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Human Rights Council
Working Group on Arbitrary Detention

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Opinion No. 70/2023 concerning Hussein Abdelrazek Abdelhafez Ismail and Mohamed Abdelrazek Abdelhafez Ismail (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 51/8.
2. In accordance with its methods of work,¹ on 25 July 2023 the Working Group transmitted to the Government of Egypt a communication concerning Hussein Abdelrazek Abdelhafez Ismail and Mohamed Abdelrazek Abdelhafez Ismail. The Government replied to the communication on 21 September 2023. 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](#).

1. Submissions

(a) Communication from the source

4. The case summarized hereafter has been reported to the Working Group as follows.

5. Hussein Abdelrazek Abdelhafez Ismail is an Egyptian national, born on 1 February 1983. Prior to his arrest, he worked as a merchant in a mobile store. He is married and the father of two children. He usually resides in the Agouza Governorate of Giza.

6. Mohamed Abdelrazek Abdelhafez Ismail is an Egyptian national, born on 5 July 1979. Prior to his arrest, he was an administrator in a contracting company. He is married and the father of two children. He usually resides in the Agouza Governorate of Giza.

(i) Context

7. According to the source, Mr. Hussein Ismail and Mr. Mohamed Ismail were both arrested as a reprisal against the work of one of their relatives, a journalist living abroad wanted by the Government of Egypt for having expressed his views on government policies in his professional capacity.

8. The source describes a pattern by which Egyptian authorities prosecute and punish individuals whose relatives are opponents or critics of the Government, journalists or human rights defenders, whether such relatives are living abroad or in custody in Egypt. According to the source, these measures are used to exert pressure on opponents and critics or to retaliate against them by targeting their relatives, in violation of the Constitution of Egypt. The source notes that article 95 of the Constitution provides that penalties are personal, that crimes and penalties may only be based on a judicial ruling, and that penalties may only be imposed for acts committed after the date on which the relevant law entered into effect.

(ii) Arrest and detention

9. The source reports that on 26 December 2013, at around 2 a.m., State security forces wearing civilian clothes and face masks, and accompanied by uniformed police officers, entered the family home of Mr. Hussein Ismail and Mr. Mohamed Ismail. Reportedly, without showing any arrest warrant or providing a reason for the arrests, they proceeded to arrest all the males in the family, including Mr. Hussein Ismail and Mr. Mohamed Ismail. The arrests reportedly took place in front of other relatives. According to the source, the State security officers also searched the house without providing a search warrant and broke and damaged several pieces of furniture and other goods.

10. Reportedly, following their arrest, Mr. Hussein Ismail and Mr. Mohamed Ismail were both subjected to enforced disappearance from 26 to 30 December 2013. They were held in an unknown location later revealed to be the State security headquarters in Al Dokki. During their interrogations, they were reportedly only asked about their relative living abroad, the relative's activities and his whereabouts. Allegedly, after they were subjected to enforced disappearance, their relatives sent the Attorney General and the Minister of the Interior complaints, which remain unanswered.

11. According to the source, during his enforced disappearance, Mr. Mohamed Ismail was subjected to severe torture, which included beatings, threats, insults, and electric shocks to his body parts. The source notes that Mr. Hussein Ismail had undergone major surgery for two spinal issues before being arrested and that his ensuing weak condition explains why he was not subjected to torture during his enforced disappearance.

12. On 30 December 2013, Mr. Hussein Ismail and Mr. Mohamed Ismail reportedly appeared before the prosecution for the first time and were accused of belonging to a terrorist group, in a case whose legal status reportedly remains ambiguous to this day. They were detained pending investigation in Giza Central Prison.

13. According to the source, Mr. Hussein Ismail and Mr. Mohamed Ismail were detained in poor conditions, which included detention in solitary confinement for two weeks without justification, detention in overcrowded cells with poor hygiene conditions, and restrictions on the frequency and duration of visits allowed. Allegedly, in 2014, prison authorities

unleashed a riot police force in Giza Central Prison to punish detainees for having initiated a hunger strike to protest against their poor detention conditions. According to the source, both Mr. Hussein Ismail and Mr. Mohamed Ismail were beaten by the riot police force during that incident.

14. The source explains that both individuals were first able to see their family in January 2014, during a ten-minute visit through wired glass.

15. Around the middle of 2016, after having been held in pretrial detention for two years, both individuals were reportedly transferred to Wadi Al-Natroun Prison and added to a case publicly known as the “Giza ISIS² Cell” case. They were charged with attempting to assassinate an officer, burning a police box, and possessing weapons and explosives. Reportedly, they were both ordered into detention pending investigation and were transferred to Fayoum Prison. According to the source, they were once again placed in solitary confinement without any justification.

16. The source reports that on 22 October 2017, Mr. Hussein Ismail and Mr. Mohamed Ismail were tried in a mass trial before the Terrorism Criminal Court and were sentenced to 25 years in prison. Both individuals’ counsel reportedly filed an appeal in 2019, which was rejected the following year.

17. According to the source, since their sentencing, both individuals have been detained in Al-Minya Prison where their detention conditions have worsened, particularly concerning the hygiene conditions and the treatment they are subjected to by the prison officers. They are reportedly allowed family visits once a month for ten minutes and the visits take place through wired glass. Reportedly, they were last able to see their family on 20 July 2022.

18. The source reports that Mr. Hussein Ismail suffered complications following the surgery he had had before his arrest due to the lack of proper treatment in detention. Despite requesting a medical assessment and access to treatment, he has reportedly never received a medical examination. According to the source, Mr. Hussein Ismail’s lawyer filed a petition to request his release based on his health condition and the need for him to receive proper medical care, but the petition was rejected.

