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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary  
Detention at its seventy-fifth session,  
18-27 April 2016****Opinion No. 7/2016 concerning Abdullah Ahmed Mohammed  
Ismail Alfakharany, Samhy Mostafa Ahmed Abdulalim,  
Mohamed Mohamed Aladili, Waleed Abdulraoof Shalaby,  
Ahmed Sabii, Youssouf Talat Mahmoud Mahmoud  
Abdulkarim, Hani Salheddin, Mosaad Albarbary, and Abdo  
Dasouki. (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. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended 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 22 September 2015 the Working Group transmitted a communication to the Government of Egypt concerning Messrs. Abdullah Ahmed Mohammed Ismail Alfakharany, Samhy Mostafa Ahmed Abdulalim, Mohamed Mohamed Aladili, Waleed Abdulraoof Shalaby, Ahmed Sabii, Youssouf Talat Mahmoud Mahmoud Abdulkarim, Hani Salheddin, Mosaad Albarbary, and Abdo Dasouki. The Government replied to the communication on 25 November 2015. 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 sentence or despite an amnesty law applicable to him) (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 or disability or other status, that aims towards or can result in ignoring the equality of human rights (category V).

### Submissions

#### *Communication from the source*

4. The case submitted by the source involves nine male journalists who are all citizens of the Arab Republic of Egypt. According to the source, the nine journalists were prosecuted in a mass trial known as the "Rabaa Operations Room" case.

5. On 11 April 2015, eight of the nine journalists were sentenced by the Cairo Criminal Court to life imprisonment while one of the nine journalists was sentenced to death. The nine journalists have appealed their sentences to the Court of Cassation. According to the source, the journalists have been held for over two years in detention, during which all have been subjected to torture and ill-treatment. The detention and trial of the nine journalists is described below.

#### Detention and trial of Messrs. Alfakharany, Abdulalim and Aladili

6. **Mr. Abdullah Ahmed Mohammed Ismail Alfakharany** is a 25-year-old student. He was born in the United Arab Emirates but holds Egyptian nationality. Mr. Alfakharany is a journalist and co-founder of a prominent news outlet in Cairo (Rassd News Network), and a human rights activist. He is also a project officer at the Euro-Mid Observer for Human Rights and a member of the American and Middle Eastern Network for Dialogue at Stanford University.

7. **Mr. Samhy Mostafa Ahmed Abdulalim** is a 27-year-old journalist and member of the Rassd News Network Board.

8. **Mr. Mohamed Mohamed Aladili** is a 31-year-old journalist. Before his arrest, he was working for Misr25 and the Amjad Channel as a technical producer. He was expected to begin working for Al Jazeera had he not been detained.

9. On 25 August 2013, Messrs. Alfakharany, Abdulalim and Aladili were visiting and interviewing a friend who had been shot in the arm during the violent dispersal of supporters of the Muslim Brotherhood from the Rabaa al-Adawiya Square in Cairo on 16 August 2013. The source states that the three journalists were gathering information on this incident in order to report about it.

10. According to the source, shortly after Messrs. Alfakharany, Abdulalim and Aladili entered the home of their friend, it was raided by 15 to 20 members of the Egyptian Security Forces wearing civilian clothes. The officers were looking for the father of the man who the three journalists were visiting, who was not present at the time. The officers questioned the four men for half an hour and beat them, before taking them to Basateen Police Station to verify their identities. The officers did not produce a warrant. The three

journalists were reportedly placed in a cell and were held incommunicado until warrants were issued by the prosecutor on 26 August 2013. The source claims that the official police file stated that the three journalists were arrested on 26 August 2013, but they were in fact arrested the day before.

11. The source further reports that Messrs. Alfakharany, Abdulalim and Aladili were later placed into custody in a confined cell that they shared with approximately 70 other convicted defendants, which was so crowded that they were forced to stand up. The three journalists reported receiving death threats, being repeatedly beaten and subjected to degrading and humiliating treatment by wardens during their first days of detention, and not being provided with sufficient food. According to the source, they reported this ill-treatment to the Public Prosecutor who took no action to follow up the complaints, despite being required to do so under Egyptian law.

