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# Advance Edited Version

Distr.: General  
28 January 2021

Original: English

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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. 77/2020 concerning Ramy Shaath (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 29 June 2020 the Working Group transmitted to the Government of Egypt a communication concerning Ramy Shaath. The Government replied to the communication on 30 September 2020. 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. Background

4. Ramy Shaath is a national of Egypt and the State of Palestine residing in Cairo, who was 48 years old at the time of the arrest.

5. The source explains that Mr. Shaath is a political activist who has played a role in co-founding several secular political movements and parties in Egypt, including the El-Dostour party. He is also the co-founder of the boycott, divestment and sanctions movement in Egypt and has been its coordinator in Egypt since 2015. The boycott, divestment and sanctions movement campaigns are aimed at holding Israel accountable for violations of human rights and international law through non-violent means. As part of his activities, Mr. Shaath raises public awareness about Palestinians' rights and has been vocal in the media denouncing the Israeli occupation of Palestinian territory. Prior to his arrest, he participated in public events and gave media interviews in which he expressed his strong opposition to the plan of the United States of America to end the Israeli-Palestinian conflict, referred to as the "deal of the century" by the United States Administration, and against the participation of Egypt in the meeting held in Manama on 25 and 26 June 2019 to discuss the plan.

#### b. Arrest and detention

6. The source alleges that the Egyptian authorities have been harassing Mr. Shaath for years because of his political activism. Specifically, in February 2012, Mr. Shaath and other political activists were banned from traveling by the State Security Prosecutor, after fabricated recordings were published on social media, and a case was opened against him (State Security case No. 43/2012). During the questioning in the case, the prosecutor told Mr. Shaath that there were two charges against him: inciting others to commit the crime of deliberate disruption of a State facility (in that case, it was the Suez Canal) and inciting public and State employees to leave their work and refrain from performing their duties. Those are serious charges regarding a State facility and the potential sentence incurred is heavy, namely, either the death penalty or life imprisonment. The case was dropped, and the ban lifted, when the fabricated aspect of the recordings was proven by independent experts. However, in April 2012, the Ministry of the Interior refused to renew Mr. Shaath's Egyptian passport, thereby attempting to deny him his Egyptian nationality. Although he won the case in 2013 before the Cairo Administrative Court, which confirmed his nationality and ordered that his passport be returned, the Ministry of the Interior appealed the verdict in 2018. The appeal remains pending.

7. According to the source, Mr. Shaath was arrested on 5 July 2019 by National Security Agency officers. On that date, a dozen heavily armed security agents stormed into Mr. Shaath's home during the night and searched it, without presenting any legal documents justifying their intervention. During the raid, officers seized computers, hard drives and mobile phones. They took Mr. Shaath to an unknown location. The source explains that, for 36 hours, the whereabouts of Mr. Shaath remained unknown. He later learned that he was interrogated at a National Security Agency facility. The interrogation was conducted in the absence of his lawyer.

8. The source submits that Céline Lebrun, a French national residing in Egypt for more than seven years and the wife of Mr. Shaath's, was present at the time of his arrest. She was arbitrarily and forcibly deported from Egypt to France by officials who also refused to allow her to contact her embassy, although she was officially under its protection.

9. On 6 July 2019, Mr. Shaath appeared before the State Security Prosecution and was added to an already open criminal case (State Security case No. 930/2019), known as the "Hope Plan" case, and charged with providing "assistance to a terrorist group". The source explains that several liberal and leftist political parties indeed attempted to form a coalition to stand for election in 2020 in a parliamentary coalition and called it the "Hope Alliance". The Egyptian authorities, as relayed by the official media, allegedly wrongly accused its supporters of terrorism and undermining State security. The source explains that at least 105

persons, including political opposition activists, journalists and human rights defenders, were arrested in Egypt on “terrorism-related” charges, between 25 June and 21 August 2019, and were charged in case No. 930/2019 for their alleged implication in a plot against the State.

10. On 6 July 2019, Mr. Shaath was interrogated about his political activity. For that interrogation, he was not allowed to be assisted by his lawyer, but another lawyer who was there was allowed to assist him.

11. Moreover, on the same day, the prosecutor ordered Mr. Shaath’s detention for 15 days pending the conduct of investigations, and his detention has been renewed every 15 days since then in automatic renewal hearings. The source specifies that, under the Code of Criminal Procedure of Egypt and the Counter-Terrorism Law of 2015, prosecutors can issue pretrial detention orders against individuals accused in “terrorism-related” cases for up to 150 days, without referring them to a judge. Between the first detention renewal hearing on 10 July 2019 and 12 November 2019, Mr. Shaath was allowed to be assisted by his lawyer.

