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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March–5 April 2023**

### **Opinion No. 10/2023 concerning Dawit Isaak (Eritrea)**

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 51/8.

2. In accordance with its methods of work,<sup>1</sup> on 19 August 2022 the Working Group transmitted to the Government of Eritrea a communication concerning Dawit Isaak. 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).

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<sup>1</sup> [A/HRC/36/38](#).

## Submissions

### *Communication from the source*

4. Dawit Isaak is a national of Eritrea and Sweden, born on 27 October 1964. He usually resides in Asmara and in Gothenburg, Sweden. Mr. Isaak is a playwright, author and journalist. He is married and has three children.

#### a. Context

5. According to the source, Mr. Isaak emigrated to Sweden from Eritrea in 1987 and he obtained Swedish citizenship. He returned to Eritrea in 1993 to work in theatre, literature and journalism, specifically at *Setit*, one of the country's first independent newspapers.

6. In 2000, Mr. Isaak, his wife and their three children allegedly fled Eritrea due to the political turmoil at the time. Mr. Isaak returned to Eritrea in 2001 to continue his work as a journalist and advocate for the easing of restrictions on the free press.

7. According to the source, on 5 May 2001, *Setit* published a letter by the "Group of 15" (G-15), in which 15 leading members of the 75-member Central Council of the People's Front for Democracy and Justice criticized the policies and actions of the President, Isaias Afwerki. In the letter, the group demanded democratic reform and that the President convene the Council's governing bodies. At the time, Mr. Isaak was reportedly employed by *Setit* as a senior staff member and periodic editor-in-chief. The permanent editor-in-chief reportedly called a staff meeting to discuss the publication of the open letter and Mr. Isaak was allegedly directly involved in the decision to publish it. In August 2001, it is alleged that the G-15 was accused by Mr. Afwerki of attempting to destabilize the country. Members of the G-15 reportedly responded to this accusation in another open letter published in *Setit* in August 2001. They also responded by calling upon the people of Eritrea to assist in solving the country's problems.

8. On 18 September 2001, Mr. Isaak and his colleagues at *Setit* allegedly protested the Government's reported crackdown on independent media and closure of independent newspapers in the country. On the same day, it is reported that 11 prominent members of the Central Council of the People's Front for Democracy and Justice were detained. Mr. Isaak was allegedly arrested five days later, on 23 September 2001.

9. According to the source, in October 2001, government officials denied that a crackdown had taken place. They claimed that Mr. Isaak and other journalists had been sent to carry out their national service, and that the closures and mass arrests were necessary for the sake of national unity and in reaction to the newspapers' failure to comply with laws covering media licences. The Government also reportedly invoked national security to justify its limitation of freedom of opinion and expression, and its alleged crackdown on the independent press and political opposition in Eritrea.

10. In 2016, the commission of inquiry on human rights in Eritrea urged the Security Council to refer the situation of Eritrea to the International Criminal Court.

#### b. Arrest and detention

11. The source alleges that Mr. Isaak was arrested at his home in Asmara on 23 September 2001. Two plainclothes policemen reportedly arrested Mr. Isaak after they were invited inside the house to have breakfast with his family. The policemen allegedly told Mr. Isaak that he was being taken in for questioning. They did not inform him of the charges, present an arrest warrant or provide legal justification for the arrest at the time. Mr. Isaak told his family that he would return home soon.

12. It is reported that Mr. Isaak was then detained by the Eritrean National Security Office. He was allegedly initially held in Police Station No. 1 in Asmara, where he was seen in October 2001 by a government official from Sweden who was there for reasons unrelated to Mr. Isaak's detention. Mr. Isaak reportedly complained to the official that he had been sleeping on the floor while in detention.

13. According to the source, in April 2002, Mr. Isaak was hospitalized with post-traumatic stress disorder resulting from torture he had allegedly been subjected to during his detention at Police Station No. 1 in Asmara.

14. In April 2004, Mr. Isaak and other journalists were reportedly being held in secret security sections of Police Station No. 2 and Police Station No. 6 in Asmara.

15. Mr. Isaak was then allegedly detained at Karcheli Prison in Asmara until 2005. He was reportedly last seen there by fellow prisoners in November 2005. It is also alleged that Mr. Isaak was temporarily released by Eritrean authorities from 19 to 21 November 2005, during which time he remained under surveillance. On 21 November, Mr. Isaak was reportedly arrested again, on the street, by Eritrean security agents, without being informed of the reasons for his arrest. According to the source, Mr. Isaak was never meant to be released. However, it is alleged that Mr. Isaak thought he was being permanently released and called his family in Sweden indicating as such. When Mr. Isaak's release came to the attention of certain Eritrean government officials, they reportedly ordered his renewed detention.

16. In December 2008, Mr. Isaak was allegedly transferred to a maximum-security prison in Embatkala, 35 kilometres north-east of Asmara, where he became seriously ill. In January 2009, he was reportedly transferred to an air force hospital in Asmara to treat a serious illness but was later returned to prison.

