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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fourth session, 29 August–2 September 2022

Opinion No. 60/2022 concerning Walid Ahmed Shawky el-Sayed (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,¹ on 10 March 2022 the Working Group transmitted to the Government of Egypt a communication concerning Walid Ahmed Shawky el-Sayed. 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).

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Walid Ahmed Shawky el-Sayed (known as Walid Shawky) is a national of Egypt, born on 11 February 1987. He usually resides in Daqahliyah Governorate. He is a dentist and an op-ed contributor to Egyptian and other Arabic independent news outlets. He is also one of the founders of the April 6 Youth Movement and a former member of its political bureau. Mr. Shawky is married and has a child.

5. According to the source, during the 2011 revolution in Egypt, Mr. Shawky was a member of the April 6 Youth Movement, a pro-democracy grass-roots movement that helped organize the 25 January 2011 protests that escalated into a popular uprising and the end of the presidency of the President of Egypt at the time.

6. The source notes that Mr. Shawky has gradually distanced himself from organized political opposition since the popular-backed military coup of 3 July 2013. However, he reportedly uses his op-ed articles to critique the 2011–2013 Egyptian revolutionary movement and reflect on his life and detention.

7. According to the source, Mr. Shawky's alleged enforced disappearance and arrest are part of a spate of raids in Alexandria and Cairo targeting formerly politically active dissidents.

a. Arrest and detention

8. At around 7 p.m. on 14 October 2018, Mr. Shawky was reportedly taken from his clinic on Khairat Street, in Cairo Governate, by four security officers, some plain-clothed and some in uniform. Allegedly, Mr. Shawky was not presented with a warrant or official document of arrest and was not notified of the reasons for his arrest.

9. Reportedly, the national security forces raided the clinic and asked for Mr. Shawky's laptop. They informed medical personnel at the clinic that they were going to question Mr. Shawky at the Al-Sayeda Zainab police station.

10. According to the source, Mr. Shawky was subjected to enforced disappearance for six days, from 14 to 20 October 2018. The source explains that when Mr. Shawky's relatives inquired about his whereabouts at the Al-Sayeda Zainab police station, on 14 October 2018, the officers denied any knowledge of his whereabouts. On 16 October 2018, a telegram was sent to the prosecutor's office, reporting Mr. Shawky's arrest and the Al-Sayeda Zainab police station's denial of his presence there. The telegram allegedly went unanswered.

11. Mr. Shawky was reportedly not authorized to see family members until 25 October 2018. His lawyer was authorized to see him for the first time on 20 October 2018, during Mr. Shawky's first appearance before the Supreme State Security Prosecution. According to the source, during that appearance, Mr. Shawky reported that he had been held incommunicado for six days inside Al-Sayeda Zainab police station and his lawyer requested that an investigation into that matter be carried out. The source adds that official documents confirm that Mr. Shawky was arrested before 20 October 2018.

12. The source reports that on 20 October 2018, the Supreme State Security Prosecution listed Mr. Shawky as a defendant in a case that included other members of the April 6 Youth Movement. Reportedly, Mr. Shawky was charged with joining a group established contrary to the provisions of the law, spreading false news and statements, and misusing social media platforms. The source notes that the prosecutor did not disclose the name of the group that Mr. Shawky was accused of joining, present any witnesses or evidence to substantiate the charges against him, or indicate the legal basis of the charges against Mr. Shawky. According to the source, the charges against Mr. Shawky are likely based on articles 86 bis and 188 of the Penal Code, and article 29 of the counter-terrorism law.

13. Reportedly, the prosecutor interrogated Mr. Shawky about his membership in the April 6 Youth Movement and Mr. Shawky responded that he had left the movement more than a year earlier. The source notes that there is no official written copy of the charges and

that all the information about the case comes from oral communications between Mr. Shawky's lawyers and the Supreme State Security Prosecution and court officials.

14. Following his appearance on 20 October 2018, the Supreme State Security Prosecution reportedly placed Mr. Shawky in detention pending investigations and, on 29 October 2018, extended his detention for 15 days. The source notes that the prosecution provided no evidence to support the charges against Mr. Shawky or to establish any of the statutory conditions for pretrial detention required under article 134 of the Code of Criminal Procedure.

