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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April–1 May 2020

#### Opinion No. 6/2020 concerning Ahmed Tarek Ibrahim Abd El-Latif Ziada (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 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 10 January 2020 the Working Group transmitted to the Government of Egypt a communication concerning Ahmed Tarek Ibrahim Abd El-Latif Ziada. 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. Ahmed Tarek Ibrahim Abd El-Latif Ziada is an Egyptian citizen from Nahia, Giza, and a graphic designer, affiliated to the April 6th Movement.
- a. Arrest and detention
  5. According to the source, on 18 February 2018 at 3.30 a.m., Mr. Ziada was arrested at his house by State security forces, of whom some were uniformed and others were in plain clothes. No warrant or official documents were shown to provide a reason for his arrest.
  6. The source indicates that the State security forces raided the house and searched his belongings. Mr. Ziada was also questioned for an hour before being arrested and taken to an unknown place.
  7. The source reports that Mr. Ziada was forcibly disappeared and kept incommunicado in the State security premises in Sheikh Zayed City for four days, until 21 February 2018. Mr. Ziada was blindfolded and had his hands tied behind his back. He underwent psychological torture, as on a daily basis he heard other detainees being given electric shocks.
  8. The source submits that a complaint was filed with the public prosecutor by Mr. Ziada's family within 10 hours of the arrest, for enforced disappearance. The complaint was registered under No. 2253 on 19 February 2018.
  9. The source states that Mr. Ziada was referred to the Supreme State Security Prosecution on 21 February 2018, where he was charged with affiliation to a terrorist group and propagation of false news.
  10. The source reports that the detainee was then transferred, on 21 February 2018, to Tora Prison. There he was prevented from practising physical exercise. In addition, he was not examined by any doctor or medical services during his stay and no medical report was issued.
  11. The source adds that Mr. Ziada's lawyer was able to see him for the first time on 25 February 2018, for his second appearance before the Supreme State Security Prosecution. Mr. Ziada's detention was then renewed every 15 days by the prosecutor, pending further investigation.
  12. The source reports that, after the initial period of incommunicado detention, family visits were allowed regularly but were subjected to harassment by the guards.
  13. The source notes that Mr. Ziada is the sole suspect in this case. For the first two months of his pretrial detention, he was held together with detainees convicted on terrorism charges, before being transferred to another cell.
  14. According to the source, Mr. Ziada's lawyer submitted eight appeals to challenge the detention renewal orders. All of these appeals were ignored except for one, which was heard on 25 September 2018 and rejected.
  15. The source indicates that on 28 May 2019, the court ordered Mr. Ziada's release conditional upon precautionary measures. He was only released 10 days later, on condition that he reported twice a week to the Kirdasa police station in Giza. On 1 October 2019, these conditions were reduced to one weekly visit to the police station. However, the police administration has refused to apply this decision and continues to force Mr. Ziada to report to the police station twice a week, without a legal basis.
  16. The source reports that on 16 February 2020, the Supreme State Security Prosecution decided to cancel the precautionary measures and ordered Mr. Ziada's release with his case, No. 467 of 2018, still pending. He is now completely free, but has not been acquitted of the charges. According to the source, this approach is used by security forces to keep the victim in constant fear of arrest in relation to the same case when needed.

b. Legal analysis

17. The source submits that several violations of the right to a fair trial occurred during Mr. Ziada's detention. These included violations of the right to trial before an independent and impartial court, of the right to the assistance of a lawyer prior to the trial, of the right to be promptly brought before a judge, and of the right to communicate and receive visits, as well as psychological coercion.

18. In particular, the source emphasizes that it is stated in article 9 (5) of the International Covenant on Civil and Political Rights that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". In addition, it is stipulated in article 9 (1) of the Covenant that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

19. The source also notes that according to the Committee against Torture, the right to freedom from torture and other ill-treatment or punishment is absolute. It applies in all circumstances, and it may never be restricted, including during times of war or states of emergency. No exceptional circumstances whatsoever, including threats of terrorism or other violent crime, may be invoked to justify torture or other ill-treatment. Such prohibition applies irrespective of the offence allegedly committed by the accused person.

20. According to the source, Mr. Ziada was submitted to psychological torture through blindfolding and threats, which constitutes illegal coercive pressure.