17. According to the source, Mr. Isaak's current location remains unconfirmed, but there is reason to believe he is being held at Eiraeiro Prison Camp, which is located 16 kilometres north of Asmara. The source notes that Eiraeiro Prison Camp is part of a network of prisons where political prisoners are incarcerated in harsh conditions. A former prison guard reported seeing Mr. Isaak and other G-15 prisoners at Eiraeiro Prison Camp on 6 January 2010. The source alleges that the Eritrean authorities have never disclosed where Mr. Isaak is detained.

18. Mr. Isaak has allegedly been subjected to harsh physical and psychological conditions of detention. It is alleged that Mr. Isaak has been subjected to incommunicado detention since 2001, as he has been denied the right to legal counsel, to communicate with his family and to access consular assistance. From 2005 to 2010, Mr. Isaak was reportedly held in strict isolation from other prisoners at Eiraeiro Prison Camp. In 2010, Mr. Isaak was allegedly placed in solitary confinement in a tiny cell with no windows and has been unable to communicate with his family or counsel and has not been allowed any contact at all with the outside world. It is reported that he remains in poor physical and mental condition, that he is suffering from post-traumatic stress disorder and that he has also been denied the necessary medical and urgent care to treat his diabetes, from which he has suffered for many years. Mr. Isaak has allegedly been hospitalized twice, in April 2002 and January 2009, to treat injuries sustained in prison and his post-traumatic stress disorder.

19. The source reports that Mr. Isaak was never provided access to legal counsel and as such has never had legal representation in Eritrea. Mr. Isaak's family reportedly hired counsel in Sweden, on 15 October 2010, to represent him. However, the source notes that Mr. Isaak has never been able to communicate with or receive a visit from his Swedish counsel.

20. In mid-April 2010, an Eritrean official in Brussels reportedly disclosed that Mr. Isaak was to be formally charged with a crime and taken to court. However, this was allegedly denied by the Eritrean Embassy in Brussels.

21. In June 2016, the Foreign Minister of Eritrea reportedly gave an interview for Radio France International during which he confirmed that Mr. Isaak was in the Eritrean authorities' custody and would eventually be tried.

22. It is alleged that Mr. Isaak's legal counsel in Sweden has taken steps to exhaust domestic remedies. At the domestic level, Mr. Isaak's legal counsel reportedly filed a habeas corpus petition with the Supreme Court of Eritrea, in 2011, demanding that Mr. Isaak be brought before a court and requesting a review of the lawfulness of his detention. The petition reportedly remains unanswered. Mr. Isaak's legal counsel also reportedly filed complaints with the Swedish Prosecution Authority, alleging that Mr. Isaak had been the victim of crimes against humanity, enforced disappearance and torture by the Eritrean authorities. Reportedly, no investigation has yet been opened.

23. At the international level, it is reported that Mr. Isaak's legal counsel took recourse through multiple courts and international bodies. In 2012, a submission was allegedly filed with the African Commission on Human and Peoples' Rights to enquire about his whereabouts and the circumstances of his detention and demand his release. As a result, in 2016, the African Commission reportedly issued a final and binding judgment ordering Eritrea to either release Mr. Isaak or afford him a speedy and fair trial. This decision was allegedly ignored by the Government of Eritrea. The source notes that, in 2020, the European Parliament condemned systematic and gross human rights violations in Eritrea and pleaded for Mr. Isaak's release from prison.

c. Legal analysis

24. The source argues that the arrest and detention of Mr. Isaak is arbitrary under categories I, II, III and V of the working methods of the Working Group.

25. As a preliminary matter, the source argues that the physical and psychological harm endured by Mr. Isaak runs contrary to the principle of human dignity, which constitutes a core tenet of human rights and fundamental freedoms and which is protected by the Constitution of Eritrea as an intrinsic part of a society founded on respect for human rights and fundamental freedoms.

i. Category I

26. The source argues that the arrest and detention of Mr. Isaak are arbitrary under category I as there is no legal basis justifying his deprivation of liberty. The Eritrean authorities allegedly detained Mr. Isaak without charge or trial and failed to invoke any national law for his detention, provide legal justification for his arrest, inform him of the charges against him, present him with a duly issued arrest warrant or provide judicial review. Mr. Isaak has reportedly been detained for more than 22 years at an undisclosed location, during which time he has allegedly been denied access to his family, consular assistance and counsel, effectively resulting in his incommunicado detention and enforced disappearance.

Legality of the arrest

27. The source recalls article 9 (2) of the Covenant, acceded to by the Government of Eritrea on 22 January 2002, and the rights guaranteed by articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights. The source stresses that, according to the findings of the Working Group, information about the reasons for arrest must be provided immediately upon arrest, and prompt information about the charges must be provided thereafter.<sup>2</sup>

28. The source refers to the implementation of these articles within domestic law, including the Constitution of Eritrea and the Criminal Procedure Code of Eritrea, which provide ample safeguards for persons who are arrested and detained without charge or trial. The source notes that the Criminal Procedure Code pertains specifically to the protection of individual rights and freedoms.

29. The source concludes that Mr. Isaak's detention is arbitrary as he was neither informed of the charges and legal justification for his arrest nor presented with an arrest warrant, in contravention of articles 9 and 14 of the Covenant and articles 8, 9, 10, and 11 of the Universal Declaration of Human Rights. The source argues that the Eritrean authorities detained Mr. Isaak without charge or trial. They also reportedly failed to invoke any national law for his detention and provide notice of the reasons for arrest and charges, a duly issued arrest warrant or judicial review.