12. On 31 August 2013, Messrs. Alfakharany, Abdulalim and Aladili were transferred in overcrowded minivans to Wadi Al Natrum Prison. The source alleges that they were tortured for six hours at the prison. On 1 September 2013, they were brought back to Basateen Police Station and held in deplorable conditions. On 14 September 2013, they were transferred to Tora Prison.

13. On 25 January 2014, the case against Messrs. Alfakharany, Abdulalim and Aladili was referred to the Cairo Criminal Court. The source informs that all three journalists were initially charged with "disturbing peace". However, in February 2014, the charges were changed without explanation by the Public Prosecutor to "spreading false information" and "spreading chaos". Messrs. Alfakharany, Abdulalim and Aladili were accused of having formed "an operations room to the Muslim Brotherhood to defy the government" during their coverage of events at the Rabaa al-Adawiya Square. The matter thus became known as the "Rabaa Operations Room" case. The three journalists were also alleged to have given orders to protesters at the Square to cause chaos.

14. According to the source, the first hearing was held on 1 April 2014. The trial was then continuously postponed for over a year until Messrs. Alfakharany, Abdulalim and Aladili were sentenced to life imprisonment on 11 April 2015 by the Cairo Criminal Court. Although the trial was held in the presence of the three journalists, the source reports that they were not able to follow the proceedings because they were locked into soundproofed glass cages. The source further reports that they were forbidden to speak to the judge to challenge their detention, and that the judge partially based his judgment on secret evidence and only considered the evidence provided by prosecution witnesses.

#### Detention and trial of Mr. Waleed Abdulraoof Shalaby

15. **Mr. Waleed Abdulraoof Shalaby** is a 52-year-old journalist. On 28 September 2013, he was arrested while staying at his relative's home. According to the source, members of the Security Forces broke into the home without a warrant, and conducted a search for evidence to incriminate Mr. Shalaby. No evidence was found, but the officers removed an Islamic book. The officers then took Mr. Shalaby to his home where they confiscated several personal items, including his papers.

16. Mr. Shalaby was then taken to the Ash Sharqia Security Forces facility where he stayed for the remainder of the day before being transferred to Aqrab Prison. The source alleges that, at Aqrab Prison, Mr. Shalaby was placed in solitary confinement for six months and forbidden to leave his cell, though he was later joined by another inmate because of overcrowding in other cells. Mr. Shalaby's personal items were confiscated by the guards, who reportedly regularly humiliated him. According to the source, on 1 February 2014, guards entered Mr. Shalaby's cell and stripped him of his clothes, leaving him naked. The guards also took his mattress and food. Mr. Shalaby's family was

subsequently forbidden to see him for two months. Visits were also denied from 3 July to 14 August 2014.

17. When the “Rabaa Operations Room” trial began, Mr. Shalaby reported having been ill-treated and having received death threats while in detention, but this was not taken into account by the judge. On 11 April 2015, Mr. Shalaby was sentenced to death. He was the only one of the nine journalists who was sentenced to death.

#### Detention and trial of Mr. Ahmed Sabii

18. **Mr. Ahmed Sabii** is a 41-year-old journalist and member of the Egyptian journalist syndicate. Before his arrest, he was the manager of Aqsa television channel. According to the source, on 4 October 2013, at least 15 armed men came to Mr Sabii’s home and arrested him without a warrant, and threatened his wife and children. Mr. Sabii was taken to Helwan Prison. He was brought before the Public Prosecutor for interrogation the next morning, and formally charged in relation to the “Rabaa Operations Room” case.

19. Mr. Sabii was subsequently moved to Heliopolis Police Department where he was detained for a year and a month, before being moved to Aqrab Prison in November 2014. The source alleges that Mr. Sabii was subjected to particularly harsh conditions of detention at Aqrab Prison, including being placed in solitary confinement, deprived of his clothes, and forced to sleep on the floor without a mattress. The source reports that the guards often confiscated Mr. Sabii’s food and denied him the right to go out to exercise. On 11 April 2015, Mr. Sabii was sentenced to life imprisonment. At the time this communication from the source was received, he was detained in Aqrab Prison.