21. The source also emphasizes that the Human Rights Committee, in its general comment No. 13 (1984) on the administration of justice, raised concerns regarding the nature of military or special courts and stated that quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice.

22. The source contends that the State security courts are active during the state of emergency and that their jurisdiction covers a wide array of crimes, such as terrorism-related offences. Their judgments are final and irrevocable and are submitted to the President for ratification. The President can reduce, annul or commute the sentence, and can order a retrial before another court if he wants to increase the sentence.

23. The source points out that the fact that Mr. Ziada was prevented from challenging his detention before a higher court violates the essence of the right to a fair trial, and breaches the independence and the impartiality of the judiciary. Indeed, the President appoints the members of the courts on recommendation from the ministers of defence and of justice, and has the last word on sentences. According to the Special Rapporteur on the independence of judges and lawyers, the body responsible for appointment, promotion and discipline of judges should be independent of the executive in both its composition and its work (A/HRC/11/41, paras. 23–34 and 97).

24. The source further recalls that everyone arrested or detained has the right to the assistance of legal counsel. The right to legal counsel prior to trial includes the right to have the lawyer present during questioning and be able to consult with him or her during questioning. According to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, this right is a safeguard for the rights of the accused and serves as an important protection against torture and other ill-treatment, coerced "confessions", enforced disappearance and other human rights violations.

25. The source indicates that, in this particular case, Mr. Ziada was questioned in the absence of his lawyer on 21 February 2018 during his first interview with the prosecutor. This constitutes a violation of his right to the assistance of a lawyer during questioning.

26. The source submits that according to article 9 (3) of the Covenant, "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial." In addition, according to article 9 (4) of the Covenant, and article 17 (2) (f) of the International Convention for the Protection of All Persons from Enforced Disappearance, everyone

deprived of their liberty has the right to take proceedings before a court to challenge the lawfulness of their detention. The court must rule without delay and order release if the detention is unlawful.

27. The source emphasizes that this right safeguards the right to liberty and security of person and provides protection against human rights violations including torture and other ill-treatment, arbitrary detention and enforced disappearance. This right is guaranteed to all people deprived of their liberty, for whatever reason. It also applies to all forms of deprivation of liberty, including administrative detention and, as a result, detention on grounds of public security.

28. According to the source, the facts of the case show that Mr. Ziada was forcibly disappeared and was not brought promptly before a judge.

29. The source states that the rights of detainees to communicate with the outside world and to receive visits are fundamental safeguards against human rights violations, including torture or other ill-treatment and enforced disappearance. They affect the ability of the accused to prepare their defence and are required in order to protect the right to private and family life and the right to health. The Human Rights Committee has also stated that the rights of people held in police custody and pretrial detention to access doctors, families and lawyers should be enshrined in law.

30. The source contends that the right of Mr. Ziada to communicate with his family was violated at the beginning of his detention.

31. Considering all of the above, the source submits that Mr. Ziada's detention and the probation measures that followed are arbitrary under categories I, II and III.

#### *Response from the Government*

32. On 10 January 2020, 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 10 March 2020, detailed information about the current situation of Mr. Ziada and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Mr. Ziada's physical and mental integrity.

33. 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 paragraph 16 of the Working Group's methods of work.

#### **Discussion**

34. At the outset, the Working Group notes Mr. Ziada's release 10 days after the court order of 28 May 2019 and the prosecution's decision to cancel the precautionary measures and to order his release with his case, No. 467 of 2018, still pending. Following his release, the Working Group has the option of filing the case or rendering an opinion as to the arbitrariness of the detention, in conformity with paragraph 17 (a) of its methods of work. In this particular case, the Working Group has decided to render the present opinion, given the absence of a response from the Government, in conformity with paragraph 15 of its methods of work. In making this decision, the Working Group gives particular weight to the fact that, although Mr. Ziada has been released: (a) the circumstances in which he was detained were serious and warrant further attention, as he was allegedly subjected to enforced disappearance and incommunicado detention; (b) he was deprived of liberty for one year and three months in prison; (c) the police refused to release him for 10 days following the court order of 28 May 2019 prescribing the precautionary measure of reporting to the police station; (d) he remained under house arrest, which the Working Group considers as deprivation of liberty,<sup>1</sup> until the cancellation of the precautionary measures on 16 February 2020; (e) from 1 October 2019, when the precautionary measures had been reduced to one weekly visit to the police station, to 16 February 2020, when the precautionary measures were lifted, the police continued to force him to report to the police

