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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020

Opinion No. 38/2020 concerning Tito Elia Magoti (United Republic of Tanzania)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work (A/HRC/36/38), on 12 March 2020 the Working Group transmitted to the Government of the United Republic of Tanzania a communication concerning Tito Elia Magoti. 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,

* Seong-Phil Hong did not participate in the discussion of the present case.

disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Tito Elia Magoti is a citizen of the United Republic of Tanzania born in 1993. He is a lawyer employed as Programme Officer for Mass Education by the Legal and Human Rights Centre, an organization based in the United Republic of Tanzania that works to empower the public and promote, reinforce and safeguard human rights and good governance in the country.

a. Arrest and detention

5. According to the source, on 20 December 2019, Mr. Magoti was reportedly abducted in Dar es Salaam, United Republic of Tanzania, by four unidentified men. He was handcuffed and driven away in a civilian vehicle. Prior to his abduction, Mr. Magoti had reportedly received a text message from his colleague, who had been used by the police to lure him to the place of the event.

6. The source explains that immediately after his abduction, a number of human rights organizations searched for him in various police stations but were unable to locate him. In the evening of 20 December 2019, the Dar es Salaam Special Zone Police Commander issued a press release indicating that Mr. Magoti was in police custody with several other individuals. No mention was made of where he was being detained or of the charges that he was facing. Despite the authorities acknowledging that they were holding Mr. Magoti in detention, his family, employer and legal representation were not informed of his whereabouts, nor were they allowed to speak to him. The uncertainty of Mr. Magoti's whereabouts was heightened by the contradictory statement by the Kinondoni Regional Police Commander – Kinondoni being the district in which Mr. Magoti was arrested – alleging that he had no knowledge of Mr. Magoti's arrest.

7. On 23 December 2019, an urgent petition was filed against the Dar es Salaam Special Zone Police Commander and the Attorney General demanding the release of Mr. Magoti, whose whereabouts and charges had yet to be revealed. On 24 December 2019, Mr. Magoti, along with one of his colleagues, who was also arrested, was brought before Kisutu Resident Magistrates' Court in Dar es Salaam. The petition was then withdrawn.

8. Mr. Magoti was first transferred to Tazara police station and then to Mbweni station. During this transfer, he was blindfolded.

9. The source explains that Mr. Magoti was questioned by the police on his use of social media and on his association with certain citizens who have publicly criticized the Government.

10. Mr. Magoti has been charged on the following counts: (a) leading organized crime, under paragraph 4 (1) (a) of the First Schedule to and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act (Cap. 200, R.E. 2002), as amended; (b) possessing a computer program designed for the purpose of committing an offence, under section 10 (1) (a) of the Cybercrimes Act (Act No. 14 of 2015), read together with paragraph 36 of the First Schedule, and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, as amended; (c) money-laundering, under sections 12 (d) and 13 (a) of the Anti-Money-Laundering Act, 2006, read together with paragraph 22 of the First Schedule, and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, as amended. The source explains that the charges against him preclude him from applying for bail.

11. Mr. Magoti is currently being detained at Segerea Remand Prison.

b. Legal analysis

12. The source submits that Mr. Magoti's detention constitutes arbitrary deprivation of his liberty under categories I, II, III and V, as developed below, except for category V.

i. Category I

13. The source argues that Mr. Magoti was arrested without a warrant. He was handcuffed, blindfolded and forced into a civilian vehicle in a manner that was tantamount to an abduction. Moreover, according to the source, Mr. Magoti was not immediately informed of the reasons for his arrest nor was he promptly informed of the charges he was facing, in violation of his due process rights.

14. The source also contends that Mr. Magoti was held for four days in detention, where he was interrogated without being granted access to a lawyer or his family. The police also failed to bring Mr. Magoti before a court of law within the 24-hour period prescribed by the national legislation or as soon as was practicable. Furthermore, the source argues that the use of a blindfold on Mr. Magoti was cruel and inhuman.