Review by an independent and impartial tribunal

30. The source argues that Mr. Isaak has been denied the opportunity to be heard before an independent and impartial tribunal and the right to challenge the legality of his detention. It is alleged that, given the absence of charge or trial, Mr. Isaak's detention was not the result of a final decision taken by an Eritrean domestic judicial body. Allegedly, there has been no

<sup>2</sup> Opinion No. 30/2017, para. 58.

assessment of the lawfulness, necessity and proportionality of his detention in accordance with domestic law and with other relevant international standards set forth in the Universal Declaration of Human Rights and other relevant international instruments ratified by Eritrea.

3. Incommunicado detention and enforced disappearance

31. According to the source, Mr. Isaak has been held in incommunicado detention for more than 22 years, effectively under enforced disappearance. It is reported that Mr. Isaak has been consistently denied access to family visits, consular assistance and the right to counsel. The source submits that Eritrean authorities have never disclosed where Mr. Isaak is being detained, and that his location therefore remains unknown.

32. The source recalls that, in an opinion in 2006, the Working Group considered the deprivation of liberty of an individual held in a secret place of detention to be arbitrary as that person had not been formally charged with any offence, informed of the duration of the custodial order, brought before a judicial officer, allowed access to counsel of their choice or accorded the possibility to challenge the legality of the detention. The source also emphasizes that no jurisdiction can allow for incommunicado detention where the person has not been granted rights or access to counsel or relatives, and that detention is arbitrary where there is no judicial control over the deprivation of liberty and where no legal procedure established by law is followed.<sup>3</sup>

33. The source also recalls the finding that, in most cases, secret detention, as it is outside any international or national legal regime, also implies that the duration of detention is not known to the detainee; it rests at the sole discretion of the authorities ordering the detention. Hence, the very nature of secret detention may result in potentially indefinite periods of detention, which render this type of detention arbitrary on this additional ground.<sup>4</sup>

34. The source notes that the General Assembly, in its resolution 60/148, reminded all States that prolonged incommunicado detention or detention in secret places might facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and could in itself constitute a form of such treatment.

35. The source contends that the prolonged, secretive and inhumane detention conditions, including lack of access to medical care, poor hygiene, ventilation and nutrition, and overcrowding, amount to torture and other cruel, inhuman or degrading treatment or punishment in the case of Mr. Isaak. The source argues that indefinite detention entails inhumane treatment and that, in certain circumstances it may even constitute a form of torture. The source notes that Mr. Isaak was hospitalized in April 2002 for treatment of his post-traumatic stress disorder, which resulted from torture he had been subjected to during his detention at Police Station No. 1 in Asmara.

36. For these reasons, the source contends that Mr. Isaak's arrest and detention are arbitrary under category I.

ii. Category II

37. The source argues that the arrest and detention of Mr. Isaak are arbitrary under category II insofar as his deprivation of liberty resulted from the legitimate exercise of his rights and freedoms guaranteed by articles 19, 21 and 22 of the Covenant, articles 19, 20 and 21 of the Universal Declaration of Human Rights, and the Constitution of Eritrea.

38. The source argues that the arbitrary detention and imprisonment of human rights defenders, such as Mr. Isaak, and the failure of the Government of Eritrea to respect the fundamental rights and freedoms enshrined in its own Constitution, such as the right to freedom of expression and the exercise of the right to political expression on the basis of political opinion, should be subject to heightened scrutiny by the Working Group.

39. The source recalls that article 19 of the Universal Declaration of Human Rights specifically protects the right to freedom of opinion and expression. The source submits that

<sup>3</sup> Opinion No. 14/2009, para. 19.

<sup>4</sup> A/HRC/13/42, para. 33.

this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. The source points out that the right to freedom of opinion and expression is also guaranteed by article 19 of the Covenant and article 9 of the African Charter on Human and Peoples' Rights, which the Government of Eritrea ratified on 14 January 1999.<sup>5</sup>

40. The source also recalls that the right to freedom of assembly is guaranteed by article 20 (1) of the Universal Declaration of Human Rights and article 21 of the Covenant.<sup>6</sup> The source notes that article 19 (2) of the Covenant protects the work of journalists and includes the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.

41. The source contends that the right to hold opinions without interference exists even if they contradict official government policies.<sup>7</sup> The source submits that detention is arbitrary when it is based on expression in the form of letters, petitions, publications, cartoons, interviews, active citizenship training, television appearances or video footage and that the use of arbitrary detention to restrict press freedom is a particularly invidious violation of civil and political rights.<sup>8</sup>

42. The source argues that, in this case, Mr. Isaak's detention was arbitrary as it was based on his political opinion. It submits that Mr. Isaak was exercising his right to freedom of opinion and expression by protesting with his colleagues against the Government's alleged crackdown on the independent press. Mr. Isaak reportedly demonstrated his political opinion through his involvement in *Setit's* publication of the G-15's open letter and through other expressions of political thought. It is alleged that Mr. Isaak was subsequently arrested by the authorities, on 23 September 2001.

