



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventy-sixth session, 22-26 August 2016****Opinion No. 42/2016 concerning Ahmed Yousry Zaky (Egypt)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission; it most recently extended the mandate of the Working Group for a further three years in resolution 24/7 of 26 September 2013.
2. In accordance with its methods of work (A/HRC/30/69), on 17 June, the Working Group transmitted a communication to the Government of Egypt concerning Ahmed Yousry Zaky. 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 International Covenant on Civil and Political Rights (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 for reasons 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

4. Ahmed Yousry Zaky, born in 1995, is a student at the University of Cairo. Mr. Zaky lives in Hadayek El Nozha, Madinat Essalam, Cairo Governorate, in Egypt.

5. On 3 May 2015, at approximately 1 a.m., personnel from the homeland security forces raided Mr. Zaky's home while he and his family were sleeping. They arrested Mr. Zaky and searched the house without showing any arrest or search warrant. The alleged perpetrators acted violently towards Mr. Zaky's relatives. Mr. Zaky was handcuffed and forced into a car, and taken to an unknown location.

6. It was later found out that Mr. Zaky had been brought to the homeland security headquarters in Lazoghly. He was kept there in secret detention for one month, during which time he was tortured repeatedly and forced to make a confession. He was hanged by his hands and stripped naked. Mr. Zaky was given electric shocks to his entire body, including his genitals. He was also regularly beaten up with sticks, insulted and deprived of food, water and sleep.

7. When a doctor came to Mr. Zaky's cell at homeland security headquarters to apply anti-inflammatory cream on him, the doctor told Mr. Zaky that "they (the personnel from the homeland security) would not kill you, but you will be tortured for as long as needed". Mr. Zaky was subjected to torture for several days more until he confessed to the crimes that he had been accused of.

8. Subsequently, on 4 June 2015, Mr. Zaky was brought before a military prosecutor of El Tagamo El Khames, without having had access to a lawyer. He was charged under the antiterrorism law, which was later amended in August 2015, for "being affiliated to a terrorist group", "blocking traffic and roads", "sabotaging power stations", "arson", "disturbing public order" and "participating in the murder of a police officer". Under the antiterrorism law, some of those charges are punishable by death.

9. Although Mr. Zaky is a civilian, his case was referred to the military court. According to the source, military courts in Egypt are not always competent to try civilians accused of terrorism-related crimes. However, Law No. 136 of 2014 on the securing and protection of public and vital facilities has broadened the jurisdiction of military courts to try civilians as soon as the latter have been accused of attacking and/or damaging public property or having committed a felony while at a public facility, including private property being used for public service, which was the case for Mr. Zaky.

10. Concerns have been raised about the independence and impartiality of military courts in Egypt. According to the information received, in Egypt, military judges are not independent from the executive branch; they are in fact affiliated with the Ministry of Defence and are required to carry out the orders of the Ministry. Moreover, military judges are military officers and are subjected to the same military disciplinary rules. They do not receive sufficient legal training. Every sentence issued by a military court has to be reviewed by the Ministry of Defence, which often approves, amends or rejects the decision arbitrarily. Military courts do not always hold their trials in official courts of law but rather in military camps, and hearings are often held in private.

11. The lawyer of Mr. Zaky only managed to meet with him after he had left the prosecutor's office. Mr. Zaky was blindfolded and his body showed signs of torture. The

lawyer asked the prosecution to authorize a medical examination and investigate the torture Mr. Zaky had been subjected to but his requests were dismissed by the prosecutor. Since Mr. Zaky was blindfolded when he was asked to sign the prosecution's documents, he did not have a chance to read them.

12. Mr. Zaky was indicted in military case No. 288 of 2015 regarding the killing of Colonel Wael Tahoun on 21 April 2015, along with 52 other defendants. Mr. Zaky's relatives have continuously testified that he had been at home with them when the killing took place.

13. Following his indictment, Mr. Zaky was transferred to Al Aqrab prison — the high security section of Tora prison — where he remains detained to date. His family had been allowed to visit him during the first months of his detention there but was refused the right to bring him clothes and blankets. Since November 2015, all visits to Al Aqrab prisoners have been refused by the prison personnel for no apparent reason.

14. On 11 January 2016, Mr. Zaky was for the first time brought before a military court. The trial is still at the stage of preliminary hearings. A hearing initially scheduled for 12 June 2016 has been postponed to an unknown date. The confessions obtained as a result of torture have been considered admissible by the military judge. There is a high probability that Mr. Zaky will be sentenced to death on the basis of the confessions he had made under torture.

15. Mr. Zaky's health has deteriorated. He has been detained in very harsh conditions with very few and short family visits (five minutes maximum each visit, with a prohibition of bringing food and clothes for him). He has never received proper medical attention while in detention.

16. The source submits that the continued deprivation of liberty of Mr. Zaky is arbitrary and falls under categories I and III. In its view, Mr. Zaky was arrested without a warrant and no reason was provided to him at the time of the arrest. He was held in secret detention for one month until he was brought before a military prosecutor and charged on 4 June 2015. The source argues that there was no legal basis to justify the detention of Mr. Zaky between 3 May and 4 June 2015 which is in violation of article 9 of the Covenant.