19. With regard to Mr. Mohamed Ismail, the source is concerned that his life is in jeopardy because of the severe deterioration of his health. His family has reportedly called for his immediate release on medical grounds. Following the launch of a media campaign to bring public attention and support to his case, the prison administration reportedly allowed Mr. Mohamed Ismail to be sent to a hospital. The examining doctor stated that he had been wrongly diagnosed and that he was actually suffering from another medical condition for which he needed surgery. The surgery was scheduled for 17 August 2022 and was postponed for seven months pending approval by State security.

20. On 12 March 2023, Mr. Mohamed Ismail was finally operated on at Suzanne Mubarak Hospital, Minya Governate. However, the source notes that following the surgery, Mr. Mohamed Ismail’s health further deteriorated, requiring him to undergo another more complicated operation. His relatives were reportedly able to find another surgeon willing to operate on him at another hospital. However, the Al-Minya prison administration reportedly refuses to discharge Mr. Mohamed Ismail for him to receive the surgery. The source expresses concern that Mr. Mohamed Ismail may lose his life because of denial of the necessary treatment and because of his detention conditions.

21. The source notes that complaints were sent to the Attorney General and the Minister of the Interior regarding Mr. Mohamed Ismail’s health condition and the necessity for him to receive medical care. Reportedly, these complaints remain unanswered.

22. The source explains that both individuals were tried before a terrorism circuit court, which is a special court created at the end of 2013. The source argues that such special courts appear to fundamentally infringe on individuals’ rights, operate to undermine the right to a fair trial and violate many international human rights norms. It submits that the use of such

² Da’esh (references to ISIS (Islamic State in Iraq and Al-Sham) are maintained as such when these appear in quotation marks).

courts should be understood as part of a broader pattern by which the authorities use terrorism and national security legislation and mechanisms to punish and silence criticism or expression in Egypt.

23. The source adds that mass trials undermine the right to individual adjudication, limit the right to access a lawyer and undermine the right of lawyers to engage in a complete and adequate defence of their clients. It is further emphasized that State security terrorism circuit courts are exceptional courts that often hold trials within police facilities under the jurisdiction of the Ministry of the Interior. It argues that trials taking place under the jurisdiction of the Ministry of the Interior subvert the right to openness and transparency of the legal process.

(iii) *Legal analysis*

24. The source argues that the arrest and subsequent detention of Mr. Hussein Ismail and Mr. Mohamed Ismail are arbitrary under categories I and III of the working methods of the Working Group.

a. Category I

25. According to the source, the arrests of Mr. Hussein Ismail and Mr. Mohamed Ismail lack legal basis or justification, rendering their detention arbitrary under category I.

26. The source recalls that articles 3 and 9 of the Universal Declaration of Human Rights protect the right to liberty. It notes that, in accordance with general comment no. 35 (2020) of the Human Rights Committee, any person deprived of liberty is to 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.

27. Similarly, principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that anyone arrested is to be informed at the time of the arrest of the reason for the arrest and is to be promptly informed of any charges against him or her. The source also points to article 14 (3) of the Arab Charter on Human Rights, which emphasizes the right of anyone arrested to be informed of the reasons behind the arrest and of the charges under which the arrest is taking place. Article 6 of the African Charter on Human and Peoples' Rights further protects the right to liberty and security of person, prohibits arbitrary arrests and detentions, and reaffirms that no one may be deprived of their freedom except for reasons and conditions previously laid down by law.

28. In the case at hand, the source recalls that Mr. Hussein Ismail and Mr. Mohamed Ismail were both arrested on 26 December 2013 by State security forces wearing civilian clothes and face masks and accompanied by uniformed police officers. The source contends that neither Mr. Hussein Ismail nor Mr. Mohamed Ismail was shown any arrest warrant or explained the reason for the arrest, in violation of their right to liberty.

29. The source further argues that both individuals were subjected to prolonged arbitrary detention on baseless charges. It notes that the detention of both individuals reflects a pattern by which authorities systematically subject individuals to prolonged arbitrary detention on baseless charges in an attempt to keep them indefinitely behind bars. The source notes that Mr. Hussein Ismail and Mr. Mohamed Ismail have been imprisoned for 10 years.

30. The source explains that after their initial arrest, they were charged with a vague accusation of "joining a terrorist group" in a case whose legal status remains ambiguous to this day. Reportedly, despite the absence of evidence against them, they were both kept in pretrial detention and their detention was constantly renewed by the prosecution until they were both eventually added to the "Gaza ISIS Cell" case.

31. The source notes that the initial case under which they were first charged was never mentioned again, and that Mr. Mohamed Ismail and Mr. Hussein Ismail were charged with the attempted assassination of a police officer, burning a police van, and possessing weapons and explosives, with no concrete evidence to substantiate those charges. The source recalls that both individuals were sentenced to 25 years in prison following a mass trial before a special court.

32. The source explains that the case of Mr. Mohamed Ismail and Mr. Hussein Ismail is illustrative of the pattern of “rotation”, by which authorities either accuse political prisoners under several cases or, directly after their release, charge them under a new case to keep them indefinitely behind bars. Allegedly, in most of the new cases, the charges are a revived version of the charges brought in the previous cases. The source explains that this practice is used by the authorities to circumvent the two-year legal limitation on the duration of pretrial detention, renders the detention of political prisoners arbitrary, and jeopardizes their right to liberty.

33. The source concludes that the authorities violated article 9 of the Covenant in so far as they proceeded to arrest and detain Mr. Mohamed Ismail and Mr. Hussein Ismail without presenting a warrant or explaining the reasons for the arrest, at the time of the arrest. The source further submits that their arrest and detention violate article 9 of the Covenant since they were arrested on the basis of insufficient evidence and were subjected to enforced disappearance for four days.

b. Category III

34. The source argues that the detention of Mr. Hussein Ismail and Mr. Mohamed Ismail is arbitrary under category III in so far as they did not benefit from a fair trial by a competent, independent and impartial tribunal established by law, they were subjected to enforced disappearance and acts of torture and ill-treatment, their right to family visits was violated, they did not have access to legal counsel and their right to health was violated.