15. Similarly, the source notes that on 14 November 2018, the Supreme State Security Prosecution extended Mr. Shawky's pretrial detention for 15 more days, without presenting any material evidence or witnesses against him. His pretrial detention was reportedly extended for further periods of 15 days each, on 16 and 30 December 2018 and on 26 February 2019. The source notes that pursuant to articles 142 and 143 of the Code of Criminal Procedure, the prosecution can extend the detention of a defendant for a maximum of 150 consecutive days. Following this period, a criminal court must take the decision to end or extend the detention, with 45 days allowed to pass between each two consecutive sessions. In total, the Code of Criminal Procedure limits the pretrial detention period to 24 months and requires the detainee's release after two years of imprisonment.

16. On 15 April 2019, Circuit 29 of Giza Criminal Court reportedly extended Mr. Shawky's pretrial detention for 45 days, pending the investigation in the above-mentioned group case. Cairo Criminal Court further extended Mr. Shawky's pretrial detention for two more periods of 45 days, on 11 June and 3 September 2019.

17. According to the source, on 23 October 2019, Cairo Criminal Court ordered the release of Mr. Shawky, subject to precautionary measures and pending investigation in the group case. However, the Supreme State Security Prosecution reportedly lodged an appeal against the Court's decision and, on 24 October 2019, Cairo Criminal Court extended Mr. Shawky's detention for another 45 days.

18. On 3 December 2019, Cairo Criminal Court once again ordered Mr. Shawky's release. However, the Court extended Mr. Shawky's detention for 45 days on 5 December 2019 again, following another appeal by the Supreme State Security Prosecution, and again on 4 March 2020.

19. According to the source, a hearing on Mr. Shawky's detention was originally scheduled for 3 May 2020 but was postponed to 7 May 2020, without the lawyers being notified. Reportedly, the lawyers were told there would be a hearing on 10 May 2020, and subsequently learned that the hearing had taken place on 7 May 2020 and that the judge had decided to extend the detention of all the defendants in the group for 45 days, without giving them or their lawyers a chance to present arguments or to attend the court session.

20. The source reports that a hearing, held on 1 June 2020, on Mr. Shawky's detention had to be postponed because officials at Tora prison failed to bring the defendants to court, in violation of article 77 of Law No. 396 of 1956, on the organization of prisons. Reportedly, the hearing was further postponed on 1 and 15 July 2020; on 22 July 2020, Mr. Shawky's detention was extended for another 45 days.

21. The source notes that other Supreme State Security Prosecution or court sessions may have occurred, but could not be referred to because of the absence of public official documents in Mr. Shawky's case.

22. According to the source, on 23 August 2020, the First Terrorism Circuit Court (Cairo) ordered Mr. Shawky's release, conditioned upon his spending several hours at the police station of his place of residence, twice a week.

23. On 26 August 2020, Mr. Shawky was reportedly transferred from Tora prison to Al-Khalifah police station, before being taken to Mansoura city in Daqahliyah Governorate, and to the town of Dekernes on 30 August 2020. He reportedly spent the following two days in the Dekernes police station and was able to receive a visit from his family.

24. The source reports that on 2 September 2020, Mr. Shawky was forcibly disappeared from Dekernes police station. Officers at the station allegedly informed his relatives that he was not at the station and that they did not know his whereabouts.

25. Mr. Shawky reportedly appeared before the Supreme State Security Prosecution on 6 October 2020, when he was added to another case and charged with being part of a protesting crowd, as well as additional counts of the three charges he was facing in the first case. The source notes that Mr. Shawky could not be guilty of the additional charge as he had been held in detention continuously since 14 October 2018.

26. According to the source, such practice corresponds to a pattern by Egyptian prosecutors of “recycling” charges against a detainee in a new case because the detainee has already been held in pretrial detention for the maximum amount of time permitted by law. The source underlines that such practice allows prosecutors to start a new two-year period of pretrial detention without having presented evidence or completed a trial in the original case.

27. Reportedly, the National Security Agency arrest report indicates that Mr. Shawky was arrested on 6 October 2020 while taking part in a protest. However, the source claims that there was no new arrest, given that the 23 August 2020 release order was never implemented. The source explains that Mr. Shawky was not released and was in fact subjected to enforced disappearance in unidentified detention facilities between 2 September and 6 October 2020. Regardless, and despite a complaint filed on Mr. Shawky’s behalf reporting that he had not been released and had been subjected to enforced disappearance, the Supreme State Security Prosecution accepted into the record the date and location of arrest provided by the National Security Agency.