43. The source also argues that Mr. Isaak's detention resulted from the peaceful exercise of his rights under international law. The source further argues that, when detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.<sup>9</sup>

44. Further, the source contends that penalizing Mr. Isaak and his colleagues solely for engaging in political discussion and criticism does not constitute a justifiable restriction under article 19 (3) of the Covenant. The source cites several opinions in which the Working Group found that the detention of members of political opposition parties on the basis of their political opinion was arbitrary.<sup>10</sup>

45. The source argues that the Government invoked national security in an attempt to justify the crackdown on the independent press and political opposition and on freedom of opinion and expression. In that regard, the source submits that national security can only be invoked as a justification where a State faces a serious political or military threat. The source cites the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (para. 29), under which national security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation, its territorial integrity or political independence against force or threat of force. The source argues that this high standard under international law was not met by the Government of Eritrea to justify the detention of Mr. Isaak and his colleagues. The source argues that the detention of Mr. Isaak was not provided for by law, and *Setit's* publication of a letter critical of the President and his Government could not possibly constitute a threat of force to the State.

<sup>5</sup> See also article 13 of the American Convention on Human Rights and article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

<sup>6</sup> See also article 11 of the European Convention on Human Rights.

<sup>7</sup> Opinion No. 33/2007, para. 16.

<sup>8</sup> Opinion No. 14/2009, para. 25.

<sup>9</sup> Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 40/2021, para. 90.

<sup>10</sup> Opinions No. 39/1992 and No. 5/1994.

46. For these reasons, the source submits that Mr. Isaak's arrest and detention are arbitrary under category II.

iii. Category III

Right to a fair trial and due process

47. The source argues that the arrest and detention of Mr. Isaak are arbitrary under category III as he has been denied his rights to due process and a fair trial. According to the source, the Government's non-observance of these international norms, as guaranteed under the Universal Declaration of Human Rights and relevant international instruments ratified by Eritrea, renders Mr. Isaak's deprivation of liberty arbitrary.

48. The source argues that Mr. Isaak was arrested without an arrest warrant and detained without charge. He was also reportedly denied the right to a fair trial by an independent judicial authority, the right to a public hearing and the right to be presumed innocent. Further, he has allegedly been denied the right to habeas corpus and the right to legal counsel during his detention and has been held in incommunicado detention since 2001.

49. The source argues that the indefinite detention of Mr. Isaak, for more than 22 years to date, without trial, violates his right to be presumed innocent. The source also argues that Mr. Isaak's incommunicado detention effectively places him outside the protection of the law, where his rights to the presumption of innocence and to be free from arbitrary deprivation of liberty are at risk of being further violated.

50. The source recalls that articles 9 and 14 of the Covenant enshrine the right to due process. Specifically, the source argues that the authorities have violated article 9 (1) and (4) of the Covenant. Article 9 (4) stipulates that anyone deprived of their liberty by arrest or detention should be entitled to proceedings before a court for it to decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. The source notes the Working Group's previous finding that incommunicado detention for one month at a military camp violated the right of the individual in question to a fair trial because he had been denied access to his family, his right to counsel and his right to be brought promptly before a judge.<sup>11</sup>

51. The source argues that judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis. Given that Mr. Isaak has reportedly been unable to challenge his detention before a court, the source contends that his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant has been violated. The source alleges that Mr. Isaak was placed outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant. The source argues that State authorities should have brought Mr. Isaak before a court of law *proprio motu*, within 48 hours of his arrest, and provided him with the legally required assistance of counsel.

52. The source also argues that the Government does not dispute that Mr. Isaak has not been brought before a judge during his entire detention. It is alleged that, by refusing to bring him promptly before a judge to allow him to challenge the legality of his detention, and by denying his release pending trial, the authorities violated article 9 (3) and (4) of the Covenant and principles 11, 32 and 36–39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source submits that the Government bears the burden of proof to rebut these allegations but has failed to do so, and that mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the submitted allegations.

53. The source recalls that the right to be presumed innocent is enshrined in article 11 of the Universal Declaration of Human Rights, article 14 (2) of the Covenant and principle 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source emphasizes the *jus cogens* nature of this right and adds that the

<sup>11</sup> Opinion No. 54/2016.

automatic extension of pretrial detention without regard to due process and fair trial rights is also indicative of the violation of the presumption of innocence.<sup>12</sup> The source recalls the Working Group's finding that the denial of an individual's right to legal assistance, inter alia, violates the individual's due process and fair trial rights, as well as the right to be presumed innocent.<sup>13</sup>

54. According to the source, the authorities have further violated articles 6 and 7 of the African Charter on Human and Peoples' Rights, which enshrine the right to liberty and security and the right to have a cause heard, including the right to appeal, the right to be presumed innocent until proved guilty by a competent court or tribunal, the right to legal representation and the right to be tried within a reasonable time by an impartial court or tribunal.

55. The source recalls that, according to the African Commission on Human and Peoples' Rights, the lawfulness and necessity of holding someone in custody must be determined by a court or other appropriate judicial authority. The source argues that Mr. Isaak was not promptly charged with legitimate criminal offences, there was no legal justification for his detention and the State did not initiate legal proceedings in compliance with fair trial standards, as stipulated by the African Commission in its Resolution on the Right to Recourse and Fair Trial 1992 and elaborated upon in its Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

56. The source argues that the authorities violated articles 1 and 29 of the Criminal Procedure Code of Eritrea. The source explains that article 1 was amended by Proclamation No. 5/1991 in order "to uphold the principle that any accused person is presumed innocent until proven guilty beyond reasonable doubt by a corroboration of proof; to forward a fair and speedy investigation and trial; and to guarantee proper usage of the law". Article 29 of the same code specifies that, unless otherwise expressly provided by law, no person may be detained or arrested except by a warrant of a court.