Right to a fair trial by a competent, independent and impartial tribunal established by law

35. The source contends that the trial of Mr. Hussein Ismail and Mr. Mohamed Ismail before a military court, namely the Terrorism Criminal Court, on 22 October 2017, violated their right to be tried by a competent, independent and impartial tribunal established by law, guaranteed by article 14 of the Covenant.

36. The source submits that both individuals were sentenced to 25 years in prison following a trial that lacked fair trial and due process guarantees. It alleges that the charges brought against both individuals lack evidential grounding and resemble those used against thousands of other detainees. It notes that although Mr. Mohamed Ismail and Mr. Hussein Ismail have been detained since 26 December 2013, they were charged with having committed a crime that allegedly took place in 2015.

37. Furthermore, it is alleged that out of the 26 individuals charged with planning and attempting the murder of a police officer, none of them knew each other. The source also reports that at one interrogation session, a judge told the individuals’ lawyer not to “try too hard”, as the verdict had already been decided upon.

38. The source further recalls that mass trials intrinsically fall short of complying with the principle of individual sentencing and, by their nature, undermine the right to individual adjudication, limit the right of access to a lawyer, and undermine the right of lawyers to engage in a complete and adequate defence of their clients. The source recalls that the Cairo Declaration on Human Rights in Islam, adopted by Egypt in 1990, states that liability is personal, and that sentencing must thus also be personal. The source stresses the incompatibility of mass trials with these requirements.

39. Moreover, the source submits that the authorities continue to misuse the special terrorism circuit courts established at the end of 2013 to directly target human rights activists or indirectly attack their family members. It explains that the authorities instrumentalize these courts as a weapon against civil society, contrary to the rule of law. It recalls that although the establishment of unique or special courts is not expressly prohibited by the Covenant or regional human rights treaties, such courts must remain competent, independent and impartial, they must respect fair trial standards, and must not be created to displace the jurisdiction of ordinary courts.

40. The source recalls that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has called on States to

avoid using unique or specialized courts in terrorism cases, stating that “the use of terrorism courts to target and harass civil society is inconsistent with the rule of law”.

Enforced disappearance

41. The source recalls that the right of persons not to undergo enforced disappearance is considered a non-derogable right, even in a state of emergency.³ Article 17 (1) and (2) of the International Convention for the Protection of All Persons from Enforced Disappearance requires that people deprived of liberty be held only in an officially recognized place of detention and that States ensure that no one is held secretly in custody. Article 18 of the Convention further requires that States provide the detainee’s family and lawyer with accurate information on the arrest.

42. The source argues that following their arrest on 26 December 2013, Mr. Hussein Ismail and Mr. Mohamed Ismail were subjected to enforced disappearance for four days, until 30 December 2013, in an unknown location. It was later discovered that they had been held in the premises of the State security headquarters in Al Dokki.

Right to be free from torture and ill-treatment

43. The source argues that Mr. Mohamed Ismail was subjected to acts of torture, which included beating, electric shocks and other forms of ill-treatment, during his enforced disappearance. It is also alleged that Mr. Hussein Ismail was subjected to ill-treatment when he was beaten by prison riot forces for having participated in a hunger strike to protest against his detention conditions.

44. The source submits that such acts are contrary to the two individuals’ right to be free from any act that could cause severe pain or suffering, whether physical or mental, and inflicted intentionally on a person, and thus violate article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 7 of the Covenant. The source recalls that according to the Committee against Torture, such a right is absolute, applies in all circumstances and may never be restricted, including in times of war or states of emergency. The source points to general comment No. 20 (1992) of the Human Rights Committee, in which the Committee stated that no exceptional circumstances, including threats of terrorism or other violent crime, may be invoked to justify torture or other ill-treatment and that such prohibition applies irrespective of the offence allegedly committed by the accused person.

Right to family visits

45. The source notes that the right of detainees to communicate with the outside world and be visited by their family is a fundamental safeguard against any attempts by the authorities to violate the detainee’s human rights, including through torture or other ill-treatment and enforced disappearance. The source recalls article 17 (2) (d) of the International Convention for the Protection of All Persons from Enforced Disappearance, whereby detained and imprisoned people must be able to communicate and be visited by their families, and notes that the right to receive visits applies to all detainees, regardless of the offence of which they are suspected or accused. Under principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, this right should be subject only to reasonable conditions and restrictions as specified by law or lawful regulations.

46. The source argues that the Government violated the right both of Mr. Hussein Ismail and of Mr. Mohamed Ismail to receive family visits. Allegedly, while in pretrial detention in Giza Central Prison, both individuals were placed in solitary confinement for two weeks, with no justification. Furthermore, they were reportedly detained in harsh conditions, including overcrowding and poor hygiene, and were subjected to restrictions regarding the time and the duration of visits. When they were not detained in solitary confinement, they

³ Principle 5 of the Basic Principles on the Independence of the Judiciary.

were reportedly only allowed one visit per month through wired glass for 10 minutes. According to the source, their family was first able to visit them in January 2014.

Right to assistance of legal counsel

47. The source recalls that principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that communication by the detained or imprisoned person with the outside world, particularly the detainee's family or counsel, must not be denied for more than a matter of days. It notes that in accordance with general comment No. 32 (2007) of the Human Rights Committee, a detainee has the right to have prompt access to legal counsel, meaning that the lawyer must be able to have private communications and meetings with the detainee and to attend all investigations without interference or restrictions. The source further notes that principle 2 of the Basic Principles on the Role of Lawyers provides that it is the duty of the competent authorities to ensure lawyers' access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access must be provided at the earliest appropriate time.

