Ministry of Defense who often approves, amends, or rejects the decision arbitrarily. Military courts do not always hold their trials in official courts of law but rather in military camps and hearings are often private.

11. The lawyer of Mr. Zaky only managed to meet with him after he left the prosecutor's office. Mr. Zaky was blindfolded and with evident signs of torture on his body. The lawyer of Mr. Zaky asked the prosecution to authorise medical examination and to investigate the torture he had been subjected to but his requests were dismissed by the prosecutor. Since Mr. Zaky was blindfolded, he was asked to sign the prosecution's documents without having the possibility of reading them.

12. Mr. Zaky was indicted in military case No. 288 of 2015 regarding the killing of Colonel Wael Tahoun on 21 April 2015, along with 52 other defendants. Mr. Zaky's relatives have continuously testified that he was at home with them when the assassination took place.

13. Following his indictment, Mr. Zaky was transferred to Al Aqrab prison – the High-Security section of Tora prison – where he remains detained to date. His family has been allowed to visit him during the first months of his detention there but was refused the right to bring him clothes and blankets. Since November 2015, all visits to Al Aqrab prisoners have been refused by the prison personnel for no apparent reason.

14. On 11 January 2016, Mr. Zaky was for the first time brought before a military court. The trial is still at the stage of preliminary hearings. A hearing initially scheduled for 12 June 2016 has been postponed to an unknown date. The confessions obtained as a result of torture have been considered admissible by the military judge. There is a high probability that Mr. Zaky will be sentenced to death penalty on the basis of the confessions he made under torture.

15. Mr. Zaky's health has deteriorated. He has been detained in very harsh conditions with very few and short family visits (5 minutes maximum each time with prohibition of bringing food and clothes for him). He has never received proper medical attention while in detention.

16. The source submits that the continued deprivation of liberty of Mr. Zaky is arbitrary and falls under categories I and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. In its view, Mr. Zaky was arrested without a warrant and no reason was provided to him at the time of the arrest. He was held in secret detention for one month until he was brought before a military prosecutor and charged on 4 June 2015. The source argues that there was no legal basis to justify the detention of Mr. Zaky between 3 May and 4 June 2015 which is in violation of article 9 of the ICCPR.

17. The source also submits that Mr. Zaky has not been guaranteed the international norms of due process and guarantees to a fair trial during the period of his deprivation of liberty, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR). The source argues that Mr. Zaky was tortured to admit to crimes that he did not commit and the confession obtained under torture has been considered admissible by the military judge; Mr. Zaky was forced to sign documents that he was not allowed to read; he did not have access to a lawyer when he was brought before a military prosecutor; he was brought before a judge on 11 January 2016, 9 months after he was arrested; and being a civilian, Mr. Zaky is tried before a military court which is lack of independence; all of which are in violation of articles 14 (3) (a) (c) (d) and (g) of the ICCPR.

*Response from the Government*

18. On 17 June 2016, 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 detailed information by 16 August 2016 about the current situation of Mr. Ahmed Yousry Zaky, and any comment on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds justifying Mr. Ahmed Yousry Zaky's continued detention and to provide details regarding the conformity of the legal proceedings against him with international human rights treaties to which the Arab Republic of Egypt is a party.

19. The Working Group regrets that it has not received a response from the Government to that communication. The Government has not requested an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

**Discussion**

20. In the absence of a response from the Government and pursuant to paragraph 15 of the methods of work, the Working Group may render an opinion on the basis of the information available to it.

21. In that regard, the Working Group observes that the set of information provided by the source is coherent and fully supported by the adduced evidence. There is therefore *prima facie* credible allegations provided by a reliable source.

22. 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.<sup>1</sup> In this case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

23. In such a circumstance, the Working Group considers established that Mr. Zaky, a 20-year old civilian, was arrested on 3 May 2015 after a search of his parents' house, without any information on the reasons of the search and the arrest. After a month of secret detention during which Mr. Zaky was tortured multiple times, he had no other choice than signing a confession. On 4 June 2015, he was presented to a military prosecutor and was formally charged. It was only after the meeting with the prosecutor that he was given legal assistance. On 16 January 2016, he was for the first time brought to a military court. The trial hearing was then scheduled for 16 June 2016, but thereafter postponed without any future date being designated. At the same time, Mr. Zaky's health has been deteriorating. Finally, the confessions are the basis of the charge against Mr. Zaky and the risk for him to be convicted and sentenced to death appears high to the source and the Working Group has no reason to doubt such a statement.