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<sup>1</sup> Deliberation No. 1 (E/CN.4/1993/24, para. 20); deliberation No. 9 (A/HRC/22/44, para. 59); and opinion No. 54/2015, para. 87.

station twice a week, without a legal basis; (f) the security forces can still keep him in constant fear of deprivation of liberty in relation to the same case, as he has not been acquitted of the charges; and (g) the Government has failed to share information about the present case, including his release, let alone provide guarantees of non-repetition.<sup>2</sup>

35. 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.

36. The Working Group wishes to reaffirm that States have the obligation to respect, protect and fulfil the right to liberty and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international and regional standards set forth in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other applicable international and regional instruments.<sup>3</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 provisions of international human rights law.<sup>4</sup>

#### *Category I*

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

38. The source submits, and the Government does not contest, that Mr. Ziada was not presented with an arrest warrant or informed of the reasons for his arrest at the time of arrest on 18 February 2018.

39. As the Working Group has stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant, which was not implemented in the present case.<sup>5</sup>

40. The international human rights law on detention includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, 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 principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>6</sup> The Working Group has been presented with no valid grounds, such as a situation of flagrante delicto, to justify an exception to this principle in the present case. Furthermore, the search of his property without a warrant also violated article 12 of the Universal Declaration of Human Rights and article 17 (1) and (2) of the Covenant.

41. The Working Group also finds that, in order to invoke a legal basis for deprivation of liberty, the authorities should have informed Mr. Ziada of the reasons for his arrest, at the time of arrest, and promptly informed him of the charges against him.<sup>7</sup> Their failure to

<sup>2</sup> Opinions No. 88/2017, para. 21; and No. 94/2017, para. 44.

<sup>3</sup> General Assembly resolution 72/180, fifth preambular paragraph; Commission on Human Rights resolutions 1991/42, para. 2; and 1997/50, para. 15; and Human Rights Council resolutions 6/4, para. 1 (a); and 10/9.

<sup>4</sup> See, for example, opinions No. 1/1998, para. 13; No. 51/2019, para. 53; and No. 56/2019, para. 74.

<sup>5</sup> See, for example, opinions No. 93/2017, para. 44; No. 45/2019, para. 51; and No. 46/2019, para. 51.

<sup>6</sup> The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See, for example, decision No. 1/1993, paras. 6–7; and opinions No. 51/2019, para. 56; and No. 56/2019, para. 77. See also article 6 of the African Charter on Human and Peoples' Rights and article 14 (1) of the Arab Charter on Human Rights.

<sup>7</sup> See, for example, opinion No. 10/2015, para. 34. See also, for example, opinions No. 45/2019, para. 51; and No. 46/2019, para. 51.

do so violates article 9 of the Universal Declaration of Human Rights and article 9 (2) of the Covenant, as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and renders his arrest devoid of any legal basis.<sup>8</sup>

42. The source further maintains, and the Government again does not dispute, that Mr. Ziada was subjected to enforced disappearance and incommunicado detention for four days from 18 February to 21 February 2018.

43. The Working Group recalls that enforced disappearances violate numerous substantive and procedural provisions of the Covenant, including articles 9 and 14, and constitute a particularly aggravated form of arbitrary detention.<sup>9</sup> Such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention, lacks any valid legal basis under any circumstance and is inherently arbitrary as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.<sup>10</sup> The Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances.