48. In this regard, the source alleges that although Mr. Mohamed Ismail and Mr. Hussein Ismail had a lawyer, their lawyer was not allowed to argue against the accusations brought by the prosecution. The source notes that as in many trials that occur before special courts, the lawyer had limited ability to engage in a full and effective defence. The source also recalls that after one of the interrogation sessions, a judge told the individuals' lawyer not to "try too hard" as the verdict had already been decided and would not be changed. The source considers that this assertion is bolstered by the fact that the individuals' appeal was rejected in 2020.

Right to health

49. The source recalls that every detainee has the right to the highest attainable physical and mental health standards. It notes that this right extends not only to timely and appropriate health care but also to underlying determinants of health, such as adequate food, water and sanitation. It adds that sick prisoners whose health conditions require specialist treatment must be transferred to specialized institutions or civil hospitals and that failure to provide access to adequate health care violates the right to health.

50. Allegedly, Mr. Hussein Ismail and Mr. Mohamed Ismail have been denied proper medical care in prison and their health has deteriorated. The source points to the poor detention conditions they are subjected to, including being placed in solitary confinement for two weeks without justification. The source submits that Mr. Hussein Ismail suffered complications from the surgery he had prior to being arrested because he could not access proper medical care in detention. Reportedly, he has been systematically denied a medical examination, despite his many requests for a medical assessment and treatment.

51. Regarding Mr. Mohamed Ismail, the source reports that his health is rapidly deteriorating. It notes that after he was examined by the prison doctor, it was recommended that he have a CAT scan in an external hospital, which the prison administration refused. Furthermore, Mr. Mohamed Ismail is currently in need of complicated surgery for which his family reportedly found a surgeon at Assiut General Hospital. However, it is reported that the prison administration is refusing to discharge him, and that Mr. Mohamed Ismail is therefore unable to access the medical treatment he needs. The source is concerned that should his medical condition continue to be ignored by prison authorities, Mr. Mohamed Ismail may lose his life.

(b) Response from the Government

52. On 25 July 2023, 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 25 September 2023, detailed information about the situation of Mr. Hussein Ismail and Mr. Mohamed Ismail, and to clarify the legal provisions justifying their 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.

53. In its reply, dated 21 September 2023, the Government stated that it affirmed its sincere desire for positive engagement with the communications of the Working Group on Arbitrary Detention. It is committed to transparency and the rectification of any misconceptions that may have been built on inaccurate information, and submits as follows.

54. The Constitution of Egypt, issued in 2014, guarantees freedom of thought, opinion and expression. Article 65 of the Constitution stipulates that “freedom of thought and opinion is ensured, and every individual has the right to express their opinion verbally, in writing, through imagery, or through other means of expression and publication”. Furthermore, article 71 of the Constitution states that imposing censorship on Egyptian newspapers and media – confiscating them, suspending them or closing them in any way – is prohibited, except for specific censorship during times of war and public mobilization. The same article also prohibits the imposition of penalties that restrict personal freedom for crimes committed through publication or publicly, except in cases of incitement to violence, discrimination among citizens, or insulting individuals’ honour, for which the law specifies the penalties. These articles are in line with articles 19 and 20 of the Covenant, which was adopted by the General Assembly and to which Egypt acceded in 1997 and ratified through Presidential Decree No. 536 of 1981.

55. In this context, Egyptian legislators adopted Law No. 180 of 2018 concerning the regulation of the press and the media. Articles 2 and 3 of Law No. 180 stipulate that the State guarantees freedom of the press, the media, printing, and paper and electronic publishing, both audio and visual. It is also prohibited in any way to impose censorship on Egyptian newspapers and media, to confiscate them, to suspend them or to close them.

56. On the other hand, article 4 of Law No. 180 stipulates that it is prohibited for the press, media outlets or electronic websites to publish or broadcast any material or advertisement whose content contradicts the provisions of the Constitution, incites violation of the law, violates the obligations stated in the code of professional ethics, contravenes public order or public morals, or promotes discrimination, violence, racism or hatred.

57. In this regard, the Supreme Constitutional Court⁴ has ruled that freedom of expression, as guaranteed by the Constitution, is the cornerstone of any democratic system. It is the fundamental principle upon which a democracy is built, and any interference with it is tantamount to denying the fact that freedom of expression cannot be separated from its means. The direct methods of its exercise must be linked to its objectives. No one should hinder its content or contradict the intended purposes of its establishment. Instead, it should be upheld with an acceptance of its consequences, and no one should be compelled to silence another, even by the force of the law.

58. While freedom of expression enjoys protection in the Egyptian legal system, it is not an absolute freedom. This is because its impact extends beyond the individual expressing their opinion and may affect others and even society as a whole. Therefore, it is permissible to restrict it to prevent violation of the rights of others.

59. As concerns the legal procedures taken regarding the individuals mentioned, the Government notes that both Mr. Hussein Ismail and Mr. Mohamed Ismail were apprehended on the basis of an authorization issued by the Public Prosecution in Criminal Case No. 5192 of 2015, North Giza. Contrary to what was mentioned in the correspondence regarding arbitrary arrest of the individuals, the Public Prosecution exercised its discretionary authority after reviewing the evidence presented to it. It issued an authorization, in accordance with the provisions of the Criminal Procedure Code, to apprehend the individuals mentioned, to seize any devices or tools used in their crimes, and to conduct searches of their persons, residences, and organizational headquarters established for their terrorist activities.⁵

60. The interrogations of the individuals mentioned were carried out in the presence of their legal counsel and within 24 hours of the date of their apprehension, in accordance with

⁴ In Constitutional Lawsuit No. 2 of 1996, during the Court’s session held on 3 February 1996.