28. According to the source, despite the National Security Agency not having provided any evidence to support the charges against Mr. Shawky, the Supreme State Security Prosecution ordered his pretrial detention for 15 days, pending investigation in the new case. In this regard, the source points that articles 61 and 154 of the Code of Criminal Procedure stipulate that the prosecution or investigative judge must terminate a case if there is no basis on which to continue with the prosecution or if the evidence is insufficient. The source adds that principle 14 of the Guidelines on the Role of Prosecutors provides that prosecutors are not to initiate or continue prosecution, or are to make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

29. According to the source, Mr. Shawky’s detention was renewed for 45 days on 23 February, 28 March, 9 May and 30 August 2021. Following the authorities’ decision to close the Tora investigation prison in December 2021, Mr. Shawky was reportedly moved to the Tora farm prison.

b. Detention conditions

30. According to the source, Mr. Shawky was detained at the Al-Sayeda Zainab Prison from his arrest, on 14 October 2018, to 9 December 2018. During his detention there, Mr. Shawky was reportedly blindfolded and handcuffed to the wall of a small, cold room, with no toilet, generally referred to by detainees as the “fridge”. Mr. Shawky was then reportedly moved to an overcrowded, cell of 4 square metres, where he had to stand for most of his stay due to the lack of space.

31. Following his appearance before the Supreme State Security Prosecution on 20 October 2018, Mr. Shawky was allegedly transferred to Tora prison, where he was held with other detainees in a dirty cell with no proper ventilation or regular access to clean water and soap. The source adds that the prison administration confiscated Mr. Shawky’s books and banned him from acquiring further reading material. According to the source, Mr. Shawky was not allowed to exercise for more than two hours a day.

32. Reportedly, detainees at Tora prison undergo many inspections by the prison administration, during which the detainees suffer ill-treatment and their belongings are seized. The source explains that families are prevented from giving detainees blankets, pillows, books, or food without any justification, and visits are limited to 30 minutes. Additionally, the source observes that water and electricity are often cut off and medical care

is poor insofar as there is no quick medical support and detainees needing an operation are not transferred to a hospital.

33. The source reports that in July 2019, the deputy warden at Tora prison told Mr. Shawky that the prison's administration had received a complaint about Mr. Shawky's situation in the prison and the violations committed against him. Mr. Shawky allegedly denied that he complained, because he was afraid that he would be tortured, especially since the deputy warden reportedly spoke to him in an inappropriate manner.

34. According to the source, due to the coronavirus disease (COVID-19) pandemic, the Ministry of the Interior banned all family visits and phone calls as of 10 March 2020. Family visits were reportedly resumed on 22 August 2020, although with additional restrictions. The source notes that most political prisoners, such as Mr. Shawky, are usually not allowed to make phone calls. The source further reports that after the outbreak of the pandemic, it became increasingly difficult for Mr. Shawky's relatives to provide him with food or medication, which the prison officials reportedly rejected for no reason. Further, the source explains that following the death of an inmate, the entry of all types of alcohol and disinfectants was completely banned, despite the possible unavailability of such hygiene products in the prison.

35. On 4 March 2022, the source informed the Working Group that Mr. Shawky was embarking on his twentieth day of hunger strike and that his life and health were in imminent danger. Reportedly, officials at Tora prison refused to confirm his hunger strike and to move him to the prison hospital. According to the source, Mr. Shawky filed a petition with the prosecutor's technical office on 24 February 2022, in order to report his hunger strike and his detention conditions. Allegedly, the petition was transferred to the Supreme State Security Prosecution but no answer was received. The next session for ruling on Mr. Shawky's pretrial detention was scheduled for 15 March 2022, before a terrorism circuit court.

c. Legal analysis

36. The source argues that the detention of Mr. Shawky is arbitrary under categories I, II and III of the working methods of the Working Group.

i. Right to freedom and security of person, and prohibition of enforced disappearance

37. The source alleges that Mr. Shawky was arrested by unidentified security forces without being presented with an arrest warrant, notified of the reasons for his arrest, or allowed to contact a family member or lawyer. According to the source, this violates his right to liberty and security of person guaranteed under article 9 (1) of the Covenant, articles 3 and 9 of the Universal Declaration of Human Rights, article 6 of the African Charter on Human and Peoples' Rights, and article 14 of the Arab Charter on Human Rights.