#### Detention and trial of Mr. Youssouf Talat Mahmoud Mahmoud Abdulkarim

20. **Mr. Youssouf Talat Mahmoud Mahmoud Abdulkarim** is a 32-year-old television presenter and Director of the Alshabab television channel. On the night of 19 August 2013, while Mr Abdulkarim was at work, the Alshabab television channel was raided by the Security Forces. The source alleges that the officers broke filming equipment. They arrested Mr Abdulkarim, forcibly put him on the ground and handcuffed him, and did not produce a warrant. The officers also hit Mr. Abdulkarim on the head with a rifle, causing intense bleeding, and struck him on other parts of his body.

21. According to the source, during Mr. Abdulkarim’s first days of detention inside a Security Forces facility, he was severely tortured which caused him permanent damage. As a result of the torture, Mr. Abdulkarim cannot stand up anymore. His family asked the authorities to allow him to see a doctor or at least that an x-ray exam be performed to clearly evaluate his injuries, but these requests were denied. The source reports that, despite suffering from regular fainting, Mr. Abdulkarim has not been provided with any medical attention, and medication brought by his relatives is always confiscated. He was only allowed to receive visits on a weekly basis for a maximum of five minutes.

22. On 11 April 2015, Mr. Abdulkarim was sentenced to life imprisonment in the “Rabaa Operations Room” case. At the time this communication from the source was received, he was being detained in Tora Prison.

#### Detention and trial of Mr. Hani Salheddin

23. **Mr. Hani Salheddin** is a 47-year-old syndicated journalist. Before his arrest, he was the Head of Department at the Misr25 Channel and ex-editor at Youm7. He is a member of the Arab Journalist Union. On 28 November 2013, Mr. Salheddin was waiting at Cairo Airport for a flight to Lebanon to undergo eye surgery, but was arrested by police officers and taken to the Liman section of Tora Prison.

24. According to the source, while in detention at Tora Prison, Mr. Salheddin has been denied medical treatment. He was forced to sleep on the floor without a mattress, and has developed a painful hernia that has not been treated. His family could not visit him for a month and a half. The source reports that Mr. Salheddin has been subjected to ill-treatment, including the placement of dogs inside his cell to cause him fear, and deprived of sleep by guards. Mr. Salheddin was also reportedly subjected to deplorable detention conditions.

25. On 11 April 2015, Mr. Salheddin was sentenced to life imprisonment in the "Rabaa Operations Room" case. At the time this communication from the source was received, he was being detained in the Liman section of Tora Prison.

#### Detention and trial of Mr. Mosaad Albarbary

26. **Mr. Mosaad Albarbary** is a 41-year-old journalist. Before his arrest, he was the Executive Director and Vice-President of Mistr25 Channel. On 2 April 2014, Mr. Albarbary was arrested by the Lebanese Security Forces in Beirut, Lebanon at the request of the Egyptian authorities. The source states that there was no official extradition procedure to return Mr. Albarbary to Egypt. Instead, he was detained for one week inside a Security Forces building before being handed over to the Egyptian intelligence services and deported to Cairo. The source alleges that the Egyptian intelligence services falsely reported that Mr. Albarbary had been arrested at Cairo Airport in order to have the records of his arrest show that he was arrested on Egyptian territory. Mr. Albarbary was interrogated for five hours at the airport.

27. The source informs that Mr. Albarbary was then held in custody for two and a half months in the Giza Migration Department in particularly harsh conditions. His cell had no ventilation and was extremely overcrowded. Mr. Albarbary was then transferred to the Istiqbal section of Tora Prison where he was denied regular meals, medication and visits.

28. On 11 April 2015, Mr. Albarbary was sentenced to life imprisonment in the "Rabaa Operations Room" case. At the time this communication from the source was received, he was being detained in the Istiqbal section of Tora Prison.

#### Detention and trial of Mr. Abdo Dasouki

29. **Mr. Abdo Dasouki** is a 39-year-old journalist. Before his arrest, Mr. Dasouki was the Director of *Ikhwan Wikis*, an Arabic wiki encyclopaedia established by the Egyptian Muslim Brotherhood.