57. The source claims that Mr. Isaak's due process rights were violated under the Constitution of Eritrea. Specifically, article 17 of the Constitution provides that every person who is held in detention shall be brought before a court of law within 48 hours of arrest or, if this is not reasonably possible, as soon as possible thereafter, and no such person shall be held in custody beyond such period without the authority of the court. Article 17 further enshrines the right of every person to petition a court of law for a writ of habeas corpus and specifies that, where the arresting officer fails to bring the person arrested before the court and provide the reason for the arrest, the court shall accept the petition and order the release of the prisoner.

58. The source reiterates that, while the decision to detain Mr. Isaak should be open to periodic review so that the grounds justifying his detention can be assessed, such review is not possible in Mr. Isaak's case as he was never charged with any crime under Eritrean law. The source concludes that Mr. Isaak's due process and fair trial rights were violated.

#### Right to legal counsel

59. The source emphasizes that the right to legal counsel is essential for the assurance of a fair trial. It argues that Mr. Isaak was denied access to counsel, contrary to article 7 (1) (c) of the African Charter on Human and Peoples' Rights, which provides for the right to legal representation, including by counsel of a person's own choosing. The African Commission on Human and Peoples' Rights has further found that non-compliance with this article is an unacceptable infringement of this right.<sup>14</sup>

60. The source alleges that Mr. Isaak has never been granted access to legal counsel. It is reported that his family instructed counsel in Sweden to represent him on 15 October 2010 and that he has been represented by counsel in Sweden since then. However, Mr. Isaak has

<sup>12</sup> Opinions No. 18/2018, No. 26/2018 and No. 87/2018.

<sup>13</sup> Opinion No. 89/2018.

<sup>14</sup> African Commission on Human and Peoples' Rights, *Constitutional Rights Project v. Nigeria*, communication No. 87/93, Judgment, 1995.



allegedly never been able to communicate with or receive a visit from said counsel. Mr. Isaak was also denied access to any legal representation in Eritrea.

61. The source concludes that the Government's alleged non-observance of the international norms relating to the right to a fair trial, pursuant to the Universal Declaration of Human Rights, the Covenant and relevant international instruments ratified by Eritrea, is of such gravity as to render Mr. Isaak's deprivation of liberty arbitrary under category III.

iv. Category V

62. The source argues that the arrest and detention of Mr. Isaak are arbitrary under category V as he was deprived of his liberty on discriminatory grounds based on both his political opinion and expression. The source submits that Mr. Isaak is a prisoner of conscience imprisoned for airing his views regarding the governance of the country.

63. The source underlines that, in 2002, the Working Group found the deprivation of liberty of the G-15 members to be related to the political debate at the time concerning the way that the country was governed by the President. The source notes that the Government's argument that the individuals conspired to overthrow the regime led by the President did not convince the Working Group because it lacked concrete evidence to substantiate its claims. At that time, the Working Group emphasized that the detainees had been arrested and detained for expressing political opinions and convictions and for exercising their right to freedom of opinion and expression guaranteed under article 19 of the Universal Declaration of Human Rights. It also considered that they had been deprived of their liberty as demonstrated by their isolation in one or more secret locations where they had no contact whatsoever with lawyers or their families. The source submits that the Working Group also confirmed the absence of any court ruling on the legality of the detention of the individuals named in the opinion. The source recalls the Working Group's conclusion that all this constitutes a series of violations of such gravity as to confer on their deprivation of liberty an arbitrary character, which contravenes articles 9 and 10 of the Universal Declaration of Human Rights and principles 10 to 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>15</sup>

64. The source emphasizes that the Working Group specifically requested the Government of Eritrea to take the necessary steps to remedy the situation of those individuals by bringing it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take adequate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights, but that none of these recommendations were adhered to by the Government.

65. The source argues that the detention of Mr. Isaak was based on the exercise of his fundamental political rights, which clearly constitutes discrimination based on his political views. The source recalls that the Working Group has previously inferred discrimination on the basis of political opinion in contexts involving widespread political imprisonment or the history between the Government and detainee in question. The source concludes that Mr. Isaak's detention represents a clear case of targeting on the basis of political opinion. Mr. Isaak reportedly worked for the *Setit* newspaper and supported the publication of the G-15 letter, in which the group criticized government policies. He and his *Setit* colleagues were allegedly arrested only days later. The source further contends that the crackdown on G-15 members and journalists, including Mr. Isaak, was widespread in Eritrea.

66. For these reasons, the source submits that Mr. Isaak's arrest and detention are arbitrary under category V.

*Response from the Government*

67. On 19 August 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 17 October 2022, detailed information about the current situation of Mr. Isaak and to clarify the legal provisions justifying his continued

<sup>15</sup> Opinion No. 3/2002.

detention, as well as its compatibility with the obligations of Eritrea under international human rights law. Moreover, the Working Group called upon the Government of Eritrea to ensure the physical and mental integrity of Mr. Isaak.