⁵ Arts. 40, 46 and 91 of the Criminal Procedure Code.

the legal time frame set forth in the provisions of article 36 (1) of the Criminal Procedure Code. This aligns with international treaties signed by Egypt, particularly with article 9 (2) and (3) of the Covenant. Before the interrogation commenced, the guarantees provided by the Criminal Procedure Code for individuals subject to this procedure were observed. The interrogators examined them to ascertain any injuries and to investigate any potential physical harm they might have suffered at the hands of the authorities executing the arrest warrant. They were also informed of the charges against them, which included their affiliation with a terrorist group, their knowledge of its objectives with the intention of committing terrorist acts and disrupting societal peace, inciting violence, spreading fear among citizens, causing harm to the public interest, and obstructing State institutions from carrying out their functions, ultimately aiming to incite chaos.

61. The investigators informed Mr. Hussein Ismail and Mr. Mohamed Ismail that the Public Prosecution, as an independent and neutral judicial body, would be conducting the investigation procedures with them. Mr. Hussein Ismail and Mr. Mohamed Ismail were given a full opportunity to present their objective defence, and their attending lawyers were allowed to submit their statements, requests and defences. The Public Prosecution issued a decision to detain them provisionally while the case was pending.

62. The individuals underwent regular sessions during which the extension of their provisional detention was reviewed before the competent judge. They were allowed, along with their defence, to present oral arguments, requests and objections, in accordance with the provisions of Security Council resolution 1373 (2001) regarding criminal procedures and the associated safeguards in terrorism-related cases. Despite the general danger posed by terrorism cases, the State relied on regular criminal procedures without exceptions due to the safeguards that these provide, ensuring the right to defence for the accused, including the presumption of innocence. Provisional detention was considered an exceptional measure, subject to periodic review, and emphasized the right of the accused to prepare an effective defence.

63. Both Mr. Hussein Ismail and Mr. Mohamed Ismail were sentenced to life imprisonment in case No. 5192 of 2015 in the Criminal Court of North Giza. They are currently detained at the Al-Minya Correctional and Rehabilitation Centre. Based on the foregoing, the arrest warrants and the provisional detention orders were issued on solid legal grounds, and there is no evidence of arbitrariness.

64. Regarding the source's allegations of torture, the Government emphasized that a legal confession, which is relied on by the court and is legally accepted, should be made before a judicial authority that is free from faults. Confessions obtained by security agencies do not hold any legal value.⁶ Security Council resolution 1373 (2001) on preventing the use of territory for terrorist purposes is applied to investigations in terrorism cases, and it underscores the complexity and the degree of specialization required in prosecuting such cases. Accusing individuals in these cases is a complicated matter, as it necessitates a high level of skill during investigations. The investigations must uncover the existence of the actual terrorist organization, determine its organizational structure, identify its operational functions, divisions or wings, including its leadership at various executive levels, the secrecy aspects, its headquarters, and funding sources, as well as the members, roles and positions within that structure. All of this is dependent on specialized investigative techniques and digital evidence. These elements have formed a clear methodology for uncovering this type of crime and establishing evidence of its existence. Relying on verbal evidence, such as confessions by the accused individually, is not feasible. Instead, each piece of evidence is tested individually, depending on how well it aligns with and supports other pieces of evidence, its consistency and its lack of contradiction. Thus, the allegation of torture by security forces during the questioning of the accused before they were presented to the prosecution is not feasible from both an objective and a legal perspective.

⁶ The judgments of the Egyptian Court of Cassation have established that although information and investigations, even when approved by the Public Prosecution, may justify the issuance of arrest and search warrants, in the realm of conviction they merely represent the opinion of the sender and are subject to potential validation or invalidation. It has also been established that the confession accepted legally is the one made before the adjudicating judiciary exclusively.

65. In this context, the Criminal Procedure Code has established a legal framework to protect rights and freedoms, providing provisions to safeguard them from any infringement. The law explicitly states that criminal charges do not expire with time, especially when they relate to crimes that violate personal freedoms and bodily integrity, as outlined in articles 117, 118, 126, 127 and 228, and repeated in article 309, and to the crimes listed in the first section of the second chapter of the Penal Code.

66. This legal framework is in line with the international obligations of Egypt, such as article 4 of the African Charter on Human and Peoples' Rights and article 5 of the Universal Declaration of Human Rights.

67. As regards the cases of Mr. Hussein Ismail and Mr. Mohamed Ismail, both individuals were interviewed by the investigative authorities during the investigation proceedings and in the presence of their lawyers. During these interviews, no visible injuries were detected to support the claim of torture.

68. Regarding their state of health, a review of their medical records as well as physical examinations confirmed that their vital signs were within the normal ranges, their general health was stable, and they were receiving all necessary medical and social care. They were allowed regular visits from their families and lawyers, similar to other detainees.

69. Furthermore, Egyptian laws provide all necessary guarantees for a fair trial as well as mechanisms to appeal verdicts. The accused individuals had their right to a non-discriminatory trial respected and were allowed to have legal representation at all stages of the trial. The entire judicial process, starting from comprehensive investigations carried out by the Public Prosecution to transparent and public court trials, was conducted by an impartial and independent judicial authority.

70. The Government reaffirms its commitment to enhancing and protecting human rights and fundamental freedoms for all citizens, without discrimination. No one is punished unless they commit a crime punishable by law at the time of the offence. The Government is accountable, first and foremost, to its informed citizens, and the independent Egyptian judiciary is the sole authority capable of verifying the veracity of any claims of human rights violations, holding perpetrators accountable and delivering justice to victims.

(c) Further comments from the source

71. On 21 September 2023, the Government's reply was sent to the source for further comments, which the source provided on 4 October 2023.

72. The source notes that the Government of Egypt claims that the arrest of Mr. Hussein Ismail and Mr. Mohamed Ismail was grounded in law, as the Public Prosecution had issued a warrant ordering their arrest after having gathered sufficient incriminating evidence for the charge of belonging to a terrorist organization under case No. 5192 of 2015. These claims strongly contradict the testimonies of the relatives of Mr. Hussein Ismail and Mr. Mohamed Ismail, who were present at the time of the arrest and witnessed the entire incident. In fact, the arrest took place at Mr. Hussein Ismail and Mr. Mohamed Ismail's family home at 2 o'clock in the morning. According to those present, no arrest warrant or search warrant was presented and the reason for the arrest was not provided by the arresting authorities. In the light of the widespread, systematic and systemic way in which arrests are conducted without warrants or legal documentation in Egypt, the claims of the Government that Mr. Hussein Ismail and Mr. Mohamed Ismail's arrest was lawful and not arbitrary are questionable.