24. In this case, one element is critical: Mr. Zaky was tortured and forced to confess wrongdoings which sustain the charges against him and that confession will be the key evidence in his trial. As the Working Group has said too often when an accused is forced to confess responsibility in a crime and that confession is used to convict him, the trial is totally flawed and ought to be annulled. This is a serious violation of the fair trial rights provided in Article 14 of the ICCPR but also of the *jus cogens* norm of prohibition of

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<sup>1</sup> See, for example, Report of the Working Group, A/HRC/19/57, 26 December 2011, para. 68, and Opinion No. 52/2014.

torture.<sup>2</sup> In addition, Mr. Zaky, a civilian, was subject to military justice and the Working Group has already, at numerous occasions, stated that this was a violation of the right to a competent, independent and impartial tribunal. This is a category III arbitrary detention and the specific allegations of torture should be referred to the appropriate mechanism.

25. In addition, Mr. Zaky was arrested and detained without timely notification of the reasons, in violation of Article 9 of the ICCPR. This violation fits into category I.

26. Finally, Mr. Zaky did not benefit from the assistance of a lawyer promptly and this is a further violation of Article 14 of the ICCPR, and another category III arbitrary detention.

27. The Working Group is concerned by the pattern of violations occurring in Egypt (see, for example, WGAD Opinion 6/2016, Opinion 7/2006, Opinion 14/2015, Opinion 49/2015, Opinion 52/2015 and Opinion 53/2015)<sup>3</sup> and wishes to draw the attention of the authorities, especially when there is a poor cooperation records despite the resolutions of the Human Rights Council. The rule of law principle is a key parameter towards a peaceful and democratic society which protects every citizen within a country whether in leadership position or not, and nourishes the trust of the people in their leadership. A shift is here necessary to bring this pattern to an end and provide for a better compliance with the rule of law principle for a sustainable peaceful society where everyone can enjoy the rights provided by the various legal instruments.

### **Disposition**

28. In conclusion, the Working Group on Arbitrary Detention renders the following opinion: The arrest and deprivation of liberty of Mr. Ahmed Yousry Zaky is arbitrary, being in violation of articles 9 and 10 of the Universal Declaration of Human Rights and Articles 9 and 14 of the International Covenant on Civil and Political Rights; and fall within categories III and I of the categories referred to by the Working Group when considering cases submitted to it.

29. As a result, the Working Group requests the Government of Egypt to take the necessary steps in order to remedy the situation of Mr. Ahmed Yousry Zaky and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

30. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release him and accord him an enforceable right to compensation. In view of the statement made above about the pattern of violations, the Working Group is of the view that there is a need to include a guarantee of non-repetition in the scope of the reparation.

31. Finally the Working Group refers the specific allegation of torture to the Special Rapporteur on torture for appropriate measures, in accordance to paragraph 33(a) of the methods of work.

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<sup>2</sup> The Human Rights Committee has stated this principle in its General Comments 20 (1992) and 32 (2007). The European Court of Human Rights has also stated the same in relation to the relevant provision of the 1950 Convention related to fair trial, especially in the case *Gäfgen v Germany* (Grand Chamber, 2010), para. 166.

<sup>3</sup> A/HRC/WGAD/2016/6, A/HRC/WGAD/2016/7, A/HRC/WGAD/2015/14, /HRC/WGAD/2015/49, A/HRC/WGAD/2015/52, A/HRC/WGAD/2015/53

**Follow-up procedure**

32. 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 follow-up action taken on the recommendations made in the present opinion, including:

- (a) Whether Mr. Zaky has been released, and if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Zaky;
- (c) Whether an investigation has been conducted into the violation of Mr. Zaky'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 the Government with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

33. The Government is further 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.

34. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the possibility of undertaking its own follow-up of the opinion if new concerns in relation to the case are brought to its attention. This follow-up procedure will enable the Working Group to keep the Human Rights Council informed of the progress made in implementing its recommendations, as well as any failure to take action.

35. The Working Group recalls that the Human Rights Council has called for all States to cooperate with the Working Group, 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>4</sup>

*[Adopted on 26 August 2016]*

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<sup>4</sup> See Human Rights Council resolution 24/7, para. 3.