38. Furthermore, the source claims that Mr. Shawky was forcibly disappeared for six days at the Al-Sayeda Zainab police station, from 14 to 20 October 2018, and for more than one month after that, from 2 September to 6 October 2020, in violation of his right not to be subjected to enforced disappearance. In this regard, the source explains that article 36 of the Code of Criminal Procedure requires that anyone arrested be presented to a competent public prosecution within 24 hours.

ii. Right to be brought promptly before a judge

39. The source also contends that Mr. Shawky's enforced disappearance for six days, immediately following his arrest, violated his right to be promptly brought before a judge, as guaranteed under article 9 (3) and (4) of the Covenant and article 17 (2) (f) of the International Convention for the Protection of All Persons from Enforced Disappearance.

40. The source recalls that this right constitutes a safeguard for the right to liberty and security, the right to be free from torture and other forms of ill-treatment, and the prohibition of arbitrary detention and enforced disappearance. The source adds that the right to be promptly brought before a judge is guaranteed to all individuals and applies to all forms of deprivations of liberty, regardless of the reasons for the deprivation.

iii. Fair trial rights

41. Additionally, the source claims that Mr. Shawky's right to a fair trial was violated. The source submits that his rights were violated under article 77 of Law No. 396 of 1956, concerning the organization of prisons, article 96 of the Constitution, article 14 of the Covenant, articles 13, 14 and 16 of the Arab Charter on Human Rights and article 7 of the African Charter on Human and Peoples' Rights.

42. The source recalls that security forces arrested him without a warrant and the Supreme State Security Prosecution presented him with no official documents regarding his case. The source also argues that the Supreme State Security Prosecution interrogated Mr. Shawky many times without his lawyer present, denied him his right to challenge his detention, and extended his detention with the help of the judges of the Cairo and Giza Criminal Courts, in violation of the Code of Criminal Procedure. According to the source, the unavailability of official legal documents pertaining to Mr. Shawky's case follows a systematic practice of depriving remanded defendants of their right to be clearly informed of the charges against them.

43. The source further claims that Mr. Shawky's right to benefit from legal representation was violated, contrary to article 54 of the Constitution, article 14 (3) of the Covenant, article 16 (3) and (4) of the Arab Charter on Human Rights, section A, article 2 (f) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, rule 93 of the Standard Minimum Rules for the Treatment of Prisoners (1977) and principles 7 and 8 of the Basic Principles on the Role of Lawyers.

44. Additionally, the source argues that Mr. Shawky did not benefit from his right to a reasonably prompt trial or release, as guaranteed under article 54 of the Constitution, article 9 (3) of the Covenant, article 14 (5) and (6) of the Arab Charter on Human Rights, and principles 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

45. The source further alleges that the use of State security courts violates the right to a fair trial insofar as the judgment of such courts is final and not subject to appeal. The source adds that the body responsible for the appointment of State security court judges is not independent of the executive branch and, therefore, these courts violate the right to be tried before an independent and impartial tribunal. Indeed, the source notes that the President of Egypt is entitled to appoint the judges after consulting with the defence minister or the justice minister. In this respect, the source recalls Human Rights Committee general comment No. 13 (1984), in which the Committee expressed concern regarding the nature of military or special courts, often established to enable exceptional procedures to be applied which do not comply with normal standards of justice.

iv. Right to be free from torture and other forms of ill-treatment

46. The source notes that the right to freedom from torture and other ill-treatment or punishment is absolute, applies in all circumstances, including in times of war and states of emergency, and irrespective of the reason for the arrest and detention.

47. The source contends that, within the premises of Al-Sayeda Zainab police station, Mr. Shawky was blindfolded and chained to the wall of a cold solitary confinement cell, with no access to a toilet, before being placed in an overcrowded cell where he was forced to stand most of the time because of the lack of space.

48. As a result, the source argues that Mr. Shawky was subjected to inhuman treatment and torture, contrary to provisions in the law on the organization of prisons, article 55 of the Constitution, article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant, article 5 of the African Charter on Human and Peoples' Rights, and articles 2 and 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

v. Right to communicate with the outside world and to access medical care

49. The source stresses 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. The source adds that such rights affect detainees' ability to prepare their defence and are required to protect the right to private and family life and the right to health.