30. Mr. Dasouki was arrested on 16 August 2013, the day of the dispersal of supporters of the Muslim Brotherhood at Rabaa al-Adawiya Square. At the time of his arrest, Mr. Dasouki was in the vicinity of the Fateh Mosque, after the police and the army had dispersed protesters who were on Ramses Square. The source alleges that Mr. Dasouki was brought to a police station in Cairo where he was tortured for several hours. Mr. Dasouki was charged in relation to the "Rabaa Operations Room" case. According to the source, he was transferred to Tora Prison where he was again tortured by officers.

31. The source reports that Mr. Dasouki complained to the Public Prosecutor about his ill-treatment, but every time he did so, the officers at Tora Prison put him in solitary confinement in retaliation. According to the source, the Public Prosecutor did not take any action to stop the torture or to investigate it.

32. On 11 April 2015, Mr. Dasouki was sentenced to life imprisonment in the "Rabaa Operations Room" case. At the time this communication from the source was received, he was being detained in the Liman section of Tora Prison.

Submissions regarding arbitrary detention

33. The source submits that the detention of Messrs. Alfakharany, Abdulalim, Aladili, Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki is arbitrary according to categories II and III of the categories applied by the Working Group.

34. The source reiterates that the nine individuals arrested and currently detained are all journalists who were covering events relating to the dispersal of protesters at the Rabaa al-Adawiya Square on 16 August 2013. As noted above, Messrs. Alfakharany, Abdulalim and Aladili were interviewing a victim of the events at the Rabaa al-Adawiya Square at the time of their arrest. In addition, Messrs. Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki were all working for media channels, newspapers or websites allegedly affiliated with the Muslim Brotherhood, which opposed the military coup of July 2013 and which covered the events on Rabaa al-Adawiya Square. Their arrests stemmed from their work with these media outlets, and because these media outlets opposed the authorities' behaviour. The source argues that the sole fact of working for media and websites linked to the Muslim Brotherhood was a sufficient justification for the authorities to arrest them because these media outlets are seen as disseminating false information, regardless of what the journalists may or may not have done.

35. The source therefore argues that the charges against the nine journalists in relation to the "Rabaa Operations Room" – including "spreading false information" – were directly related to their coverage of this event, in violation of their rights to freedom of expression and of opinion under article 19(1) and 19(2) of the ICCPR. The source states that the Egyptian authorities often have recourse to criminal charges to suppress independent voices, especially journalists, and this is a form of censorship and an infringement of the right to form, hold, receive and impart opinions. Further, the source submits that the vagueness of the charges against the nine journalists suggests that they were arrested to impede them from independently and impartially carrying out their work as journalists.

36. In addition, the source points to allegations against the nine journalists that they formed a group aimed at undermining Egypt's government, in an attempt to overthrow it. The source argues that, given there was no evidence presented to support such allegations, it is clear that the authorities only wanted to prevent the journalists from disclosing information relating to the events of 16 August 2013 at the Rabaa al-Adawiya Square. Finally, the source notes that all of the journalists report that they were tortured and subjected to ill-treatment in retaliation for their work as journalists, demonstrating that they were only arrested to suppress their freedom of expression.

37. The source also submits that there have been numerous violations of due process during the arrest, detention and trial of Messrs. Alfakharany, Abdulalim, Aladili, Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki. The source argues that these violations are of such gravity as to render their deprivation of liberty arbitrary according to category III. The alleged violations include:

- (i) Failure to present a warrant when the nine journalists were arrested, contrary to article 9(1) of the ICCPR;
- (ii) Failure to inform the journalists of the charges against them, contrary to article 9(2) of the ICCPR. The journalists were not informed of the charges against them in their first days of custody, and some of them remained in detention without charges for several months. With the exception of Mr. Shalaby, the charge of belonging to the "Rabaa Operations Room" group was only brought against the journalists in February 2014, six months after most of them had been arrested in August 2013;