12. The source explains that the detention of Mr. Shaath is based only on secret National Security Agency investigations, the results of which neither Mr. Shaath nor his lawyers were able to examine and in spite of a decision issued in 2015 by the Court of Cassation of Egypt, which ruled that National Security Agency investigations did not constitute evidence on their own.

13. According to the source, on 25 November 2019, Mr. Shaath appeared for the first time before a judge. During that hearing, the judge ordered the renewal of his pretrial detention for an additional 45 days, without any proof or legal justification having been presented. Another hearing was scheduled for January 2020. Between 25 November 2019 and 18 February 2020 (the third hearing), communication between Mr. Shaath and his lawyers was made more difficult due to the fact that he attended hearings from within a soundproof glass cage. Therefore, he could not communicate with his lawyers, nor hear or take part in what was happening in the court. On 18 February 2020, Mr. Shaath saw his lawyers for the last time.

14. Since then, due to the suspension of visits to the prison and the suspension of detainees’ transfer to courts, owing to measures in place to combat the coronavirus disease (COVID-19) pandemic, Mr. Shaath has not been able to see or communicate with his lawyers at all. Since 18 February 2020, his detention has been renewed three times (on 6 May, 12 May and 20 June 2020). On the two first dates, no lawyers were even authorized to attend to present a defence.

15. The source explains that, on 17 April 2020, a criminal court ordered Mr. Shaath to be added to a new case (State Security case No. 517/2020) and to the “terrorist list” of Egypt for five years, along with 12 other defendants, some of whom were already detained in the Hope Case. The court decision was taken in the absence of the defendants and their lawyers; they were not even informed of the hearing, and it occurred in a context in which most of the hearings had been postponed due to the COVID-19 pandemic. They were not given the possibility to present a defence against the unknown accusations and only learned of the decision from the news in the Egyptian press. For the source, that decision represents an alarming escalation of the attacks against Mr. Shaath. In addition to the defamation, given that decision, if released, Mr. Shaath would be subject to a travel ban, raising serious concerns around his ability to reunite with his family. His assets can also be frozen or confiscated, as well as his Egyptian passport. Regarding the latter point, the source fears that that decision is in fact a new tactic for stripping Mr. Shaath of his Egyptian nationality. In that regard, the source recalls that the Ministry of the Interior had been trying to strip Mr. Shaath of his nationality since 2012. In a hearing in April 2020 related to the case, and after several failed attempts to convince a court, the Ministry of the Interior tried to justify stripping Mr. Shaath of his nationality with the argument that Mr. Shaath was on the terrorist list. That concern is reinforced by the fact that, in the court order as reported in the *Official Gazette*, Mr. Shaath is indicated as not being an Egyptian national.

c. Legal analysis

16. The source argues that the detention of Mr. Shaath is arbitrary and falls within categories II, III and V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

(i) Category II

17. The source argues that the deprivation of liberty of Mr. Shaath was the result of his exercising his universally recognized human rights, in particular the right to freedom of opinion and expression, the right to freedom of assembly and association and the right to participate in public affairs, enshrined in articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 21, 22 and 25 of the Covenant.

18. Furthermore, the application of vague and overly broad provisions adds weight to the conclusion that Mr. Shaath's deprivation of liberty falls within category II.

(ii) Category III

19. According to the source, Mr. Shaath's rights were not respected during or after his arrest, and, notably, he was not shown an arrest warrant. In addition, throughout the above-mentioned pretrial detention, Mr. Shaath was denied his fundamental right to a fair trial, which is guaranteed by article 10 of the Universal Declaration of Human Rights and articles 14 and 16 of the Covenant. More specifically, he was not properly informed of the criminal investigation against him or the charges pending, nor was he informed of the ongoing criminal proceedings.

20. The source adds that pretrial detention is only legitimate where there is a reasonable suspicion of the person having committed the offence and where detention is necessary and proportionate to prevent the person from absconding, committing another offence or interfering with the course of justice during pending procedures. Article 9 (3) of the Covenant states that it should not be the general rule that persons awaiting trial are detained in custody. The fact that Mr. Shaath's detention had already been renewed automatically on multiple occasions at the time of submission of the present communication is evidence that it is unnecessary and disproportionate.

21. Moreover, the source explains that the detention of Mr. Shaath has not been examined by a judicial body. Instead, his detention has been extended by a prosecutor who is exercising judicial powers, something that the Human Rights Committee has repeatedly stated is counter to the proper exercise of such powers, which must be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. A public prosecutor therefore cannot be considered as an officer exercising judicial power under article 9 (3) of the Covenant.