15. The source also claims that Mr. Magoti's arrest fits a pattern whereby the authorities have failed to follow due process procedures.

ii. Category II

16. As a general matter, the source reports that the Government has come under criticism for its increasing restriction of human rights defenders, civil society, journalists, bloggers, opposition politicians and their supporters, the media and other dissenting voices in the United Republic of Tanzania.

17. The source argues that the allegations against Mr. Magoti are in retaliation for the exercise of his right to freedom of expression. In particular, during Mr. Magoti's detention, he was reportedly questioned on his use of social media and his association with another media owner and activist and an opposition politician. These individuals are reportedly vocal critics of the Government, and are all currently facing various forms of retaliation for demanding government accountability and transparency.

18. The source points out that Mr. Magoti is a lawyer who has in his professional and personal capacity worked to promote human rights in the United Republic of Tanzania and has publicly engaged in matters of public interest. The source concludes that prosecuting an individual for engaging in matters of public interest and associating with citizens of similar views is in violation of international law, particularly the rights to freedom of expression, political participation and freedom of association.

iii. Category III

19. According to the source, Mr. Magoti was arrested on 20 December 2019. He was not informed, at the time of his arrest, of the reasons for his arrest. He was detained for four days before he was eventually brought to court on 24 December 2019, when, for the first time, he was informed of the charges against him. The source recalls the provisions of article 9 (2) and (3) of the Covenant and recalls that the Human Rights Committee has explained that delays should not exceed a few days from the time of arrest and that 48 hours is ordinarily sufficient.

20. The source argues that while Mr. Magoti was eventually informed of the charges against him, the charge sheet fails to meet international standards. Article 14 (3) (a) of the Covenant provides that in the determination of a criminal charge, an accused person is entitled to "be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him". The source claims that there is clearly insufficient information on the facts to support the allegations against Mr. Magoti. According to the facts giving rise to the charge of "leading organized crime", on diverse dates between February 2019 and December 2019 in Dar es Salaam, Mr. Magoti organized a criminal racket, which involved the possession of a computer program for the commission of an offence, thereby acquiring the sum of 17,354,535 Tanzanian shillings. No information is given on the nature of the computer program, the offence that was committed using the computer program or the way in which the computer program was used to acquire the alleged sum. As such, Mr. Magoti lacks adequate information about the scope of the case against him, which severely undermines his ability to prepare for trial.

21. Moreover, the source claims that during the four days that Mr. Magoti was detained, he was denied access to his lawyer while he was interrogated. According to the source, this denial violates article 14 of the Covenant. During this time, he was not afforded an

opportunity to notify his family of his arrest or his place of detention. He was also blindfolded and transferred from police station to police station. The source therefore argues that the United Republic of Tanzania has violated Mr. Magoti's rights.

22. According to the source, section 148 (5) of the Criminal Procedure Act provides that a police officer in charge of a police station, or a court before whom an accused person is brought or appears, cannot admit that person to bail if that person is charged with certain crimes, including money-laundering contrary to Anti-Money-Laundering Act. This provision thus provides for a blanket denial of bail for certain crimes and, as such, Mr. Magoti is not entitled to bail and he remains in detention pending the finalization of his case. The source claims that section 148 (5) (a) of the Criminal Procedure Act and the resulting denial of Mr. Magoti's right to apply for bail is a violation of his due process rights as guaranteed under articles 9 and 10 of the Universal Declaration of Human Rights, articles 9 and 14 of the Covenant and principles 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

23. Furthermore, the source reports that those charged with non-bailable offences can spend years in pretrial detention in the United Republic of Tanzania. According to the source, the prosecution of Mr. Magoti is in retaliation for his public criticism of the Government and the charges against him are deliberately aimed at keeping him in prolonged pretrial detention. The source explains that following Mr. Magoti's appearance in court on 24 December 2019, his case was postponed to 7 January 2020. The case was postponed an additional three times, as follows, because the prosecution claimed that it was still carrying out its investigations. Once the prosecution had indicated that the investigations had reached a satisfactory stage, it requested that the hearing be moved to 21 January 2020. However, on that date, the prosecution requested a further postponement on the basis that although the investigations had reached a satisfactory stage, they were not complete. After listening to opposing arguments from both the prosecution and the defence, the presiding magistrate postponed the matter to 5 February 2020. On 5 February 2020, the matter was again postponed to 19 February 2020.