50. The source also recalls that between March and April 2020, the Ministry of the Interior banned prisoners from receiving family visits, phone calls and letters. The source asserts that this constitutes a violation of Mr. Shawky's right to communicate with the outside world, including with his family, as guaranteed under article 38 of the law concerning the organization of prisons, article 54 of the Constitution, article 17 of the Covenant, article 12 of the Universal Declaration of Human Rights, article 21 of the Arab Charter on Human Rights, article 17 (2) (d) of the International Convention for the Protection of All Persons from Enforced Disappearance, principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and rules 37, 39, 79 and 92 of the Standard Minimum Rules for the Treatment of Prisoners (1977).

51. Furthermore, the source affirms that Mr. Shawky's right to physical and mental health was violated by Tora prison guards, who left him in a dirty cell for months, with no proper ventilation or access to clean water or soap. The source contends that this constitutes a violation of articles 18 and 55 of the Constitution, article 25 (1) of the Universal Declaration of Human Rights, article 12 (1) of the International Covenant on Economic, Social and Cultural Rights, article 14 (4) of the Arab Charter on Human Rights, principle 9 of the Basic Principles for the Treatment of Prisoners, and principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

vi. Right to freedom of association and freedom of expression

52. According to the source, Mr. Shawky was questioned by the prosecutor about his affiliation with the April 6 Youth Movement. The source argues that Mr. Shawky was arrested because of his previous affiliation with the movement, which violates his right to political affiliation. In this regard, the source refers to articles 2 and 20 of the African Charter on Human and Peoples' Rights, which, respectively, forbid discrimination on the basis of political or any other opinion, and guarantee individuals' right to freely determine their political status and pursue their economic and social development according to the policy they have freely chosen.

53. The source further contends that Mr. Shawky was questioned about an article he wrote in which he critiqued the April 6 Youth Movement. As a result, the source argues that Mr. Shawky was arrested in violation of his right to freedom of expression, as guaranteed under article 9 of the African Charter on Human and Peoples' Rights, article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights. In this regard, the source submits that none of the restrictions allowed under article 19 (3) of the Covenant are applicable in the case at hand insofar as the arrest and prosecution of a former political activist does not further the protection of national security and public order or the respect of the rights of others. The source notes that, if it considered the information provided by Mr. Shawky false, the Government could have openly addressed the allegations against it and corrected the record by reaching out to the media and providing the public with evidence supporting its claim.

54. On 26 April 2022, the Working Group was informed that Mr. Shawky had been released by the general prosecution service on 24 April 2022.

Response from the Government

55. On 10 March 2022 the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 9 May 2022, detailed information about the current situation of Walid Ahmed Shawky el-Sayed and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Egypt under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the

Working Group called upon the Government of Egypt to ensure Mr. Shawky's physical and mental integrity.

56. On 10 May 2022, the Government of Egypt requested an extension. However, this request was submitted after the initial deadline, was therefore not in compliance with paragraph 16 of the Working Group's methods of work, and was consequently denied.

57. The Working Group regrets that the Government did not submit a timely reply, nor did it seek an extension in a timely manner in accordance with paragraph 16 of the Working Group's methods of work.

Discussion

58. 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.

59. In determining whether Walid Ahmed Shawky el-Sayed's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.² In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

60. As a preliminary matter, the Working Group notes that Mr. Shawky has been released. However, the Working Group notes that in accordance with paragraph 17 (a) of its methods of work, it reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. In the present case, the Working Group considers that the allegations made by the source are extremely serious and therefore will proceed to deliver the opinion.

61. The source argues that the detention of Mr. Shawky is arbitrary under categories I, II and III; the Working Group shall proceed to examine these in turn.

Category I

62. The uncontested narration of the source is that when Mr. Shawky was taken from his clinic on Khairat Street in Cairo Governate on 14 October 2018, by four security officers, some plain-clothed and some uniformed, he was not presented with a warrant or official document of arrest and was not notified of the reasons for his arrest.

63. International law concerning the right to personal liberty allows restrictions to this right. It, however, includes the right to be presented with an arrest warrant in cases that do not involve arrests made in flagrante delicto, to ensure the objectivity and legality of the arrest process. It is also required that the decision on whether the arrest is warranted be taken by an outside authority, that is, a competent, independent and impartial judicial body. This is procedurally inherent in the right to personal liberty and security and the prohibition of arbitrary deprivation of liberty under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 of the Covenant, and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Additionally, the Human Rights Committee has stated that any person shall be informed, at the time of arrest, of the reasons for the arrest and that this requirement applies broadly to the reasons for any deprivation of liberty.³

64. The Working Group finds that, in order to invoke a legal basis for the deprivation of liberty, the authorities should have presented an arrest warrant and informed Mr. Shawky of the reasons for his arrest at the time of the arrest and promptly informed him of the charges against him. Their failure to do so violates article 9 of the Universal Declaration of Human Rights, article 9 of the Covenant and principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and renders the arrest devoid of any legal basis.