44. The Working Group further recalls that it has consistently stated that holding persons incommunicado is not permitted under international human rights law<sup>11</sup> because it violates the right to be brought promptly before a judge and to challenge the lawfulness of detention before a court, enshrined in article 9 (3) and (4) of the Covenant.<sup>12</sup> The Working Group regards judicial oversight of deprivation of liberty as a fundamental safeguard of personal liberty which is essential in ensuring that detention has a legal basis. Such oversight by an independent judicial authority was absent in the present case. The Working Group thus considers that the incommunicado detention violates article 10 of the Universal Declaration of Human Rights and article 9 (3) and (4) of the Covenant. As a result, Mr. Ziada's right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

45. In view of the facts, the Working Group finds that Mr. Ziada was not brought promptly before a judge, within 48 hours of his arrest, barring absolutely exceptional circumstances, which is the international standard.<sup>13</sup> Moreover, it finds that pretrial detention, which should be the exception rather than the rule, was in the present case not based on an individualized determination of necessity and reasonableness that took into account all the circumstances, for such purposes specified in law as to prevent flight, interference with evidence or the recurrence of crime, accompanied by consideration of alternatives; consequently, his detention was without a legal basis.<sup>14</sup> Therefore, the Working Group finds a violation of article 9 of the Universal Declaration of Human Rights and article 9 (1) and (3) of the Covenant as well as of principles 11, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>15</sup>

<sup>8</sup> See also article 6 of the African Charter on Human and Peoples' Rights and article 14 (1) and (3) of the Arab Charter on Human Rights.

<sup>9</sup> See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 17. See also opinions No. 11/2020, No. 5/2020 and No. 13/2020.

<sup>10</sup> See the Declaration on the Protection of All Persons from Enforced Disappearance. See, for example, opinions No. 82/2018, para. 28; No. 51/2019, para. 58; and No. 56/2019, para. 79; as well as article 5 of the African Charter on Human and Peoples' Rights and article 22 of the Arab Charter on Human Rights.

<sup>11</sup> A/HRC/13/39/Add.5, para. 156.

<sup>12</sup> See, for example, opinions No. 45/2019, No. 44/2019 and No. 45/2017.

<sup>13</sup> See Human Rights Committee, general comment No. 35, para. 33, citing *Kovsh v. Belarus* (CCPR/C/107/D/1787/2008), paras. 7.3–7.5. See also CCPR/C/79/Add.89, para. 17; CCPR/C/SLV/CO/6, para. 14; and CCPR/CO/70/GAB, para. 13. See, for example, opinions No. 57/2016, paras. 110–111; No. 76/2019, para. 38; and No. 82/2019, para. 76.

<sup>14</sup> See Human Rights Committee, general comment No. 35, para. 38. See also A/HRC/19/57, paras. 48–58.

<sup>15</sup> See also article 6 of the African Charter on Human and Peoples' Rights and article 14 (1) and (5) of the Arab Charter on Human Rights.

46. The Working Group further observes that Mr. Ziada was not afforded the right to take proceedings before a court so that it could decide without delay on the lawfulness of his detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights, articles 2 (3) and 9 (1) and (4) of the Covenant, as well as principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>16</sup> The United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court indicate that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and is essential to preserve legality in a democratic society (A/HRC/30/37, paras. 2–3). This right, which is in fact a peremptory norm of international law, applies to all forms and situations of deprivation of liberty.<sup>17</sup>

47. The Working Group notes that Mr. Ziada has been subjected to pretrial detention by preventive detention orders issued and extended in a series of hearings by the Supreme State Security Prosecution. In view of Human Rights Committee general comment No. 35 (2014) on liberty and security of person (see para. 32), the Working Group considers that such prosecuting authorities cannot be considered as competent, independent and impartial officers ensuring judicial power. The absence of such judicial authority violates article 9 (3) of the Covenant. Moreover, the Working Group observes, and raises grave concern, regarding the fact that the near-automatic extension of pretrial detention by prosecutors for prolonged periods of time is a common practice<sup>18</sup> and is not based on individualized determinations or periodic judicial reviews.

48. The Working Group also notes that for 10 days the police failed to implement the court order of 28 May 2019 to release Mr. Ziada, in violation of article 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.