73. Furthermore, had there been sufficient grounds to conclude that Mr. Hussein Ismail and Mr. Mohamed Ismail "belonged to a terrorist organization", the name of such organization would have been cited. The arbitrary arrest of Mr. Hussein Ismail and Mr. Mohamed Ismail is part of a broader pattern of imprisonment of innocent civilians to instil fear and discourage the emergence of any critical voices that would threaten the security and stability of the current military government. Since the 2015 amendments to the Anti-Terrorism Law (Law No. 94 of 2015), which have excessively broadened the definitions of "terrorist entity" and "terrorist act", the direct and very flagrant consequence has been the proliferation of arbitrary detentions and enforced disappearances, and intensified repression of the fundamental freedoms of ordinary citizens. The terrorism charges brought against

Mr. Hussein Ismail and Mr. Mohamed Ismail do not have an empirical or an evidential grounding and are similar to those used against thousands of other detainees in a State endeavour to demonstrate force and exercise societal control. All of this is anchored in a broader context whereby in the past decade, the human rights situation in Egypt has deteriorated to levels unseen in the country's modern history. Countless violations, including arbitrary arrests, indefinite detentions, military trials, torture, enforced disappearances and extrajudicial killings, are committed by the State with total impunity – under the pretext of maintaining order and security, when in reality the ultimate purpose has been to stifle human rights.

(i) *Enforced disappearance and torture*

74. The Government of Egypt claims that Mr. Hussein Ismail and Mr. Mohamed Ismail were brought before the Prosecution 24 hours after their arrest, accompanied by their lawyer, in compliance with article 36 (1) of the Criminal Procedure Code as well as article 9 (2) and (3) of the Covenant. The Government also claims that any physical injuries that might have been found on Mr. Hussein Ismail and Mr. Mohamed Ismail were not related to and did not result from the arrest. These claims fail to take into consideration the four days of enforced disappearance to which they were subjected. In fact, Mr. Hussein Ismail and Mr. Mohamed Ismail first appeared before the Prosecution on 30 December 2013, four days after their arrest on 26 December 2013 at 2 a.m. at their family home. During their enforced disappearance, they were interrogated about their journalist relative, his activities and his whereabouts, without the presence of their lawyer. During those four days, Mr. Mohamed Ismail was reportedly subjected to torture by means of beating, threats, insults, and electric shocks in sensitive areas which resulted in visible physical injuries. Given the systematicity of enforced disappearances following arrests, which have become almost mechanical and integral law enforcement mechanisms, the claims of the Government of Egypt that Mr. Hussein Ismail and Mr. Mohamed Ismail were brought before the Prosecution 24 hours following their arrest is questionable.

(ii) *Independence, impartiality and competency of tribunals*

75. The Government of Egypt claims that the Public Prosecution is an independent and impartial body that conducts investigations and that accordingly, Mr. Hussein Ismail and Mr. Mohamed Ismail were granted the right to defend themselves and to have their lawyer defend their case. The source argues that the trial of Mr. Mohamed Ismail and Mr. Hussein Ismail that took place on 22 October 2017 before the Terrorism Criminal Court was unfair and lacked due process guarantees, in contravention of article 14 of the Covenant. The trial was unfair and lacked due process guarantees, as it was a mass trial which intrinsically fell short of complying with the principle of individual sentencing. By their nature, mass trials undermine the right to individual adjudication, limit the right of access to lawyers, and undermine the right of lawyers to engage in a complete and adequate defence of their clients. According to the Cairo Declaration on Human Rights in Islam, adopted in 1990 by Egypt, "liability is in essence personal", which is a stipulation that the sentencing must also be personal, a requirement fundamentally at odds with the nature of mass trials.

76. The source notes that after one of the interrogation sessions, an official from the judiciary told the lawyers of Mr. Mohamed Ismail and Mr. Hussein Ismail not to "try too hard", since the verdict had already been decided. Such comments cast doubt upon the independence and impartiality of the court. On more general grounds, doubts have been cast upon the judicial system in Egypt and its ability to deliver impartial justice. In fact, ties between the Public Prosecutor's Office, the executive branch, and different arms of the criminal justice system, namely the police, prosecutors, the courts and prison staff, remain concerning. In 2006, the then Special Rapporteur on the independence of judges and lawyers expressed concern over the erosion of independence of the judiciary under the Mubarak presidency. Such erosion has been exacerbated since the military coup d'état of 2013, as claims of institutional independence (e.g. prosecutorial or judicial) have been progressively dispelled.

(iii) Violation of the right to be free from torture and ill-treatment

77. The Government of Egypt claims that torture is prohibited and denies all allegations of torture against Mr. Hussein Ismail and Mr. Mohamed Ismail, which contradicts both their testimonies and their families' testimonies. The effectiveness of the anti-torture provisions in Egypt is questionable. In fact, torture and ill-treatment of detainees remains a persistent practice used by law enforcement officials against detainees, especially in the early stages of investigations, and confessions obtained under duress continue to be accepted as evidence by Egyptian courts.

(iv) Violation of the right to health through deliberate medical negligence

78. The Government of Egypt claims that the state of health of Mr. Mohamed Ismail and Mr. Hussein Ismail is stable and that they receive regular and proper medical attention. This contradicts their family's testimonies that Mr. Mohamed Ismail is currently hanging on to life by a thread as he is in immediate need of a "dilatation and grafting operation" due to his deteriorating state of health. Mr. Hussein Ismail did not receive the proper treatment following his surgery subsequent to his arrest. He has been systematically denied a medical examination despite many requests for a medical assessment and treatment.