² A/HRC/19/57, para. 68.

³ General comment No. 35 (2014), para. 24.

65. The source further claims that Mr. Shawky was forcibly disappeared for two periods. First, Mr. Shawky was reportedly disappeared for six days after his arrest on 14 October 2018, in the premises of the Al-Sayeda Zainab police station. An inquiry by his relatives about his whereabouts did not elicit any information as to Mr. Shawky's fate and whereabouts. Mr. Shawky was not authorized to see family members until 25 October 2018, while his lawyer was authorized to see him for the first time on 20 October 2018, during Mr. Shawky's first appearance before the Supreme State Security Prosecution. Second, Mr. Shawky was again forcibly disappeared from 2 September to 6 October 2020, even though his conditional release was ordered on 23 August 2020 by the First Terrorism Circuit Court (Cairo). These serious allegations were put to the Government, which chose not to address them.

66. The Working Group therefore finds that Mr. Shawky was subjected to de facto enforced disappearance following his arrest on 14 October 2018 for six days and then again from 2 September to 6 October 2020 in violation of article 9 (1) of the Covenant. Enforced disappearance is prohibited by international law and constitutes a particularly aggravated form of arbitrary detention.⁴ 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.⁵ The Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances.

67. Furthermore, the Working Group notes that following his initial arrest on 14 October 2018, Mr. Shawky was reportedly presented before the Supreme State Security Prosecution on 20 October 2018, which ordered his pretrial detention. Although it had the opportunity to do so, the Government does not contest these allegations.

68. Pursuant to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to be brought promptly before a judge or other officer authorized by law to exercise judicial power. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee "promptly" before a judge or other officer authorized by law following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.⁶ The Working Group finds that Mr. Shawky was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant. The Working Group also recalls that the prosecutorial body cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.⁷

69. Further, to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged in article 9 (4) of the Covenant. The Working Group recalls that the right to challenge the lawfulness of detention before a court is a self-standing human right that is essential to preserve legality in a democratic society.⁸ This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty and to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security

⁴ See also Human Rights Committee, general comment No. 35 (2014), para. 17. See also opinions No. 5/2020, No. 6/2020, No. 11/2020, No. 13/2020, No. 77/2020, No. 38/2021 and No. 25/2022.

⁵ See article 1 of the Declaration on the Protection of All Persons from Enforced Disappearance, which condemned any act of enforced disappearance as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field; and opinions No. 82/2018, para. 28; No. 18/2019, para. 33; No. 22/2019, para. 67; No. 26/2019, para. 88; No. 28/2019, para. 61; No. 29/2019, para. 54; No. 36/2019, para. 35; No. 41/2019, para. 32; No. 42/2019, para. 48; No. 51/2019, para. 58; No. 56/2019, para. 79; No. 6/2020, para. 43; No. 11/2020, para. 41; and No. 34/2020, para. 49. See also article 22 of the Arab Charter on Human Rights.

⁶ Human Rights Committee, general comment No. 35 (2014), paras. 32–33.

⁷ *Ibid.*, para. 32. See also opinions No. 5/2020, para. 72; No. 6/2020, para. 47; No. 14/2015, para. 28; and No. 41/2020, para. 60; and [A/HRC/45/16/Add.1](#), para. 35.

⁸ [A/HRC/30/37](#), paras. 2–3.

detention and detention under counter-terrorism measures.⁹ Moreover, it applies irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.¹⁰

70. The right to take proceedings before a court in order that that court may decide upon the lawfulness of detention also must be afforded without delay, as specified in article 9 (4) of the Covenant. As the Human Rights Committee specified in paragraph 47 of its general comment No. 35 (2014), the adjudication of the case should take place as expeditiously as possible. In the present case, while Mr. Shawky appeared before the prosecution after a period of enforced disappearance, six days after his arrest, it was not until 15 April 2019 that he was first presented before a judicial authority (see para. 16 above), an allegation not contested by the Government. The Working Group therefore finds a breach of article 9 (4) of the Covenant. Given that Mr. Shawky was not able to challenge his detention, his 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.