49. The Working Group further recalls that vaguely and broadly worded provisions, which cannot qualify as *lex certa*, violate the due process of law which is undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights. Furthermore, the Working Group notes that the Human Rights Committee has found, in its jurisprudence, that detention pursuant to proceedings that are incompatible with article 15 (1) of the Covenant are necessarily arbitrary within the meaning of article 9 (1) of the Covenant.<sup>19</sup>

50. In this light, the Working Group considers that the vague provisions of the Penal Code, the Telecommunication Regulation Law (Law No. 10 of 2003) and the Anti-Terrorism Law (Law No. 94 of 2015) cannot qualify as *lex certa* and may be used to deprive individuals of their liberty without a specific legal basis and violate the due process of law underpinned by the principle of legality that is stipulated in article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant. The Working Group considers that the provisions of the Anti-Terrorism Law (Law No. 94 of 2015), which prescribe various prison terms for harmless online postings, are neither necessary to protect the public, or private interests, against injury, nor proportionate to guilt. In addition, the requirements of *lex praevia*, *lex stricta*, *lex certa* and *lex scripta* must be construed more strictly in proportion to the severity of the prescribed punishment. As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly.<sup>20</sup>

51. The Working Group also emphasizes that laws that are vaguely and/or broadly worded may have a deterrent effect on the exercise of the rights and freedoms of individuals, as they have the potential to cause abuse, including arbitrary deprivation of

<sup>16</sup> See also article 6 of the African Charter on Human and Peoples' Rights and article 14 (1) and (6) of the Arab Charter on Human Rights.

<sup>17</sup> Opinion No. 39/2018, para. 35.

<sup>18</sup> See, for example, opinions No. 63/2018, No. 82/2018, No. 87/2018, No. 29/2019, No. 41/2019 and No. 65/2019.

<sup>19</sup> *Fardon v. Australia* (CCPR/C/98/D/1629/2007), para. 7.4 (2). See opinions No. 41/2017, para. 99; No. 36/2017, para. 103; and No. 20/2017, para. 51.

<sup>20</sup> See opinions No. 62/2018, para. 57; and No. 42/2019, para. 60.

liberty.<sup>21</sup> The Working Group therefore reiterates the concerns expressed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, about the recent amendments to the Anti-Terrorism Law (Law No. 94 of 2015) that could result in more abuses and more chilling effect, not less,<sup>22</sup> and refers the case to this Special Rapporteur.

52. For these reasons, the Working Group considers that Mr. Ziada's deprivation of liberty lacks a legal basis and is thus arbitrary, falling under category I.

### *Category III*

53. The source alleges, and the Government does not contest, that Mr. Ziada was not able to be assisted by his lawyer on 21 February 2018 during his first appearance before the Supreme State Security Prosecution and that he was able to do so for the first time on 25 February 2018 during his second interrogation. The Working Group considers that the denial of access to legal counsel at such a critical stage undermined the ability to mount an effective legal defence. As the Working Group has stated in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after the moment of apprehension, and such access is to be provided without delay. The Working Group finds that the authorities failed to respect the right of Mr. Ziada to legal assistance at all times, which is inherent in the right to liberty and security of person and in the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, under articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 9 (1) and 14 (1) of the Covenant. The Working Group therefore finds a serious violation of these articles as well as of principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>23</sup>

54. The Working Group further notes the denial of Mr. Ziada's right to be visited by and to correspond with his family and to be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations in accordance with principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Human Rights Committee has observed in its general comment No. 35 (see para. 58) that giving prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture and for protection against arbitrary detention and infringement of personal security. In view of the allegations that Mr. Ziada was held, for a period of two months, with convicted individuals, the Working Group also recalls principle 8 of the Body of Principles in which it is stated that "persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons."

55. The Working Group also concludes that Mr. Ziada's pretrial detention which began on 18 February 2018 and lasted for over one year and three months without an individualized judicial determination has undermined the presumption of innocence guaranteed under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant as well as principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>24</sup>

56. Furthermore, there can be no justification for such a prolonged pretrial detention with no prospect of a trial – a manifest violation of the right to be tried without undue delay

<sup>21</sup> See opinion No. 10/2018, para. 55.

<sup>22</sup> Office of the United Nations High Commissioner for Human Rights, "Egypt's updated terrorism law opens the door to more rights abuses, says UN expert", available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25787](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25787).

<sup>23</sup> See also article 7 (1) (c) of the African Charter on Human and Peoples' Rights and arts. 12, 13 (1) and 16 (2) and (3) of the Arab Charter on Human Rights.