24. The source concludes that the detention of Mr. Magoti without the right to bail is a violation of regional and international standards and thus arbitrary. The source also fears that Mr. Magoti will be held in prolonged pretrial detention as a form of extrajudicial punishment.

25. With regard to the postponement of hearings, the source argues that while the actual length of time between charges and trial are relatively short, the repeated delays are contrary to the spirit of the general rule concerning the right to a speedy trial, and that any delays must be in the interests of justice and kept to a necessary minimum. The prosecution has thus far requested a postponement on three occasions on the basis that investigations are still under way. These requests were made despite the fact that the dates of 7 and 21 January and 5 February 2020 were scheduled with the prosecution's knowledge. On each occasion, Mr. Magoti and his counsel appeared in court prepared to proceed. The source contends that the police arrested Mr. Magoti in order to conduct investigations, which is contrary to best practice. The right to a speedy trial is intended not only to avoid keeping individuals too long in a state of uncertainty about their fate, but also, if a person is 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. Given that Mr. Magoti has been charged with an offence that automatically denies him the right to bail, it is in the interests of justice that this matter not be subject to undue delays.

Response from the Government

26. On 12 March 2020, the Working Group transmitted the allegations from the source to the Government through its regular communications procedure. The Working Group requested the Government to provide, by 11 May 2020, detailed information about the current situation of Mr. Magoti and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Mr. Magoti's physical and mental integrity.

27. The Working Group regrets that it received no response from the Government, nor a request for an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

28. 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.

29. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

30. The source has made a number of allegations with regard to the detention of Mr. Magoti and has argued that it falls under categories I, II, III and V. The Working Group will consider each of these categories in turn.

Category I

31. The Working Group will consider whether there have been violations under category I, which concerns deprivation of liberty with no legal basis.

32. The source argues that the arrest of Mr. Magoti had no legal basis since he was not presented with an arrest warrant at the time of his arrest or promptly informed of the charges against him, and because he was kept in detention for four days without being brought before a court or being granted access to a lawyer. The Working Group notes that the Government chose not to reply to these submissions, although it had the opportunity to do so.

33. The Working Group recalls that, pursuant to article 9 (1) of the Covenant, no one may be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. As the Working Group has stated,[1] in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant. In the present case, Mr. Magoti was abducted by four unidentified men, handcuffed and taken into police custody. The police commander then issued a press statement about his custody. In the absence of any explanation from the Government as to the procedure for bringing him into custody, the Working Group considers that the police is complicit in this de facto abduction. The Working Group concludes that Mr. Magoti was not presented with a warrant, and that the procedure for a lawful arrest was not followed, in violation of article 9 (1) of the Covenant and articles 3 and 9 of the Universal Declaration of Human Rights.

34. Moreover, the Working Group considers that an arrest is arbitrary when carried out without informing the arrested person, at the time of the arrest, of the reasons for the arrest, and when the person is not promptly informed of the charges, as required by article 9 (2) of the Covenant.[2] Based on the information provided by the source, which was not contested by the Government, Mr. Magoti was not informed at the time of his arrest of the reasons for his arrest, nor was he promptly informed of the charges that he faced, in violation of article 9 (2) of the Covenant and articles 3 and 9 of the Universal Declaration of Human Rights.

35. Pursuant to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge must be brought promptly before a judge. As the Human Rights Committee has stated, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing following arrest, and any longer delay must remain absolutely exceptional and be justified under the circumstances.[3] The Working Group further notes with concern that Mr. Magoti was brought before a judge only after an urgent petition was filed, seemingly by Mr. Magoti's legal representatives, against the Dar es Salaam Special Zone Police Commander and the Attorney General demanding his release. In the absence of any justification for the delay in the present case, the Working Group finds that the Government

[1] For example, opinions No. 9/2019, para. 29, and No. 52/2019, para. 21.