(iii) Change of the dates of arrest to hide the time spent by the journalists in incommunicado detention, contrary to article 9 of the ICCPR. In the case of Messrs. Alfakharany, Abdulalim and Aladili, the authorities changed the official date of their arrest, stating that they had been arrested on 26 August 2013 and not 25 August 2013. Similarly, Mr Albarbary was detained by the intelligence services in Lebanon for one week before the authorities brought him back to Egypt and falsely reported that he was arrested on Egyptian territory;

(iv) Holding the journalists in incommunicado detention, which is a *prima facie* form of arbitrary detention, contrary to article 10 of the ICCPR and article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). They were also detained with convicted criminals even though they had not been tried yet, in violation of article 10(2)(a) of the ICCPR.;

(v) Denial of the right to challenge the lawfulness of detention, contrary to article 9(4) of the ICCPR. The journalists' lawyers were not granted the right to challenge the lawfulness of their detentions, even though they made a request to the Public Prosecutor to do so;

(vi) Failure to try the journalists without undue delay, contrary to article 14(3)(c) of the ICCPR. The first hearing of the case before a judge was on 1 April 2014, nearly seven months after the respective arrests of the journalists. Their trial was held over one year because of regular and vaguely justified postponements by the judge or the prosecution;

(vii) Failure to provide a fair trial, contrary to article 14 of the ICCPR. Most of the evidence against the journalists was brought to the judge by the intelligence services and was not communicated to their lawyers, rendering it impossible for them to challenge its veracity. Only prosecution witnesses testified in court, giving the appearance that the trial was not impartial, contrary to article 14(1) and 14(3)(e) of the ICCPR.;

(viii) Torture and other ill-treatment of the journalists, contrary to article 1 of the CAT. All of the journalists reported having been subjected to torture and/or ill-treatment during their detention, and they are still at high risk of being ill-treated while being detained in harsh conditions. Further, all of the reports made to the Public Prosecutor regarding these violations were dismissed and no investigations were launched into the complaints, in violation of article 12 of the CAT;

(ix) Failure to try the journalists in their presence, contrary to article 14(3)(d) of the ICCPR. The journalists were not all inside the courtroom but at its entrance when they were sentenced. They were nevertheless considered as being present.

38. On 20 August 2015, the source provided the Working Group with an update on the nine journalists. According to the source, the first session of their appeal was expected to be held on 1 October 2015. Messrs. Alfakharany, Abdulalim and Aladili remained in detention in Tora Prison, but it was not possible for the source to determine where the other six journalists were being detained. At the time of this update from the source, Messrs. Alfakharany, Abdulalim and Aladili were allowed to receive visits from their families and, for some of them, from their lawyers.

#### *Response from the Government*

39. On 22 September 2015, the Working Group transmitted the allegations from the source to the Government of the Arab Republic of Egypt under its regular communication procedure. The Working Group requested the Government to provide detailed information by 23 November 2015 about the current situation of Messrs. Alfakharany, Abdulalim,

Aladili, Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki. The Working Group also requested the Government to clarify the legal provisions justifying their continued deprivation of liberty.

40. In its response, the Government forwarded a copy of the verdict issued by the Criminal Court in this case. The Government also sought an extension of time, which was granted under paragraph 16 of the methods of work of the Working Group. The deadline for response was 23 December 2015, but the Government did not forward any further information by this date.

41. The translation from Arabic of the verdict forwarded by the Government in November 2015 was received on 8 April 2016, in time for the present seventy-fifth session of the Working Group. The verdict contains a list of the names of 37 individuals who were convicted by the Cairo Criminal Court (North Giza), including the nine men involved in the present case. It includes information on the sentences passed in relation to each of the nine men.

*Further comments from the source*

42. On 10 December 2015, the source notified the Working Group that the Court of Cassation rendered its decision on 3 December 2015 in relation to the appeals brought by the nine men in this case. According to the source, the Court of Cassation revoked all of the sentences previously imposed on the nine men (including the death penalty imposed in relation to Mr. Shalaby), and ordered a retrial by the Cairo Criminal Court. The nine men remain in custody pending the retrial.

