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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-ninth session (23–27 November 2020)

Opinion No. 80/2020 concerning Mohamed Adel Fahmy Ali (Egypt)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 9 April 2020, the Working Group transmitted to the Government of Egypt a communication concerning Mohamed Adel Fahmy Ali (known as Mohamed Adel). The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



Submissions

Communication from the source

a. Context

4. Mohamed Adel Fahmy Ali (known as Mohamed Adel) is a national of Egypt, born in 1988. Mr. Adel is one of the co-founders of the April 6 movement, a member of the movement's political arm and a spokesperson of the movement.

5. The source reports that, in 2013, Mr. Adel was sentenced to three years' imprisonment by the Abdeen Misdemeanour Court, which considers minor crimes that are punishable with fines or short terms of imprisonment. In that case (No. 9593), Mr. Adel was arrested along with two other political activists and was accused of violating the Egyptian demonstrations law, showing force and bashing. The charges against him consisted of protesting without a permit in front of the court in Abdeen, resisting authorities and beating security forces.

6. According to the source, Mr. Adel was sentenced to three years' imprisonment and obliged to fulfil three additional years as probation measures. Such measures are considered as subsidiary punishment which can be applied directly by virtue of the law and do not need to be referred to in the court judgment. Although Egyptian law sets out various kinds of punishment, the Egyptian security authorities allegedly apply the most severe level without fulfilling the preconditions. Such measures include police monitoring, i.e. precautionary measures binding an accused or convicted person to report to a certain police station for a period of time on a daily or weekly basis. According to the source, that is the most abusive form of police monitoring, given that the person would be considered to have absconded if she or he did not comply with it. Such measures are reportedly a means of punishing members of the opposition party and controlling the lives of the opponents of those in power.

7. After spending three years in prison, Mr. Adel reportedly underwent obligatory daily police monitoring, from January 2017, being forced to stay daily for 12 hours at Aga police station, between 6. p.m. and 6 a.m. the following morning.

8. On 6 July 2017, at the end of the daily probation measure at the police station, Mr. Adel was allegedly arrested before returning home. A police force was then sent to his house, and it seized the mobile devices and computer there. Mr. Adel was detained for four days at the police station, pending investigations into the content that he had published on his social media accounts. He was subsequently released without new charges but remained subject to the police probation measures.

b. Arrest and detention

9. According to the source, on 19 June 2018 at 6 a.m., after the end of his daily probation measure, Mr. Adel was arrested at the Aga police station and taken by police officers to a National Security Service facility in Mansoura, without being presented with an arrest warrant or official document showing the reason for his arrest. Mr. Adel's family was not informed of his arrest. They went to the police station, when he had not returned home or contacted them at the end of his daily probation measure, where they were told by police officers that Mr. Adel had been brought before the Prosecutor of Mansoura in Dakahlia Governorate. When he became aware of that, Mr. Adel's lawyer went to the Office of the Public Prosecutor, before which Mr. Adel was presented at 12 p.m.

10. On the same day, the prosecution allegedly accused Mr. Adel of "publishing false news" by posting statements on social media aimed at affecting the stability of the Egyptian State. The source submits that the Egyptian authorities use a template of methods against any voices of opposition, accusing them, among other things, of spreading false news or joining a banned group. The accusation remained vague, given that the prosecution did not name any false news or statements. The source argues that, during that period, in Mr. Adel's personal statements on Facebook, he criticized the Government sending Egyptian celebrities to the World Cup to support the national team and the recent increases in gasoline prices. There was reportedly nothing calling for protests or any forms of violence, and he was not part of any organized movements or groups at the time.

11. According to the source, the head of the Office of the Public Prosecutor in Mansoura ordered Mr. Adel's detention for 15 days, pending investigation under a new case (No. 5606 of 2018). In that case, Mr. Adel is facing the charge of leading an organization (April 6 movement) that was established in contravention of the law and is aimed at inciting citizens against the State and its organizations. He is also facing the charge of spreading false news on social media meant to disrupt public peace and order. The source argues that those charges are subject to the provisions of the Anti-Terrorism Law, which sets out specific courts with different procedures and severe sentences.

12. The source reports that Mr. Adel has remained in pretrial detention in the National Security Service headquarters of Mansoura prison since 19 June 2018, with frequent periodic renewals of his detention. Since that date, Mr. Adel has been suffering from incommunicado pretrial detention, as well as the extremely poor and unsanitary detention conditions.