[2] For example, opinions No. 10/2015, para. 34, and No. 46/2019, para. 51.

[3] Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 33.

violated article 9 (3) of the Covenant by failing to bring Mr. Magoti before a judge until 24 December 2019 despite his arrest having been on 20 December 2019.

36. The Working Group notes that in order to establish that detention is legal, anyone detained has the right to challenge the lawfulness of the detention before a court, as envisaged by article 9 (4) of the Covenant. The Working Group wishes to recall that, according to 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, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society (A/HRC/30/37, paras. 2–3). This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty (ibid., para. 11), including not only detention for purposes of criminal proceedings, but also situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes (ibid., annex, para. 47 (a)). It also applies irrespective of the place of detention or the legal terminology used in the legislation, and any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary (ibid., annex, para. 47 (b)).

37. The Working Group notes that while the authorities acknowledged having Mr. Magoti in custody, he was denied contact with the outside world and in particular his family and lawyer. It thus appears from the information submitted by the source that Mr. Magoti was held incommunicado for four days from 20 December 2019 to 24 December 2019. The Working Group has consistently found that holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9 (3) and (4) of the Covenant.[4] The Working Group considers that judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.

38. The Working Group concludes that Mr. Magoti's arrest and detention lacks a legal basis and is arbitrary under category I.

Category II

39. The source reports that Mr. Magoti was detained for the peaceful exercise of his rights to freedom of expression, political participation and freedom of association.

40. The source submits, and the Government has not challenged, that Mr. Magoti is a lawyer who has worked to promote human rights in the United Republic of Tanzania and has publicly engaged in matters of public interest. The source submits that Mr. Magoti was prosecuted for engaging in matters of public interest and associating with citizens who have expressed views critical of the Government.

41. The Working Group recalls that article 19 (2) of the Covenant provides that everyone has the right to freedom of expression, and that this right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the individual's choice. This right includes political discourse, commentary on public affairs, discussion of human rights, and journalism.[5] This provision protects the holding and expression of opinions, including those which are critical of, or not in line with, government policy.[6]

42. The permitted restrictions on that right may relate either to respect of the rights or reputations of others or to the protection of national security, public order or public health or morals. The Human Rights Committee has stipulated that restrictions are not allowed on grounds not specified in article 19 (3), even if such grounds would justify restrictions to

[4] For example, opinions No. 45/2017, para. 29; No. 79/2017, para. 49; and No. 52/2019, para. 23. See also Human Rights Committee, general comment No. 35, para. 35.

[5] Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 11.

[6] Opinions No. 79/2017, para. 55, and No. 8/2019, para. 55.

other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.[7] Moreover, article 19 (3) may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.[8] It should be noted that article 22 of the Covenant permits restrictions to the right of association on the same three grounds.

43. The source reported that Mr. Magoti was questioned by the police on his use of social media and on his association with individuals critical of the Government. The Working Group notes that this line of questioning appears to bear no connection with the charges with which Mr. Magoti is charged under the Economic and Organized Crime Control Act, the Cybercrimes Act and the Anti-Money-Laundering Act.

44. Moreover, the Working Group considers that Mr. Magoti's criticism through his use of social media and journalism concerned matters of public interest. Mr. Magoti was therefore detained for exercising his right to take part in the conduct of public affairs under article 21 (1) of the Universal Declaration of Human Rights and article 25 (a) of the Covenant.

45. According to 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. Mr. Magoti was detained for the exercise of his rights under that Declaration. Detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and to equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.

46. In the absence of a rebuttal from the Government, the Working Group considers that a prima facie case has been established that Mr. Magoti's arrest and detention arose from the exercise of Mr. Magoti's rights under articles 19, 21, 25 and 26 of the Covenant and articles 7, 19, 20 and 21 of the Universal Declaration of Human Rights, and is therefore arbitrary under category II.