68. The Working Group regrets that the Government did not submit a reply or seek an extension in accordance with paragraph 16 of the Working Group's methods of work.

### Discussion

69. 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.

70. In determining whether Mr. Isaak's detention is 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 a 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.<sup>16</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

71. The Working Group wishes to reaffirm that States have the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including the liberty of person, and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights, the Covenant and other applicable international and regional instruments.<sup>17</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 circumstances of the detention and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.<sup>18</sup>

72. The source argues that the arrest and detention of Mr. Isaak are arbitrary under categories I, II, III and V of the working methods of the Working Group. The Working Group will examine these allegations in turn.

### Category I

73. According to the information provided by the source, Mr. Isaak was arrested without being shown an arrest warrant or provided with the reasons for his arrest. Further, he was reportedly not informed of the charges against him and has been detained for more than 22 years at an undisclosed location, during which time he has allegedly been denied access to visits from his family, consular assistance and counsel, effectively resulting in his incommunicado detention and enforced disappearance. The Government has chosen not to contest these allegations although it had the opportunity to do so. In these circumstances, the Working Group is inclined to accept the prima facie credible allegations made by the source.

74. The Working Group recalls that a detention is considered arbitrary under category I if it lacks legal basis. As it has previously stated, for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law which may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case. This is typically<sup>19</sup> done through an arrest warrant or order (or equivalent document).<sup>20</sup> In addition, article 9 (2) of the Covenant provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest and shall be promptly informed of any charges. The reasons for

<sup>16</sup> A/HRC/19/57, para. 68.

<sup>17</sup> See, for example, General Assembly resolution 72/180 and Human Rights Council resolutions 41/2 and 41/17. See also Commission on Human Rights resolutions 1991/42 and 1997/50; Human Rights Council resolutions 6/4 and 10/9; and opinions No. 41/2014, para. 24; No. 42/2019, para. 43; No. 13/2020, para. 39; and No. 23/2022, para. 58.

<sup>18</sup> Opinions No. 82/2018, para. 25; No. 76/2019, para. 36; No. 14/2020, para. 45; and No. 23/2022, para. 58.

<sup>19</sup> Human Rights Committee, general comment No. 35 (2014), para. 23; see also opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

<sup>20</sup> Human Rights Committee, general comment No. 35 (2014), para. 27; and opinion No. 30/2017, paras. 58 and 59.

arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.<sup>21</sup> The Working Group notes that Mr. Isaak was not arrested in flagrante delicto, when the opportunity to obtain a warrant would not be typically available.

75. 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 or equivalent document to Mr. Isaak, informed him 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 articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) and (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.

76. The source argues that Mr. Isaak has been denied the opportunity to be heard before an independent and impartial tribunal as well as the right to challenge the legality of his detention. It is alleged that, given the absence of charge or trial, Mr. Isaak's detention was not the result of a final decision taken by an Eritrean domestic judicial body. This allegation remains unrebutted by the Government.

77. The Working Group notes that enforced disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention.<sup>22</sup> In fact, the Working Group has repeatedly asserted that holding persons at secret, undisclosed locations and in circumstances undisclosed to their family violates their right to contest the legality of their detention before a court or tribunal under article 9 (4) of the Covenant. Judicial oversight of any detention is a central safeguard for personal liberty and is critical in ensuring that the detention has a legitimate basis.

78. The Working Group recalls article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance, which provides that individuals deprived of their liberty must be held in a place of detention that is officially recognized, and that States must ensure that no one is held secretly in detention.

79. In the circumstances attending the detention of Mr. Isaak at a location unknown to his family and lawyers, the Working Group finds that he was unable to challenge the legality of his detention before a court under article 9 (4) of the Covenant. Consequently, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant were violated.

80. The Working Group also recalls that principle 15 of the Body of Principles provides that communication of the detained or imprisoned person with the outside world, and in particular the person's family or counsel, shall not be denied for more than a matter of days. The detention of Mr. Isaak in a location unknown to his family and lawyer to this day entails a wilful refusal to disclose his fate or whereabouts. This lacks any valid legal basis under any circumstance. It is also inherently arbitrary as it places such 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. The Working Group refers this matter to the Working Group on Enforced or Involuntary Disappearances.

81. Consequently, the Working Group finds that the Government failed to establish any legal basis for Mr. Isaak's detention, rendering his detention arbitrary under category I.

#### *Category II*

82. According to the source, Mr. Isaak was arrested and detained as a result of his legitimate exercise of the rights and freedoms guaranteed by articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the Covenant. In particular, the source alleges that Mr. Isaak was exercising his right to freedom of opinion and expression by protesting with his colleagues against the Government's alleged

<sup>21</sup> Opinion No. 85/2021, para. 69.

<sup>22</sup> See opinions No. 5/2020, No. 6/2020, No. 11/2020, No. 13/2022 and No. 65/2022. See also Human Rights Committee, general comment No. 35 (2014), para. 17.

crackdown on independent press, through his involvement in *Setit*'s publication of the G-15's open letter and through other expressions of political thought. These allegations were put to the Government, which chose not to contest them.