43. The first retrial session was due to be held on 8 February 2016, but the source informed that the nine men were never brought to court by the authorities and the judge postponed the retrial to 1 March 2016 and then again to 7 March 2016. In an update on 2 March 2016, the source expressed concern that Messrs. Alfakharany, Abdulalim and Aladili were transferred to the high security section of Al Aqrab prison where many detainees were on hunger strike to protest against their conditions of detention and the no-visit policy established by the prison personnel.

44. On 11 March 2016, the source submitted a response to the Government's submission of the verdict of the Cairo Criminal Court in November 2015. The source stated that the verdict was not a copy of the Court's ruling, but a document from the Public Prosecutor that had not been used during the trial. The source submits that this document was written after the Court's decision in this case and did not answer any of the observations made by the source in its original communication to the Working Group. The Working Group has not received any further update on the status of the retrial. In any event, the Working Group does not require local remedies to be exhausted before it can consider a communication and render an Opinion.

**Discussion**

45. The Working Group considers that the Government's communication received on 25 November 2015 does not respond to any of the allegations made by the source. The Working Group also notes that the Government did not respond when given an extension of time to provide further information. In accordance with paragraph 16 of its methods of work, the Working Group may render an Opinion on the basis of all the information it has obtained, even if no reply has been received upon expiry of the time limit.



46. In its jurisprudence, the Working Group has established the ways in which it deals with evidentiary issues.<sup>1</sup> 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 given allegations.

47. The Working Group has taken into account all of the allegations made by the nine journalists in relation to the Rabaa Operations Room case. Even though the nine journalists were arrested and detained at different times and under different circumstances, their accounts are similar in all material respects, which lends credibility to their allegations. The Working Group is therefore of the view that the case submitted by the source is credible.

48. In addition, the Working Group has taken into account other reliable information which supports the source's claims, and demonstrates that there is a systemic problem of arbitrary deprivation of liberty of journalists in Egypt. Firstly, the Working Group refers to its previous opinions concerning individual communications from various sources regarding arbitrary arrests and detention in the Egypt.<sup>2</sup> In these cases, findings were made about the arbitrary detention of journalists and bloggers who peacefully exercised their rights to freedom of opinion and expression under the UDHR and ICCPR.

49. Further, on 11 November 2015, two UN Special Rapporteurs made a statement, which was endorsed by the Working Group, expressing "grave concern at the situation of fear and intimidation of journalists and human rights defenders which inhibit the legitimate exercise of their rights and the performance of their work in Egypt." They also noted, referring to the detention and recent release of a journalist, that: "According to credible reporting, we understand that dozens of reporters are being held by Egyptian authorities today."<sup>3</sup> This statement followed an earlier expression of concern by a UN Special Rapporteur in September 2015, which was also endorsed by this Working Group, in relation to the arrest, detention and sentencing of three Al Jazeera journalists. In the statement, the Special Rapporteur reiterated that: "With nearly two dozen other journalists in jails, according to reliable information, these sentences reinforce the sense that freedom of expression is under attack in Egypt".<sup>4</sup>

50. The Working Group considers that the Government has not rebutted the *prima facie* reliable assertion by the source that the nine journalists were arrested, detained and sentenced solely for having peacefully exercised their right to freedom of opinion and expression, in violation of article 19 of the UDHR and article 19 of the ICCPR. Their

<sup>1</sup> See, for example, Report of the Working Group, A/HRC/19/57, 26 December 2011, para. 68, and Opinion No. 52/2014.

<sup>2</sup> See, for example, Opinion Nos. 50/2011, 35/2008.

<sup>3</sup> Office of the High Commissioner for Human Rights, News Release, Geneva, 11 November 2015. The statement was made by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the UN Special Rapporteur on the situation of human rights defenders in relation to the case of Mr. Hossam Baghat. The statement is available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16738&LangID=E>

<sup>4</sup> Office of the High Commissioner for Human Rights, News Release, Geneva, 1 September 2015. The statement was made by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in relation to the case of Mohamed Fahmy, Bahar Mohamed and Peter Greste. The statement is available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16370&LangID=E>. The Special Rapporteur also noted that: "The broadcasting of information should never be restricted, certainly not without evidence of a serious immediate threat to a legitimate national security interest." In the present case, the Working Group notes that the Government provided no evidence to show such a threat in the case of the nine journalists, or that its response was necessary and proportionate.

deprivation of liberty therefore falls within category II of the categories applied by the Working Group.