13. The source submits that Mr. Adel's lawyer was present with him during all appearances before the prosecutor in case No. 5606 of 2018. Nevertheless, he has not been able to visit him in detention. Therefore, according to the source, there was no private communication, adequate time or adequate means through which to provide legal assistance for Mr. Adel.

c. Legal analysis

14. The source submits that the detention of Mr. Adel falls under categories I, II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

15. According to the source, Mr. Adel's detention falls under category II, given that he was arrested for practising his legitimate and universally protected right to freedom of expression, as enshrined in article 19 of the Covenant. The restriction of Mr. Adel's freedom of expression was not legitimate, because his social media posts and exercise of his rights did not threaten the national security or the public order of the State, nor did it harm the rights of other citizens.

16. Moreover, the source recalls that everyone arrested or detained has the right to the assistance of legal counsel.¹ The right to pretrial legal counsel includes the right to have the lawyer present during questioning and to be able to consult him or her during questioning. According to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, that right is a safeguard for the accused's rights and serves as an important protection against torture and other ill-treatment, coerced "confessions", enforced disappearance and other human rights violations.²

17. The source reports that, on 5 July 2018, Mr. Adel was presented before the Office of the Public Prosecutor in Sherbine (one of the headquarters of Dakahlia Governorate). He refused to participate in the interrogations before the prosecutor, because there were no lawyers present. Accordingly, the prosecutor referred Mr. Adel to the Office of the Public Prosecutor in Mansoura, which made its decision to detain the activist for 15 days before even starting the interrogation and without waiting for the syndicate to assign a lawyer to be present with the detainee. In view of that, the source argues that Mr. Adel's right to a lawyer during the pretrial questioning was violated and that consequently the procedures should be declared invalid.

18. The source further states that article 9 (3) of the Covenant safeguards the rights to liberty and security and provides protection against human rights violations, including torture and other ill-treatment, arbitrary detention and enforced disappearance.³ That right is guaranteed to all people deprived of their liberty, for whatever reason. It also applies to all forms of deprivation of liberty, including administrative detention, including detention on the grounds of public security.⁴ According to the source, Mr. Adel has not been brought before

¹ Human Rights Committee, general comment No. 32 (2007), para. 34.

² Human Rights Committee, general comment No. 20 (1992), para. 11; and E/CN.4/1992/17, para. 284.

³ Committee against Torture, general comment No. 2 (2007), para. 13.

⁴ Human Rights Council resolution 15/18, para. 4 (d) and (e).

a court for the commencement of his trial, which increases the probability of his rights being violated.

Response from the Government

19. On 9 April 2020, the Working Group transmitted the allegations made by the source to the Government of Egypt through its regular communications procedure. The Working Group requested the Government to provide, by 8 June 2020, detailed information about the situation of Mr. Adel and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Mr. Adel's physical and mental integrity.

20. On 9 June 2020, the Government sought an extension of the deadline to submit its response. In conformity with paragraph 16 of its methods of work, the Working Group granted an extension of one month for the Government to submit its response by 8 July 2020. The Working Group regrets that it did not receive any further response from the Government.

21. The Working Group notes with concern that the Government has not availed itself of the opportunity to respond to the allegations made in the present case.⁵ The Working Group urges the Government to continue to engage constructively with it on all allegations relating to the arbitrary deprivation of liberty.

Discussion

22. 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.

23. In determining whether Mr. Adel's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law 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.

i. Category I

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

25. The source reports that Mr. Adel was arrested on 19 June 2018 at the Aga police station and taken by police officers to a National Security Service facility in Mansoura, without being presented with an arrest warrant or official document showing the reason for his arrest or being told the reasons for his arrest at the time of arrest.

26. According to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. Article 9 (2) provides that anyone who is arrested must be informed, at the time of arrest, of the reasons for the arrest. In the present case, the Working Group considers that the source has provided credible information, which was not rebutted by the Government, that Mr. Adel was arrested without an arrest warrant being presented to him, in violation of article 9 (1).⁶ Moreover, Mr. Adel was not informed of the reasons for his arrest at the time of arrest, in violation of article

⁵ The Working Group takes note of the fact that, in relation to some opinions adopted under its regular procedure prior to the current session, the Government has not responded or did not respond in a timely manner. See, for example, opinions No. 41/2016, No. 42/2016, No. 54/2016, No. 60/2016, No. 78/2017, 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 and No. 14/2020. However, the Government submitted a response in relation to opinions No. 6/2016, No. 7/2016, No. 30/2017, No. 83/2017, No. 26/2018, No. 27/2018 and No. 28/2018.