71. Moreover, upon his appearance before the prosecution on 20 October 2018, Mr. Shawky was remanded in custody. Although his pretrial detention appears to have been periodically reviewed by first the prosecution and then the court, the Government does not contest that the reasons for his continued pretrial detention until his release on 24 April 2022 have never been articulated by the authorities. It is also not contested by the Government that when Mr. Shawky's conditional release was ordered on 23 August 2020, the order was not implemented and Mr. Shawky was remanded in custody and presented with new charges days later, starting a new cycle of pretrial detention hearings.

72. The Working Group recalls that it is a well-established norm of international law that pretrial detention shall be the exception and not the rule, and that it should be ordered for as short a time as possible.¹¹ Article 9 (3) of the Covenant provides that it is not to be the general rule that persons awaiting trial are to be detained, but release may be subject to guarantees to appear for trial and at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice.¹²

73. In order to give effect to this principle, pretrial detention must be based on an individualized determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.¹³ The courts must examine whether alternatives to detention, such as bail, would render custodial measures unnecessary in the particular case.¹⁴ According to the source, Mr. Shawky's continued pretrial detention was never substantiated, either by the prosecution or by the court. In the absence of any explanation by the Government, the Working Group cannot accept that Mr. Shawky's pretrial detention was properly constituted in accordance with article 9 (3) of the Covenant.

74. The Working Group also considers the release of Mr. Shawky, which was ordered by the First Terrorism Circuit Court on 23 August 2020 but never effected, and the new charges that were brought against him. Such practice of "recycling of charges" and repeat pretrial detention on charges that are very similar to previous ones are akin to "revolving door" pretrial detention, which is entirely incompatible with article 9 (3) of the Covenant. The

⁹ [A/HRC/30/37](#), para. 11, and 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, para. 47 (a).

¹⁰ 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, para. 47 (b).

¹¹ Opinions No. 28/2014, para. 43; No. 49/2014, para. 23; No. 57/2014, para. 26; No. 1/2020, para. 53; and No. 8/2020, para. 54; Human Rights Committee, general comment No. 35 (2014), para. 38; and [A/HRC/19/57](#), paras. 48–58.

¹² [A/HRC/19/57](#), para. 54.

¹³ Human Rights Committee, general comment No. 35 (2014), para. 38.

¹⁴ *Ibid.* See also opinion No. 83/2019, para. 68; and 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, guideline 15.

Working Group thus considers that not only were the rights of Mr. Shawky further violated under article 9 (3) of the Covenant, but the authorities' failure to comply with the judicial order of conditional release also violated article 9 (1) of the Covenant.

75. Noting all the above, the Working Group concludes that the arrest and detention of Mr. Shawky was arbitrary under category I.

Category II

76. The source claims that Mr. Shawky's detention is arbitrary under category II, since he was detained purely for the peaceful exercise of his rights, namely an article he had written. These allegations were put to the Government, which chose not to address them.

77. The Working Group recalls that detention purely due to peaceful exercise of rights protected by the Covenant may be arbitrary.¹⁵ The Working Group notes that freedom of opinion and freedom of expression as expressed in article 19 of the Covenant are indispensable conditions for the full development of the person; they are essential for any society and in fact constitute the foundation stone for every free and democratic society.¹⁶

78. Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers, and this right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.¹⁷ Moreover, article 19 (2) of the Covenant protects all forms of expression and the means of their dissemination, including all forms of audiovisual as well as electronic and Internet-based modes of expression.¹⁸

79. In the present case, the Working Group notes that Mr. Shawky, a dentist, had written an article that appears to have been the key reason for his arrest and detention, which lasted more than three years. The Working Group has been presented with no indication that Mr. Shawky has ever taken part in any violent activities or incited others to violence. Indeed, this is not contested by the Government in the present case; and the Government has not presented any evidence that the permissible restrictions under article 19 of the Covenant could somehow apply to the actions of Mr. Shawky. In these circumstances, the Working Group concludes that the detention of Mr. Shawky resulted from his peaceful exercise of his right to freedom of expression, as protected by article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights.

80. Noting all the above, the Working Group concludes that the detention of Mr. Shawky was arbitrary under category II.

Category III

81. Given its finding that the deprivation of liberty of Mr. Shawky was arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Shawky should take place. Indeed, Mr. Shawky has been released but it remains unclear whether all charges against him have been duly dismissed. The source has made submissions under category III and the Working Group shall proceed to examine these.