Category III

47. Given its finding that the deprivation of liberty of Mr. Magoti is arbitrary under category II, the Working Group wishes to emphasize that no criminal trial against Mr. Magoti should take place. However, Mr. Magoti remains detained and the source has submitted that Mr. Magoti's fair trial rights have been violated, rendering his detention arbitrary under category III.

48. The source further submits that Mr. Magoti's charge sheet does not meet international standards as it contains insufficient information on the charges faced by Mr. Magoti and on the facts to support the allegations against him, hindering his ability to prepare for trial. Article 14 (3) (a) of the Covenant provides that in the determination of a criminal charge, an accused person is entitled to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge. The Human Rights Committee has observed that in order to fulfil the requirements of article 14 (3) (a), the information provided to the person must indicate both the law and the alleged general facts on which the charge is based.[9] In the absence of detailed information about the charges against Mr. Magoti from the Government, the Working Group concludes that it appears that the charges are unclear and insufficiently substantiated, which has hindered Mr. Magoti's ability to defend himself, in violation of article 14 (3) (a) of the Covenant.

49. The Working Group is also of the view that the authorities failed to respect Mr. Magoti's right to legal assistance, which is inherent in the right to liberty and security of person and in the right to a fair and public hearing by a competent, independent and

[7] Human Rights Committee, general comment No. 34, para. 22.

[8] Ibid., para. 23.

[9] Human Rights Committee, general comment No. 32 (2007) on right to equality before courts and tribunals and to a fair trial, para. 31.

impartial tribunal established by law. Indeed, during the four days that Mr. Magoti was detained incommunicado, he was interrogated in the absence of his lawyer. The Working Group recalls that, in accordance with the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension. The Working Group therefore finds a violation of article 10 of the Universal Declaration of Human Rights, article 14 (3) (b) and (d) of the Covenant and principle 18 (1) and (3) of the Body of Principles. Further, Mr. Magoti ought to have been able to notify members of his family of his arrest, and thus the Working Group finds a violation of principle 16 (1) of the Body of Principles.

50. According to the source, Mr. Magoti is precluded from obtaining bail as he is charged with offences under the Anti-Money-Laundering Act 2006, and section 148 (5) of the Criminal Procedure Act provides that a police officer in charge of a police station, or a court before whom an accused person is brought or appears, cannot admit that person to bail if that person is charged with certain crimes, including money-laundering contrary to Anti-Money-Laundering Act.

51. In its jurisprudence, the Working Group has repeatedly confirmed that mandatory pretrial detention – in the present case, for an offence that is non-bailable under section 148 (5) of the Criminal Procedure Act – is in violation of a State's obligations under international human rights law.[10] In particular, non-bailable offences are in violation of the requirement under article 9 (3) of the Covenant that pretrial detention be an exceptional measure rather than the rule.[11] Such non-bailable offences are also in violation of the requirement that pretrial detention be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.[12] As the Human Rights Committee has stated, pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.[13]

52. The Working Group considers that non-bailable offences also deprive a detainee of the right to seek alternatives to detention, in violation of the right to be presumed innocent under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant. The imposition of mandatory pretrial detention for certain offences reverses the presumption of innocence, so that those subject to ongoing criminal proceedings are automatically detained without a balanced consideration of non-custodial alternatives to detention. Moreover, mandatory pretrial detention deprives judicial authorities of one of their essential functions as members of an independent and impartial tribunal, namely assessing the necessity and proportionality of detention in each case.