⁶ It is not sufficient that there is a law which authorizes the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant (opinions No. 36/2018, para. 40; No. 46/2018, para. 48; No. 44/2019, para. 52; and No. 45/2019, para. 51).

9 (2) of the Covenant, as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

27. As the Working Group has previously stated, an arrest is arbitrary when it is carried out without informing the arrested person of the reasons for the arrest.⁷ The Working Group observes that Mr. Adel has been subjected to pretrial detention following an order by the Office of the Public Prosecutor in Mansoura, which was subsequently frequently renewed. The source also explained that, on 5 July 2018, Mr. Adel's detention was renewed by the Office of the Public Prosecutor in Mansoura, which made its decision to detain him for 15 days before even starting the interrogations.

28. In view of the facts submitted by the source, which have not been contested by the Government, as well as the extended period of pretrial detention in the present case, the Working Group recalls that, according to article 9 (3) of the Covenant, detention should be the exception, rather than the general rule, and anyone detained on a criminal charge has the right to be tried within a reasonable time or released.⁸ The Working Group therefore finds a violation of article 9 (3) of the Covenant in the present case, given that it appears that no exceptional basis justifying the pretrial detention of Mr. Adel has been demonstrated.

29. Moreover, in view of the fact that Mr. Adel has been held in pretrial detention since 19 June 2018, with no trial date set, and that he appeared before a prosecutor, the Working Group observes that Mr. Adel was not brought promptly before a judge or another officer authorized by law to exercise judicial power, within 48 hours of his arrest, and that no exceptional circumstances were indicated, in accordance with the international standards.⁹ Therefore, the Government has violated article 9 of the Universal Declaration of Human Rights and article 9 (3) of the Covenant, as well as principles 11, 37 and 38 of the Body of Principles.

30. In addition, the source alleges that Mr. Adel was held in incommunicado detention during his pretrial detention. The Government does not deny that allegation. As the Working Group has consistently argued, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9 (4) of the Covenant.¹⁰ Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty¹¹ and is essential in ensuring that detention has a legal basis. Given that Mr. Adel was unable to challenge his detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was violated.

31. The source notes that Mr. Adel's lawyer was present during appearances before the Prosecutor but that he was not allowed to visit Mr. Adel in prison and therefore could not have private conversations with him. The Working Group considers that Mr. Adel was effectively deprived of his right to legal counsel and representation, which is procedurally inherent in the right to liberty and security and the prohibition of arbitrary detention, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.¹² According to principle 9 and guideline 8 of the Basic Principles and Guidelines, persons deprived of their liberty have the right to legal assistance by the counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and must be promptly informed of that right upon apprehension; access to legal counsel should not be unlawfully or unreasonably restricted.¹³ The Working Group

⁷ See, for example, opinions No. 10/2015, para. 34; No. 46/2019, para. 51; and No. 16/2020, para. 60.

⁸ Human Rights Committee, general comment No. 35 (2014), para. 38. See also A/HRC/19/57, paras. 48–58.

⁹ Human Rights Committee, general comment No. 35 (2014), paras. 32–33; see also, for example, opinions No. 57/2016, paras. 110–111; No. 76/2019, para. 38; and No. 82/2019, para. 76.

¹⁰ See, for example, opinions No. 45/2017 and No. 46/2017.

¹¹ See the Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), para. 3.

¹² See also principles 15, 17 and 18 of the Body of Principles and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers.

¹³ See also Human Rights Committee, general comment No. 32 (2007), para. 34.

recalls that access to legal counsel from the outset of detention is an essential safeguard in ensuring that the detainee can challenge the legal basis for his or her detention.¹⁴

32. For those reasons, the Working Group considers that Mr. Adel's deprivation of liberty lacks a legal basis and is therefore arbitrary, falling under category I.

ii. Category II

33. The source alleges, and the Government does not refute, that Mr. Adel has been arrested and detained for his online posts and membership in the April 6 movement. He has reportedly not engaged in or incited violence, and his posts criticized policies such as sending Egyptian celebrities to the World Cup and raising gasoline prices. The source also submits that the Prosecutor allegedly accused Mr. Adel of "publishing false news" by posting statements on social media aimed at affecting the stability of the Egyptian State. The source also contends that the accusation remained vague, given that the Prosecutor did not name such false news or statements. To the Working Group, those allegations concern the rights to freedom of opinion and expression (article 19 of the Covenant), freedom of association (article 22 of the Covenant) and freedom to take part in the conduct of public affairs (article 25 of the Covenant).