51. The Working Group also considers that the source's allegations disclose violations of the right to a fair trial, some of which apply to all of the journalists, while other allegations only applied to some of them (as outlined in the source's submissions above). The Government has not rebutted any of these allegations. The Working Group considers that the violations include the failure of arresting officers to present a warrant, and denial of the rights of the journalists to be informed promptly of the charges against them; to an opportunity to challenge the lawfulness of their detention;<sup>5</sup> to be tried without undue delay by an independent and impartial tribunal, and to be tried in their presence.

52. The Working Group concludes that the breaches of articles 9, 10 and 11 of the UDHR and articles 9 and 14 of the ICCPR in the case of the nine journalists are of such gravity as to give their deprivation of liberty an arbitrary character, falling within category III of the categories applied by the Working Group.

53. The Working Group is particularly concerned about the alleged torture and ill-treatment of the nine journalists. In particular, the Working Group refers to the allegations made by the source that they have been beaten, subjected to degrading and humiliating treatment including death threats, held incommunicado, held in solitary confinement for prolonged periods, subjected to retaliation after making complaints, detained in overcrowded and deplorable conditions with convicted criminals, and denied medical treatment and medication, contrary to their rights under article 5 of the UDHR and articles 7 and 10 of the ICCPR. Moreover, the Government did not address the source's allegations that the Public Prosecutor failed to investigate the journalists' reports of torture and ill-treatment. This conduct is contrary to the duty of prosecutors to "respect and protect human dignity and uphold human rights", as set forth in guideline 12 of the Guidelines on the Role of Prosecutors, and contrary to Egypt's obligations under articles 12, 13 and 16 of the CAT. The Working Group will therefore refer the matter to the relevant Special Rapporteur for further consideration of the circumstances of this case and, if necessary, appropriate action.

54. Finally, the Working Group notes that the source alleged that the Lebanese Security Forces arrested Mr. Albarbary in Beirut, Lebanon at the request of the Egyptian authorities and detained him for one week. The Lebanese Security Forces then reportedly handed him over to the Egyptian intelligence services and he was deported to Egypt without any official extradition procedure. The Working Group recalls that it is possible for another State to share responsibility for human rights violations where its actions contribute to the arbitrary deprivation of liberty. However, in this case, there was no evidence submitted in relation to the conduct of the Lebanese authorities and the Working Group has decided not to pursue this matter.

#### **Disposition**

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

The deprivation of liberty of Messrs. Alfakharany, Abdulalim, Aladili, Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki is arbitrary, being in

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<sup>5</sup> As noted in the Working Group's Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court: "Any individual who is deprived of liberty in any situation by or on behalf of a governmental authority at any level, ... has the right to take proceedings before a court in the State's jurisdiction to challenge the arbitrariness and lawfulness of his or her deprivation of liberty and to receive without delay appropriate and accessible remedies" (Principle 3, A/HRC/30/37, 6 July 2015).

contravention of articles 5, 9, 10, 11 and 19 of the UDHR and articles 7, 9, 10, 14 and 19 of the ICCPR, and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

56. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Messrs. Alfakharany, Abdulalim, Aladili, Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki without delay and bring it into conformity with the standards and principles in the UDHR and ICCPR.

57. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to release Messrs. Alfakharany, Abdulalim, Aladili, Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki immediately and accord them an enforceable right to compensation in accordance with article 9, paragraph 5, of the ICCPR.

58. The Working Group urges the Government to ensure that Messrs. Alfakharany, Abdulalim, Aladili, Shalaby, Sabii, Abdulkarim, Salheddin, Albarbary and Dasouki are not subjected to further torture or ill-treatment. The Working Group also urges the Government to fully investigate the circumstances surrounding their arbitrary detention, and to take appropriate measures against those responsible for the violation of their rights.

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

*[Adopted on 19 April 2016]*

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