<sup>24</sup> See also article 7 (1) (b) of the African Charter on Human and Peoples' Rights and article 16 of the Arab Charter on Human Rights.



that is guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1) and (3) (c) of the Covenant.<sup>25</sup>

57. The Working Group also expresses its gravest concern at the prima facie credible allegation of psychological torture of Mr. Ziada as he listened to other detainees being tortured, while he was blindfolded and had his hands tied behind his back. The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.

58. The Working Group also considers that the Emergency State Security Courts, which are trying Mr. Ziada, do not meet the international standard for a competent, independent and impartial tribunal as their judges are appointed by the President upon recommendation from the defence and justice ministers, in violation of articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.<sup>26</sup> These special courts also do not permit appeal for the defendants, a right guaranteed by article 14 (5) of the Covenant.<sup>27</sup>

59. Given the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Mr. Ziada's deprivation of liberty an arbitrary character that falls within category III.

60. The Working Group notes that the present opinion is only one of many other opinions in recent years in which the Working Group has found the Government to be in violation of its international human rights obligations.<sup>28</sup> The Working Group is concerned that this indicates a systemic problem with arbitrary detention in Egypt, which, if it continues, may amount to a serious violation of international law.<sup>29</sup> The duty to comply with international human rights standards that are peremptory and are *erga omnes* norms, such as the prohibition of arbitrary deprivation of liberty and life as well as of torture and enforced disappearance, rests with all State organs, officers and agents, as well as with all other natural and legal persons.<sup>30</sup> The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>31</sup>

61. Lastly, the Working Group would welcome the opportunity to visit Egypt in order to engage with the Government in a constructive manner.

### Disposition

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

The deprivation of liberty of Ahmed Tarek Ibrahim Abd El-Latif Ziada, being in contravention of articles 3, 6, 8, 9, 10, 11 (1) and (2) and 12 of the Universal Declaration of Human Rights, and of articles 2 (3), 9 (1), (2), (3) and (4), 14 (1), (2), (3) (b), (c) and (d) and (5), 15 (1), 16, and 17 (1) and (2) of the International

<sup>25</sup> See also article 7 (1) (d) of the African Charter on Human and Peoples' Rights and article 13 (1) of the Arab Charter on Human Rights.

<sup>26</sup> Opinion No. 63/2018, para. 20.

<sup>27</sup> See also article 16 (7) of the Arab Charter on Human Rights.

<sup>28</sup> See, for example, opinions No. 6/2016, No. 7/2016, No. 41/2016, No. 42/2016, No. 54/2016, No. 60/2016, No. 30/2017, No. 78/2017, No. 83/2017, No. 26/2018, No. 27/2018, No. 47/2018, No. 63/2018, No. 82/2018, No. 87/2018, No. 21/2019, No. 29/2019, No. 41/2019, No. 42/2019, No. 65/2019 and No. 77/2019.

<sup>29</sup> Opinion No. 47/2018, para. 85.

<sup>30</sup> The domestic political and judicial organs are under a positive obligation to ensure an effective remedy and reparation for violations of international human rights law by removing the statute of limitations, sovereign immunity, the *forum non conveniens* doctrine or other procedural obstacles to redress in such cases through legislative or judicial action. See opinions No. 52/2014, para. 51; No. 42/2019, para. 68; No. 51/2019, para. 80; and No. 56/2019, para. 97. See also CAT/C/CAN/CO/6, para. 15; and CAT/C/CAN/CO/7, paras. 40–41.

<sup>31</sup> A/HRC/13/42, para. 30; and see, for example, opinions No. 1/2011, para. 21; No. 51/2017, para. 57; and No. 56/2017, para. 72.

Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

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

64. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to formally drop all outstanding charges against Mr. Ziada so that he no longer faces the risk of being detained again for those charges, and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Ziada.

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

66. The Working Group requests the Government to bring its laws, in particular the Anti-Terrorism Law (Law No. 94 of 2015), into conformity with the recommendations made in the present opinion and with the commitments made by Egypt under international human rights law.

67. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Enforced or Involuntary Disappearances, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

68. The Working Group encourages the Government to ratify the Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court.

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

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

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

71. 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.

72. 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.

73. 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>32</sup>

*[Adopted on 1 May 2020]*

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<sup>32</sup> Human Rights Council resolution 42/22, paras. 3 and 7.