17. The source also submits that Mr. Zaky has not been guaranteed the international norms of due process and guarantees to a fair trial during the period of his deprivation of liberty, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant. The source argues that Mr. Zaky was tortured to admit to crimes that he had not committed, and that the confession obtained under torture has been considered admissible by the military judge. Furthermore, Mr. Zaky was forced to sign documents that he was not allowed to read, he was denied access to a lawyer when he was brought before a military prosecutor, he was brought before a judge on 11 January 2016, nine months after his arrest and, despite being a civilian, Mr. Zaky is being tried before a military court, which lacks independence, all of which are in violation of articles 14 (3) (a) (c) (d) and (g) of the Covenant.

Response from the Government

18. On 17 June 2016, 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 detailed information by 16 August 2016 about the current situation of Mr. Zaky and any comment on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds justifying Mr. Zaky's continued detention and to provide details regarding the conformity of the legal proceedings against him with international human rights treaties to which Egypt is a party.

19. The Working Group regrets that it has not received a response from the Government to the communication. The Government has not requested an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

20. 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.

21. 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 (see 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.

22. In such circumstances, the Working Group considers established that Mr. Zaky, a 20-year-old civilian, was arrested on 3 May 2015 after security forces searched his parents' house, without providing any information as to the reasons for the search and arrest. After a month of secret detention, during which Mr. Zaky was tortured multiple times, he was forced to sign a confession. On 4 June 2015, he was brought before a military prosecutor and formally charged. Only after that hearing was he given access to legal assistance. On 16 January 2016, he was for the first time brought before a military court, where his trial hearing was scheduled for 16 June 2016, but then postponed without any future date being designated. At the same time, Mr. Zaky's health has been deteriorating. The confession forms the basis of the charge against Mr. Zaky, and the risk that he will be convicted and sentenced to death appears high to the source. The Working Group has no reason to doubt such a statement.

23. In the present case, a critical element is that Mr. Zaky was tortured and forced to confess wrongdoings, and that that confession has been used to confirm the charges brought against him and will be used as key evidence in his trial. As the Working Group has said repeatedly in the past, when someone is forced to confess to a crime, and that confession is then used to convict him or her, then the trial becomes totally flawed and should be annulled. This is a serious violation of the fair trial rights provided in article 14 of the Covenant and of the *jus cogens* norm of prohibition of torture.¹ In addition, Mr. Zaky, a civilian, was subject to military justice; the Working Group has already stated on numerous occasions that such an approach is a violation of the right to a competent, independent and impartial tribunal. For those reasons, the detention of Mr. Zaky is arbitrary and falls within category III, and the specific allegations of torture should be referred to the appropriate mechanism.

24. In addition, Mr. Zaky was not given timely notification of the reasons for his arrest and detention, in violation of article 9 of the Covenant. For that reason, the detention of Mr. Zaky is arbitrary and falls within category I.

25. Finally, Mr. Zaky was not given prompt access to a lawyer, in violation of article 14 of the Convention. For that reason, the detention of Mr. Zaky is arbitrary and also falls within category III.

¹ The Human Rights Committee has stated this principle in its general comments No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, and No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial. The European Court of Human Rights has also stated the same in relation to the relevant provision of the Convention for the Protection of Human Rights and Fundamental Freedoms, especially in the case *Gäfen v. Germany* (Grand Chamber, 2010), para. 166.

26. The Working Group wishes to draw the attention of the Egyptian authorities to the pattern of violations that has occurred in Egypt (see, e.g., opinions No. 7/2016, No. 6/2016, No. 53/2015, No. 52/2015, No. 49/2015 and No. 14/2015), which has demonstrated a poor record of cooperation with the Working Group. The rule-of-law principle is a key parameter towards a peaceful and democratic society that protects every citizen within a country, whether in leadership position or not, and nourishes the trust of the people. A change is necessary in order to bring this pattern to an end and comply more fully with the rule-of-law principle, for a sustainable and peaceful society in which everyone can enjoy the rights provided by the various legal instruments.

Disposition

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

The arrest and deprivation of liberty of Ahmed Yousry Zaky, being in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and fall within categories I and III.

28. As a result, the Working Group requests the Government of Egypt to take the steps necessary to remedy the situation of Mr. Zaky and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the Covenant.

29. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to release him immediately and accord him an enforceable right to compensation. In view of the statement made above about the pattern of violations, the Working Group is of the view that there is a need to include a guarantee of non-repetition in the scope of the reparation.

30. Finally, the Working Group refers the specific allegation of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate measures, in accordance to paragraph 33 (a) of its methods of work.

Follow-up procedure

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

32. The Government is further 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.

33. The Working Group requests the source and the Government to provide the above information within six months of the date of the 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.

34. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.²

[Adopted on 26 August 2016]

² See Human Rights Council resolution 24/7, paras. 3 and 7.