82. The source has submitted, and the Government has chosen not to contest, that Mr. Shawky was denied access to his legal counsel as well as access to official documents pertaining to his case. The Working Group also notes that Mr. Shawky's health deteriorated seriously while in detention due to the conditions of his detention and that he even embarked upon a hunger strike, an allegation which is also not contested by the Government.

83. In the light of this, the Working Group considers that Mr. Shawky's right to legal assistance was denied in violation of his right under article 14 (3) (d) of the Covenant. All persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such

¹⁵ General comment No. 35 (2014), paras. 17 and 53.

¹⁶ General comment No. 34 (2011), para. 2.

¹⁷ *Ibid.*, para. 11.

¹⁸ *Ibid.*, para. 12.

access must be provided without delay.¹⁹ The right to legal assistance is an essential element of the right to a fair trial as it serves to ensure the principle of equality of arms is duly observed.²⁰

84. Moreover, the Working Group recalls that, in principle, access to the case file must be provided from the outset,²¹ but this was denied to Mr. Shawky. Noting this, and in the absence of a rebuttal from the Government, the Working Group finds that Mr. Shawky's rights under article 14 (1) and (3) (b) and (e) of the Covenant and articles 10 and 11 of the Universal Declaration of Human Rights were also violated.

85. The Working Group also considers that the conditions of detention and Mr. Shawky's deteriorating health condition further prevented him from being able to mount an effective defence. The Working Group therefore finds a further violation of article 14 (3) (d) of the Covenant.

86. Finally, the Working Group notes that Mr. Shawky spent well over three years in pretrial detention. The Working Group recalls that the right of the accused to be tried without undue delay, set out in article 14 (3) (c) of the Covenant, is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice.²² However, what is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities. In the present case, the Working Group has been presented with no reasons justifying such a delay and in fact considers the obligation arising from 14 (3) (c) of the Covenant particularly stringent in the present case, given the findings under category II (see above). It therefore finds a violation of article 14 (3) (c) of the Covenant.

87. Noting all the above, the Working Group concludes that the detention of Mr. Shawky was arbitrary under category III.

Concluding remarks

88. The Working Group is seriously concerned about the health and well-being of Mr. Shawky and about the conditions of detention in which he was held. The Working Group feels obliged to remind the Government that in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person and that denial of medical assistance constitutes a violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rules 18, 22, 24, 25, 27, 30 and 42 in particular, as well as principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group refers the case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health for appropriate action.

89. The Working Group notes that the present opinion is only one of many opinions in recent years in which the Working Group finds the Government to be in violation of its international human rights obligations.²³ The Working Group is concerned that this indicates a systemic problem with arbitrary detention in Egypt, which, if it continues, may amount to a serious violation of international law. The duty to comply with international human rights

¹⁹ A/HRC/45/16, paras. 51–52; and United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8. See also the Basic Principles on the Role of Lawyers, paras. 16–22.

²⁰ See, for example, opinion No. 35/2019.

²¹ See, for example, opinion No. 29/2020, para. 94.

²² General comment No. 32 (2007), para. 35.

²³ See, for example, opinions No. 6/2016, No. 7/2016, No. 41/2016, No. 42/2016, No. 54/2016, No. 60/2016, No. 30/2017, No. 78/2017, No. 83/2017, No. 26/2018, No. 27/2018, No. 47/2018, No. 63/2018, No. 82/2018, No. 87/2018, No. 21/2019, No. 29/2019, No. 41/2019, No. 42/2019, No. 65/2019, No. 77/2019, No. 6/2020, No. 80/2020, No. 45/2021, No. 79/2021, 83/2021, No. 23/2022 and No. 34/2022.

standards rests with all State organs, officers and agents as well as with all other natural and legal persons. 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

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

The deprivation of liberty of Walid Ahmed Shawky el-Sayed, being in contravention of articles 3, 6, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14, 16 and 19 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

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

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

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

94. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

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

Follow-up procedure

96. 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 compensation or other reparations have been made to Mr. Shawky;
- (b) Whether an investigation has been conducted into the violation of Mr. Shawky's rights and, if so, the outcome of the investigation;
- (c) 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;
- (d) Whether any other action has been taken to implement the present opinion.

97. 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.

98. 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.

99. 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.²⁴

[Adopted on 2 September 2022]

²⁴ Human Rights Council resolution 42/22, paras. 3 and 7.