34. The Working Group recalls that article 19 (2) of the Covenant provides that everyone has the right to freedom of expression, and that that 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 his or her choice. According to the Human Rights Committee's authoritative reiteration and elucidation of the treaty commitment undertaken in the Covenant, that right includes political discourse, commentary on public affairs, discussion of human rights and journalism.¹⁵ Moreover, as the four independent global human rights experts on freedom of expression and access to information have made clear, general prohibitions on the dissemination of information, based on vague and ambiguous ideas, including false news or information, are incompatible with international standards for restrictions on freedom of expression and should be abolished.¹⁶

35. The Working Group notes the observation made by the Human Rights Committee, in paragraph 8 of its general comment No. 25 (1996) on participation in public affairs and the right to vote, that citizens took part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves and that that participation was supported by ensuring freedom of expression, assembly and association. Moreover, the Working Group recalls that, given that peaceful assemblies often have expressive functions, and that political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection, as the Committee restated in paragraph 32 of its general comment No. 37 (2020) on the right of peaceful assembly.

36. There is nothing to suggest that the permissible restrictions on the rights set out in articles 19 (3), 22 (2) and 25 of the Covenant would apply in the present case. The Government had the opportunity to explain how the permissible restrictions to freedom of expression would have applied in the present case, but it has failed to do so. In addition, the

¹⁴ See opinion No. 40/2020, para. 29.

¹⁵ Human Rights Committee, general comment No. 34 (2011), para. 11. See also, for example, opinions No. 31/1998, 52/2013 and 45/2019.

¹⁶ Joint declaration on freedom of expression and "fake news", disinformation and propaganda, adopted by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe, the Special Rapporteur on Freedom of Expression of the Organization of American States and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights, para. 2 (a). Available from www.ohchr.org/Documents/Issues/Expression/JointDeclaration3March2017.doc. See also opinion No. 46/2020, para. 54.

Human Rights Council has called upon States to refrain from imposing restrictions under article 19 (3) that are not consistent with international human rights law.¹⁷

37. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

38. The Working Group considers that the language used in the Anti-Terrorism Law is vague and overly broad. The Working Group is concerned that the provisions appear to lack a clear definition and may be used, in the present case, to punish Mr. Adel for the peaceful exercise of human rights and prevent him from regulating his behaviour accordingly. As the Working Group has previously emphasized, the principle of legality requires that laws be formulated with sufficient precision so that the individual can acquire access to and understand the law and regulate his or her conduct accordingly.¹⁸

39. 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.¹⁹ The source has demonstrated that Mr. Adel was detained for the exercise of his rights under that Declaration. The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders is in violation of their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.²⁰

40. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on the situation of human rights defenders.

41. The Working Group finds that Mr. Adel's deprivation of liberty is arbitrary, falling within category II, given that it resulted from his legitimate exercise of the rights and freedoms protected under articles 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights and articles 19 (1) and (2), 22 (1) and 25 (a) of the Covenant.

iii. Category III

42. Given its finding that Mr. Adel's deprivation of liberty is arbitrary under category II, the Working Group wishes to emphasize that, in such circumstances, no trial should take place. However, given that Mr. Adel is held in pretrial detention with a view to his criminal prosecution in two cases, the Working Group will now consider the alleged violations of the right to a fair trial and due process.

43. The Working Group notes that Mr. Adel had limited access to a legal counsel of his choice after his arrest on 19 June 2018, given that his lawyer was present with him during all appearances before the prosecutor but was unable to visit him in detention, depriving them of private communication and adequate time and facilities for the preparation of a legal defence.

44. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and that such access must be provided without delay.²¹ In the Working Group's view, by restricting access to his legal counsel, the Government failed to respect Mr. Adel's right to legal assistance, which is inherent in the right to a fair

¹⁷ Human Rights Council resolution 12/16, para. 5 (p), in which the Council called upon States to refrain from imposing restrictions inconsistent with article 19 (3) of the Covenant, including on discussion of government policies and political debate, reporting on human rights, government activities and corruption in government and peaceful demonstrations or political activities.

¹⁸ See opinion No. 37/2020, para. 60.

¹⁹ General Assembly resolution 53/144, annex, articles 1 and 6 (c). See also General Assembly resolution 74/146, para. 12.

²⁰ See, for example, opinions No. 75/2017, 15/2020 and 16/2020.