2. Discussion

79. The Working Group thanks the source and the Government for their submissions.

80. In determining whether the deprivation of liberty of Mr. Hussein Ismail and Mr. Mohamed Ismail is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented 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. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.⁷

81. The source argues that the detention of Mr. Hussein Ismail and Mr. Mohamed Ismail is arbitrary and falls under categories I and III. The Working Group will proceed to examine these in turn.

(a) Category I

82. The source has argued that Mr. Hussein Ismail and Mr. Mohamed Ismail were detained without an arrest warrant on 26 December 2013 and then subjected to enforced disappearance. The Government has denied this and argued that they were arrested two years later – in 2015. The Working Group notes that the source's information is based on accounts by many witnesses, including numerous family members. Moreover, the source refers to specific days when Mr. Hussein Ismail and Mr. Mohamed Ismail appeared before the Prosecutor (30 December 2013), names the detention facility (Giza Central Prison) and also refers to the time when they were first allowed to see their families (mid-January 2014). At the same time, the Government, which is in a position to fully investigate the matter and to clarify the discrepancy, failed to do so. In these circumstances, the Working Group cannot but accept the source's version of events.

83. 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 case to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.⁸ This is typically done through an arrest warrant or arrest order (or equivalent document).⁹ In addition, any form of detention or imprisonment should be ordered by, or be subjected to, the effective control of a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with

⁷ A/HRC/19/57, para. 68.

⁸ Opinions No. 9/2019, para. 29; No. 46/2019, para. 51; and No. 59/2019, para. 46.

⁹ Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39. In cases of arrests made in flagrante delicto, the opportunity to obtain a warrant will typically not be available.

principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group finds that this was denied to Mr. Hussein Ismail and Mr. Mohamed Ismail, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.

84. The Working Group further finds that these two individuals were subjected to de facto enforced disappearance in breach of article 9 (1) of the Covenant. Enforced disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention.¹⁰ Mr. Hussein Ismail and Mr. Mohamed Ismail thus were also placed outside the protection of the law, in violation of their right to be recognized as persons before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

85. Furthermore, the Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is not only informed of the reasons for the arrest but is also promptly informed of any charges against them. The right to be promptly informed of charges concerns notice of criminal charges, and as noted by the Human Rights Committee in its general comment No. 35 (2014), this right “applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment”.¹¹

86. It appears that, being initially arrested on the basis of their family ties as a reprisal against their family member,¹² Mr. Hussein Ismail and Mr. Mohamed Ismail were ultimately accused of being members of a terrorist group without the name of the group even being mentioned, and in the absence of any explanation from the Government regarding the claim that they were only arrested in 2015, the Working Group concludes that there has been a breach of article 9 (2) of the Covenant.

87. The Working Group also recalls that it is a well-established norm of international law that pretrial detention is to be the exception and not the rule, and that it should be ordered for as short a time as possible.¹³ Article 9 (3) of the Covenant provides that it shall not be the general rule that persons awaiting trial shall 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. In the present case, the above-mentioned individuals were kept in pretrial detention for about four years before being convicted in 2017, and no alternative preventive measure was ever examined. Moreover, the Working Group notes the source’s submissions about the phenomenon known as “rotation”, whereby authorities either accuse political prisoners under several cases, or, directly after their release, charge them under a new case, which it has previously criticized in its opinions in respect of Egypt.¹⁴

88. Furthermore, according to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to be brought promptly before a judge. As the Human Rights Committee has stated, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge following his or her arrest, and any longer delay must remain absolutely exceptional and be justified under the circumstances.¹⁵ In the present case, Mr. Hussein Ismail and Mr. Mohamed Ismail did not appear to have been brought before a judicial authority within 48 hours of their arrest, in violation of article 9 (3) of the Covenant.

¹⁰ Opinions No. 5/2020, No. 6/2020, No. 11/2020, No. 13/2020, No. 77/2020, No. 38/2021 and No. 25/2022; see also Human Rights Committee, general comment No. 35 (2014), para. 17.

¹¹ Human Rights Committee, general comment No. 35 (2014), para. 29.

¹² See opinion No. 42/2023, in which the Working Group found a similar situation to be a case of guilt by association and recalled that no one should be deprived of their liberty for crimes, real or not, committed by a family member by birth or marriage, in a free, democratic society.

¹³ Opinions No. 8/2020, para. 54; No. 1/2020, para. 53; No. 57/2014, para. 26; No. 49/2014, para. 23; and No. 28/2014, para. 43; see also Human Rights Committee, general comment No. 35 (2014), para. 38; and [A/HRC/19/57](#), paras. 48–58.

¹⁴ See, among others, opinions No. 79/2021; No. 53/2022, para. 73; No. 60/2022, para. 74; and No. 20/2023, para. 75.

¹⁵ Human Rights Committee, general comment No. 35 (2014), para. 33; and [CAT/C/GAB/CO/1](#), para. 10.

89. Noting all of the above, the Working Group considers that, in the arrest and pretrial detention of Mr. Hussein Ismail and Mr. Mohamed Ismail, the Government acted contrary to articles 3, 6 and 9 of the Universal Declaration of Human Rights, articles 9 and 16 of the Covenant, and principles 11, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

90. Accordingly, the Working Group considers that their arrest and subsequent detention were arbitrary under category I.

(b) Category III

91. The source argues that Mr. Hussein Ismail and Mr. Mohamed Ismail did not benefit from a fair trial by an independent and impartial tribunal established by law, they were subjected to enforced disappearance and acts of torture and ill-treatment, their right to family visits was violated, they did not have access to legal counsel, and their right to health was violated.

92. The Government denied these allegations, stating that the persons concerned were tried by a competent tribunal, had full access to legal assistance and did not demonstrate any signs of ill-treatment.