83. The freedom of expression guaranteed under article 19 of the Covenant 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.<sup>23</sup> Article 19 (2) of the Covenant protects the holding and expression of opinions, including those that are critical of, or not in line with, government policy.<sup>24</sup> The Human Rights Committee has specifically recognized that article 19 (2) of the Covenant protects the work of journalists and includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment.<sup>25</sup>

84. The Working Group considers that Mr. Isaak's conduct fell within the right to freedom of opinion and expression protected under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant and that he was detained for exercising such right.

85. According to the source, the Government invoked national security in an attempt to justify the crackdown on the independent press and political opposition and on freedom of opinion and expression in Eritrea. The Working Group notes that, in its resolution 12/16, the Human Rights Council called upon States to refrain from imposing restrictions under article 19 (3) that are not consistent with international human rights law. The Government has not presented any evidence that the permissible restrictions under article 19 of the Covenant somehow apply in the case at hand.

86. Further, according to the source, at the time of his arrest, Mr. Isaak was a senior staff member and periodic editor-in-chief of *Setit*, which published the G-15 letter. He was reportedly detained five days after having protested with his *Setit* colleagues the Government's reported crackdown on independent media and closure of independent newspapers in the country. These allegations were put to the Government, which chose not to contest them.

87. In the absence of any response from the Government, the Working Group finds credible the source's allegation that Mr. Isaak was also arrested as a result of his exercise of the right to freedom of association and peaceful assembly.

88. The Working Group further considers that Mr. Isaak's direct involvement in the decision to publish an open letter criticizing government policies concerned matters of public interest.<sup>26</sup> The Working Group therefore concludes that Mr. Isaak was detained for exercising his right to take part in the conduct of public affairs under article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant.<sup>27</sup>

89. The Working Group thus concludes that Mr. Isaak's detention resulted from the peaceful exercise of his right to freedom of opinion and expression, freedom of association and peaceful assembly, as well as his right to take part in the conduct of public affairs, contrary to articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21, 22 and 25 of the Covenant. His detention is therefore arbitrary under category II. The Working Group refers this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

<sup>23</sup> Human Rights Committee, general comment No. 34 (2011), para. 11.

<sup>24</sup> Opinions No. 79/2017, para. 55; and No. 8/2019, para. 55.

<sup>25</sup> *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

<sup>26</sup> Opinion No. 3/2002, paras. 11 and 12.

<sup>27</sup> Human Rights Committee, general comment No. 25 (1996), para. 8 (citizens take part in the conduct of public affairs by exerting influence through public debate). See also opinions No. 46/2011, No. 42/2012, No. 26/2013, No. 36/2018, No. 45/2019, No. 59/2019, No. 89/2020, No. 46/2021 and No. 71/2021.

*Category III*

90. Given its finding that the deprivation of liberty of Mr. Isaak is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Isaak should take place.

91. The source has submitted, and the Government has chosen not to contest, that Mr. Isaak has been denied access to his legal counsel throughout his detention. Although his family was able to secure a lawyer in Sweden, Mr. Isaak has not been able to access legal representation in Eritrea or to communicate with any lawyer since his arrest, including the lawyer secured by his family in Sweden.

92. The Working Group recalls that 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 that such access is to be provided without delay.<sup>28</sup> The Working Group notes that the right to communicate with counsel, as encapsulated in article 14 (3) (b) of the Covenant, entails the requirement that counsel be able to meet clients in private and to communicate with them in conditions that fully respect the confidentiality of their communications.<sup>29</sup> The Working Group finds that the failure to allow Mr. Isaak access to or communication with a lawyer since the beginning of and throughout his detention violates his right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing, as guaranteed by article 14 (3) (b) of the Covenant.

93. Under articles 9 (3) and 14 (3) (c) of the Covenant, anyone arrested or detained on a criminal charge is entitled to trial within a reasonable time and without undue delay. Given the Working Group's finding that Mr. Isaak's detention was arbitrary under category II because it resulted from the peaceful exercise of his rights, any delay in trying his case is unreasonable.<sup>30</sup>

94. The Working Group considers that Mr. Isaak's pretrial detention for more than 22 years is unacceptably long and constitutes an egregious violation of articles 9 (3) and 14 (3) (c) of the Covenant and principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group also considers that such prolonged pretrial detention violates Mr. Isaak's right to be presumed innocent as enshrined in article 11 of the Universal Declaration of Human Rights, article 14 (2) of the Covenant and principle 36 of the Body of Principles.

95. The Working Group notes the source's uncontested allegations that Mr. Isaak was subjected to acts of torture through his secret and prolonged detention in inhumane detention conditions, including poor hygiene, lack of access to medical care, ventilation and nutrition, and overcrowding. The source also alleges that Mr. Isaak was hospitalized in April 2002 to treat his post-traumatic stress disorder resulting from torture he had been subjected to during his detention at Police Station No. 1 in Asmara. The source submits that Mr. Isaak was held in strict isolation from other prisoners at Eiraeiro Prison Camp from 2005 to 2010, at which time he was placed in solitary confinement in a tiny cell with no windows. Reportedly, he has been unable to communicate with his family or counsel, or allowed any contact at all with the outside world. The Working Group notes that none of these allegations have been refuted by the Government.