²¹ Basic Principles and Guidelines, principle 9 and guideline 8; and Human Rights Committee, general comment No. 35 (2014), para. 35.

and public hearing by a competent, independent and impartial tribunal established by law, in accordance with article 10 of the Universal Declaration of Human Rights and article 14 (1) and (3) (b) and (d) of the Covenant.²² The Working Group considers that such a violation substantially undermined and compromised Mr. Adel's capacity to defend himself in any subsequent judicial proceedings.

45. The Working Group takes note of the denial of Mr. Adel's due process right to be visited by and to correspond with his family and to be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations, in accordance with principles 15 and 19 of the Body of Principles and rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).²³ As the Human Rights Committee observed in paragraph 58 of its general comment No. 35 (2014) on liberty and security of person, giving prompt and regular access to family members, as well as lawyers, was an essential and necessary safeguard for the prevention of torture as well as protection against arbitrary detention and infringement of personal security.

46. The Working Group recalls that the reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was handled by the authorities.²⁴ The delay in bringing Mr. Adel to trial is unacceptably long, in violation of articles 9 (3) and 14 (3) (c) of the Covenant. The delay in the present case is exacerbated by the fact that, as noted above, it is clear to the Working Group that he is, but should not have been, detained solely for the exercise of his rights under international human rights law.²⁵ The Working Group therefore finds no justification for such prolonged pretrial detention, with no prospect of a trial, a manifest violation of the right to be tried without undue delay, guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights and articles 9 (3) and 14 (1) and (3) (c) of the Covenant.²⁶

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

48. The Working Group notes that the present opinion is only one of many other opinions in recent years in which the Working Group has found the Government to be in violation of its international human rights obligations.²⁷ The Working Group is concerned that this indicates a systemic problem with arbitrary detention in Egypt, which, if it continues, may amount to a serious violation of international law.²⁸ The duty to comply with international human rights standards rests with all State organs, officers and agents, as well as all other natural and legal persons.²⁹ The Working Group recalls that, under certain circumstances,

²² See also principles 15, 17 and 18 of the Body of Principles and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers. See also OL TUR 15/2018 of 22 October 2018, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24130>; and A/HRC/45/16, para. 53.

²³ See opinions No. 35/2018, para. 39; No. 44/2019, paras. 74–75; and No. 45/2019, para. 76.

²⁴ Human Rights Committee, general comment No. 35 (2014), para. 37; and general comment No. 32 (2007), para. 35.

²⁵ See, in that regard, opinions No. 15/2020 and No. 16/2020.

²⁶ See also article 7 (1) (d) of the African Charter on Human and Peoples' Rights and article 13 (1) of the Arab Charter on Human Rights.

²⁷ 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 and No. 14/2020.

²⁸ See opinion No. 47/2018, para. 85.

²⁹ The domestic political and judicial organs are under a positive obligation to ensure an effective remedy and reparation for violations of international human rights law by removing the statute of limitations, sovereign immunity, *forum non conveniens* doctrine or other procedural obstacles to redress in such cases through legislative or judicial action. See opinions No. 52/2014, para. 51; No. 61/2018, para. 77; No. 22/2019, para. 81; No. 42/2019, para. 68; No. 51/2019, para. 80; and No. 56/2019, para. 97.

widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.³⁰ The Working Group has alluded to that possibility in its previous cases concerning Egypt.

49. The Working Group would welcome the opportunity to work constructively with the Government to address its concerns relating to arbitrary detention. The Working Group has previously made requests to the Government to undertake a country visit and will continue to seek a positive response.

Disposition

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

The deprivation of liberty of Mohamed Adel Fahmy Ali, being in contravention of articles 3, 8, 9, 10, 11, 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights and articles 2 (3), 9, 10 (1), 14 (1), (2) and (3) (b), (c) and (d), 19, 22 (1), and 25 (a) of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

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

52. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Adel 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 his immediate release.

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

54. The Working Group requests the Government to bring its laws, in particular the Anti-Terrorism Law, into conformity with the recommendations made in the present opinion and with the commitments made by Egypt under international human rights law.

55. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on the situation of human rights defenders, for appropriate action.

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

Follow-up procedure

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

³⁰ See A/HRC/13/42, para. 30; and opinions No. 1/2011, para. 21; No. 51/2017, para. 57; and No. 56/2017, para. 72.

(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.

58. 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.

59. 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.

60. 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.³¹

[Adopted on 25 November 2020]

³¹ Human Rights Council resolution 42/22, paras. 3 and 7.