53. While the reasonableness of any delay in bringing the case to trial has to be assessed in the circumstances of each case, taking into account its complexity and other relevant factors, the Working Group considers that the excessive delay in the present case from the time of arrest to trial is in violation of article 11 (1) of the Universal Declaration of Human Rights, articles 9 (3) and 14 (3) (c) of the Covenant and principle 38 of the Body of Principles. The Working Group considers that the imperatives of a speedy trial are even more compelling when a person is charged with a non-bailable offence. In this instance, Mr. Magoti has been held in custody without the possibility of bail for over eight months, since his arrest on 20 December 2019. The source reports that his trial has been postponed at the prosecution's request on at least three occasions on the basis that investigations are continuing. There is no sign that his criminal trial will take place soon, and the Government has chosen not to provide the Working Group with information justifying the delay. Moreover, given the findings under category II that Mr. Magoti was exercising his rights to freedom of expression and freedom of association, this adds to the gravity of the conclusion that the deprivation of liberty was too long, as he should not have been held under arrest at

[10] For example, opinions No. 24/2015, paras. 36–40; No. 61/2018, paras. 47–48; and No. 8/2020, para. 77.

[11] See also principles 38 and 39 of the Body of Principles.

[12] Human Rights Committee, general comment No. 35, para. 38.

[13] Ibid.

all.[14] Accordingly, the Working Group finds that the Government has neither tried nor released Mr. Magoti within a reasonable time, in violation of article 11 (1) of the Universal Declaration of Human Rights and articles 9 (3) and 14 (3) (c) of the Covenant.

54. The Working Group concludes that this violation of the right to a fair trial was of such gravity as to give Mr. Magoti's pretrial detention an arbitrary character under category III.

Category V

55. The Working Group will now examine whether Mr. Magoti's deprivation of liberty constitutes illegal discrimination under international law and whether it therefore falls under category V.

56. The Working Group accepts that Mr. Magoti is a lawyer who has worked to promote human rights in the United Republic of Tanzania and has publicly engaged in matters of public interest.

57. The Working Group has already established, in the discussion above concerning category II, that Mr. Magoti's arrest and detention appear to have resulted from the peaceful exercise of his rights under international law. When it is established that deprivation of liberty has resulted from the active exercise of civil and political rights, there is a strong presumption that the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on political or other views.[15]

58. The Working Group is of the view that the limited information received from the source tends to support the view that Mr. Magoti was targeted because of his political or other views or his status as a human rights defender. In particular, the Working Group recalls that Mr. Magoti was interrogated by the authorities on his use of social media and his association with citizens who have been publicly critical of the Government. The Working Group notes that according to the source, two of the individuals with whom Mr. Magoti associates are vocal critics of the Government and are also currently facing various forms of retaliation for calling for greater governmental accountability and transparency.

59. In the absence of a rebuttal from the Government, the Working Group concludes that a prima facie case has been established that Mr. Magoti was deprived of his liberty on discriminatory grounds, that is, on the basis of his political or other views or his work as a human rights defender, in contravention of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. His deprivation of liberty therefore falls under category V.

60. The source argues that the use of a blindfold on Mr. Magoti was cruel and inhuman. Moreover, the Working Group notes that the abduction must have been extremely stressful and recalls that incommunicado detention creates conditions that lead to the violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[16] With regard to these allegations and in accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Disposition

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

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

62. The Working Group requests the Government of the United Republic of Tanzania to take the steps necessary to remedy the situation of Mr. Magoti without delay and bring it

[14] Opinions No. 15/2020, para. 71, and No. 16/2020, para. 77.

[15] For example, opinions No. 88/2017, para. 43, and No. 13/2018, para. 34.

[16] See A/54/44, para 182 (a), and the UN Special Rapporteur on Torture has consistently argued that use of incommunicado detention is unlawful (A/54/426, para. 42; A/HRC/13/39/Add.5, para. 15.6).

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.

63. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Magoti immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Magoti.

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

65. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

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

Follow-up procedure

67. 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. Magoti has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Magoti;

(c) Whether an investigation has been conducted into the violation of Mr. Magoti's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the United Republic of Tanzania with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

68. 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.

69. 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.

70. 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.[17]

[*Adopted on 24 August 2020*]

[17] Human Rights Council resolution 42/22, paras. 3 and 7.