96. The Working Group recalls that torture or ill-treatment of detainees not only is a grave violation of human rights, but also seriously undermines the fundamental principles of a fair trial as it can compromise the ability to defend oneself, especially in the light of the right not

<sup>28</sup> 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; Human Rights Committee, general comment No. 35 (2014), para. 35; *A/HRC/45/16*, paras. 50–55; and *A/HRC/48/55*, para. 56. See also *A/HRC/27/47*, para. 13.

<sup>29</sup> Human Rights Committee, general comment No. 32 (2007), para. 34. See also *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997), para. 8.5; *Siragev v. Uzbekistan* (CCPR/C/85/D/907/2000), para. 6.3; and *Khomidov v. Tajikistan*, (CCPR/C/81/D/1117/2002), para. 6.4. See also, for example, opinions No. 42/2018, No. 83/2018 and No. 67/2020.

<sup>30</sup> Opinions No. 16/2020, para. 77; No. 10/2021, para. 78; and No. 40/2022, para. 88.

to be compelled to testify against oneself or to confess guilt.<sup>31</sup> Detainees should be protected from any practices that violate their right to be free from any act that could cause severe pain or suffering, whether physical or mental, and that is inflicted intentionally on a person. This has been clearly stated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The right to freedom from torture and other ill-treatment or punishment is absolute. This applies in all circumstances, and it may never be restricted, including in 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.<sup>32</sup>

97. Moreover, according to rule 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, subject to independent review, and authorized by a competent authority. These conditions do not appear to have been observed in the present case. Prolonged solitary confinement (a time period in excess of 15 consecutive days) is prohibited under rules 43 (1) (b) and 44 of the Nelson Mandela Rules. The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

98. In the light of the above, the Working Group concludes that the violations of the right to a fair trial of Mr. Isaak under article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant are of such gravity as to give his detention an arbitrary character under category III.

#### *Category V*

99. According to the source, Mr. Isaak is a human rights defender who was arrested and detained on discriminatory grounds, based on both political opinion and expression. The source submits that Mr. Isaak is a prisoner of conscience imprisoned for airing his views regarding the governance of the country. The Government has chosen not to rebut these allegations.

100. In the discussion above concerning category II, the Working Group established that Mr. Isaak's detention resulted from the peaceful exercise of his human rights under international law. When a detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.<sup>33</sup>

101. In addition, under the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and to draw public attention to the observance of human rights (arts. 1 and 6 (c)).<sup>34</sup> The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.<sup>35</sup>

102. The Working Group therefore concludes that Mr. Isaak was deprived of his liberty on discriminatory grounds, that is, owing to his status as a human rights defender, and on the basis of his political or other opinion in seeking to hold the authorities to account. His deprivation of liberty thus violates articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and is arbitrary under category V.

<sup>31</sup> Opinions No. 22/2019, para. 78; No. 26/2019, para. 104; and No. 56/2019, para. 88.

<sup>32</sup> Human Rights Committee, general comment No. 20 (1992), para. 3.

<sup>33</sup> Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 59/2019, para. 79.

<sup>34</sup> See also General Assembly resolution 74/146, para. 12.

<sup>35</sup> Opinions No. 48/2017, No. 75/2017, No. 45/2018, No. 9/2019, No. 83/2019, No. 15/2020 and No. 66/2021.

*Concluding remarks*

103. The Working Group expresses its utmost concern regarding the source's un rebutted allegation that Mr. Isaak has been in pretrial detention for more than 22 years without being charged and without any prospect of trial. The Working Group expresses further concern about Mr. Isaak's reported poor physical and mental condition and post-traumatic stress disorder, as well as the denial of necessary medical and urgent care to treat his diabetes, from which he has suffered for many years. The Working Group recalls that, according to article 10 (1) of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules, all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity, including by being allowed to enjoy the same standards of health care that are available in the community. In particular, rule 27 (1) requires that all prisons ensure prompt access to medical attention in urgent cases, and that prisoners who need specialized treatment or surgery be transferred to specialized institutions or civil hospitals.

104. Further, the Working Group notes with alarm that the location of Mr. Isaak remains unknown to this day. It urges the Government to provide information about the situation and whereabouts of Mr. Isaak without delay, in particular the exact location of his ongoing deprivation of liberty.

105. On 18 May 2018, the Working Group issued a request to the Government of Eritrea to invite the Working Group to conduct a country visit. The Working Group reiterates that it would welcome the opportunity, at the earliest convenience to the Government, to conduct a visit to Eritrea in order to engage with the Government in a constructive manner and to offer its assistance in addressing instances of arbitrary deprivation of liberty.

**Disposition**

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

The deprivation of liberty of Dawit Isaak, being in contravention of articles 2, 3, 7, 8, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 14, 16, 19, 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III, and V.

107. The Working Group requests the Government of Eritrea to take the steps necessary to remedy the situation of Mr. Isaak 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.

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

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

110. 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, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on freedom of peaceful assembly and of association, for appropriate action.

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

**Follow-up procedure**

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

113. 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.

114. 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.

115. 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>36</sup>

[Adopted on 28 March 2023]

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<sup>36</sup> Human Rights Council resolution 51/8, paras. 6 and 9.