93. The Working Group recalls principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, according to which persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after the moment of apprehension, and that such access is to be provided without delay. The Working Group finds that the enforced disappearances and incommunicado detentions that both Mr. Hussein Ismail and Mr. Mohamed Ismail were subjected to, as the Working Group has established, by definition deprived them of their right to legal counsel at a critical stage of the criminal proceedings and exposed them to a risk of coercion, which according to the source indeed took place.

94. Holding an accused person incommunicado at the crucial initial period of detention violates the essence of the right to legal assistance and to prepare a defence and the principle of equality of arms, guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (b) of the Covenant. The Working Group considers that these violations substantially undermined and compromised Mr. Hussein Ismail and Mr. Mohamed Ismail's capacity to participate effectively in any court proceedings that could arise. This was further exacerbated by the fact that the charges against them were completely changed after they had been in detention for about two years – the period denied by the Government – which only proves that they were not afforded any tangible possibility to defend themselves against the initial charges which appeared to serve as a pretext for their detention.

95. The Working Group stresses that, under international human rights law, all detained and imprisoned individuals have the right to communicate with and be visited by their families. The right to receive visits applies to all detainees, regardless of the offence of which they are suspected or accused. According to principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, this right may only be subject to conditions and restrictions as specified by law or lawful regulations. However, both petitioners were held incommunicado during the initial period of their detention.

96. The Working Group also expresses its gravest concern at the allegations that Mr. Mohamed Ismail was subjected to torture, which included beating, electric shocks and other forms of ill-treatment, during his enforced disappearance, and that Mr. Hussein Ismail was subjected to ill-treatment by prison riot forces for participating in a hunger strike to protest against his detention conditions.

97. Although the Government denied these allegations, it failed to provide the Working Group with any proof to the contrary, for example a medical certificate. In the Working Group's view, not only is torture a grave violation of human rights per se, but it seriously undermines the ability of persons to defend themselves and hinders their exercise of the right to a fair trial, especially in the light of the right, under article 14 (3) (g) of the Covenant, not

to be compelled to testify against oneself or to confess guilt. The alleged treatment reveals a prima facie breach of the absolute prohibition of torture, which is a peremptory norm of international law, and of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

98. The Working Group further notes that both Mr. Mohamed Ismail and Mr. Hussein Ismail spent about four 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 designed not only 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. The Working Group has been presented with no reasons to justify such delays. It therefore finds a violation of article 14 (3) (c) of the Covenant.

99. Lastly, the Working Group notes the allegation, which was not denied by the Government, that Mr. Mohamed Ismail and Mr. Hussein Ismail were tried in a mass trial. As the Working Group has emphasized, mass trials are incompatible with the interests of justice and do not meet the standards of a fair trial, since they risk seriously jeopardizing the rights of the accused and preclude an individualized assessment of their culpability beyond reasonable doubt.¹⁶ In the present case, the Working Group is concerned that these risks might have materialized.

100. Noting all of the above, the Working Group concludes that the violations of Mr. Mohamed Ismail and Mr. Hussein Ismail's right to a fair trial under article 14 of the Covenant and articles 10 and 11 of the Universal Declaration of Human Rights were of such gravity as to render their detention arbitrary, falling under category III.

(c) Concluding remarks

101. Referring to the allegations that Mr. Hussein Ismail suffered complications following his surgery due to the lack of proper treatment and that Mr. Mohamed Ismail's health severely deteriorated and he urgently requires another operation, the Working Group wishes 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 Nelson Mandela Rules – of rules 18, 22, 24, 25, 27, 30 and 42 in particular – as well as of principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

102. The Working Group notes that the present opinion is only one of many opinions in recent years in which it has found the Government to be in violation of its international human rights obligations.¹⁷ It 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.¹⁸ The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of

¹⁶ Opinions No. 65/2019, para. 75; No. 5/2020, para. 86; No. 41/2020, para. 73; No. 67/2020, para. 85; and No. 9/2023, paras. 89–91.

¹⁷ 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. 14/2020, No. 80/2020, No. 45/2021, No. 79/2021, No. 83/2021, No. 23/2022, No. 34/2022 and No. 60/2022.

¹⁸ Opinions No. 47/2018, para. 85; and No. 14/2020, para. 74.

international law may constitute crimes against humanity.¹⁹ The Working Group has alluded to this possibility in its past cases concerning Egypt.²⁰

3. Disposition

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

The deprivation of liberty of Hussein Abdelrazek Abdelhafez Ismail and Mohamed Abdelrazek Abdelhafez Ismail, being in contravention of articles 3, 6, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9, 14 and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

104. The Working Group requests the Government of Egypt to take the steps necessary to remedy the situation of Mr. Hussein Ismail and Mr. Mohamed Ismail 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.

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

106. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Hussein Ismail and Mr. Mohamed Ismail and to take appropriate measures against those responsible for the violation of their rights.

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

4. Follow-up procedure

108. 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. Hussein Ismail and Mr. Mohamed Ismail have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to them;
- (c) Whether an investigation has been conducted into the violation of their rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Egypt with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

109. 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.

110. 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

¹⁹ A/HRC/13/42, para. 30; see also, for example, opinions No. 1/2011, para. 21; No. 51/2017, para. 57; and No. 56/2017, para. 72.

²⁰ See, for example, opinions No. 60/2016, para. 27; No. 26/2018, para. 81; No. 27/2018, para. 83; No. 29/2019, para. 69; No. 65/2019, para. 87; No. 79/2020, para. 49; No. 53/2022, para. 95; No. 12/2023, para. 107; No. 20/2023, para. 85; and No. 26/2023, para. 94.

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 of any failure to take action.

111. 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.²¹

[Adopted on 15 November 2023]

Advance Edited Version

²¹ Human Rights Council resolution 51/8, paras. 6 and 9.