(iii) Category V

22. For the source, whereas Mr. Shaath's deprivation of liberty has resulted from the active violation of his civil and political rights, there is a strong presumption that the deprivation of liberty also constitutes a violation of international law on the grounds of discrimination based on political or other views. In particular, Mr. Shaath is being discriminated against on the basis of his status as an opposition leader, in violation of his right to equality before the law and equal protection of the law under article 26 of the Covenant. Mr. Shaath is indeed a prominent human rights activist; he has been involved in the Palestinian human rights movement, and he was involved in the Egyptian revolutionary movement in 2011.

23. His political views and convictions regarding the Government's policies and actions are at the centre of the present case, and the authorities have displayed an attitude towards him that can only be characterized as discriminatory. He has been the target of persecution and surveillance measures for many years, including an attempt at deprivation of his Egyptian citizenship in 2012, and there is no other explanation for that targeting except for the fact that he has been exercising his right to express his views and convictions regarding the Government's human rights record.

24. A joint letter of allegation dated 9 October 2019 (EGY 10/2019) from several special procedure mandate holders was sent to the Government, which has not yet replied.

*Response from the Government*

25. On 29 June 2020, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 31 August 2020, detailed information about the current situation of Mr. Shaath and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Egypt under international human rights law, in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Egypt to ensure his physical and mental integrity.

26. On 26 August 2020, the Government of Egypt requested an extension of the time limit to reply, in accordance with paragraph 16 of the Working Group's methods of work, which was granted, with a new deadline of 30 September 2020. The Government of Egypt submitted its reply on 30 September 2020.

27. The Government reiterates that the State is committed to the international human rights conventions, covenants and agreements ratified by Egypt.

28. Regarding the claims concerning Mr. Shaath and the refusal to renew his Egyptian passport, the appeal related to that matter is still under consideration by the court and a ruling has not yet been issued in the case. Mr. Shaath continues to exercise his right to conduct his defence before the Egyptian courts. Consequently, he has not yet exhausted all domestic remedies. Therefore, it is too early to discuss the case, because it is still under review and doing so could affect the opinion and subsequent ruling of the court. It would also be premature to ask questions about issues on which the judiciary has not yet reached a conclusion.

29. The Government reports that Mr. Shaath was arrested on 5 July 2019 pursuant to a warrant issued by the Public Prosecution Service in case No. 930/2019, in the light of information confirmed by security checks that, together with the leadership of the Muslim Brotherhood terrorist group, he was involved in a scheme aimed at carrying out hostile acts by inciting citizens to commit acts of violence against State institutions, public figures, police officers and members of the armed forces, hampering the implementation of the Constitution and the law and threatening national security, in conjunction with the celebration of the anniversary of the June 2013 revolution. In view of the seriousness of the findings of the Public Prosecution Service's investigations into terrorist crimes under the Counter-Terrorism Law, it issued a warrant to arrest the individual concerned and the others involved, to search their homes and the organization's headquarters, from which they carried out their terrorist activities, and to seize the electronic devices that may have been used to commit the crimes.

30. The public prosecutor proceeded to question the individual concerned, within 24 hours of his arrest, that is, within the legally defined deadline. The interrogation took place on 6 July 2019 in the presence of his lawyer. He was physically examined by the investigator before the interrogation to ensure that there were no physical injuries indicating that he had been subjected to physical harm during his arrest. No injuries were found. The investigator also informed him of the judicial authority conducting the investigation procedures and of the charges against him. The charges are participating in a terrorist group with knowledge of its objectives and publishing false news intended to spread panic and harm the public interest. The investigator decided to hold the individual concerned in pretrial detention for a period of 15 days for a number of reasons, including fear that the interests of the investigation would be harmed through influencing of witnesses and tampering with evidence. Accordingly, the individual was placed in Tora prison in Cairo.

31. Following his arrest on 5 July 2019, the individual in question was brought before the public prosecutor on 6 July 2019, within the legal deadline of 24 hours, in accordance with article 36 (1) of the Code of Criminal Procedure and international treaties signed by Egypt, in particular article 9 (2) and (3) of the International Covenant on Civil and Political Rights. That confirms that the allegation contained in the communication regarding the individual's enforced disappearance is untrue.

32. The Government then explains that, regarding the pretrial detention procedures applicable in cases involving offences against State security, such as Mr. Shaath's case, article 206 bis of the Code of Criminal Procedure, as amended by Act No. 145 of 2006, provides that senior public prosecutors have the power to act as investigating judges in cases involving the felonies set out in chapters 1, 2, 2 bis and 4 of the second book of the Criminal Code. In addition, they have the powers of the court of appeal for misdemeanours described in article 143 of the Code of Criminal Procedure in investigating the crimes listed in the first section of chapter 2, provided that the period of detention does not exceed 15 days each time. The senior prosecutors have the powers of the investigating judge, with the exception of the periods of pretrial detention stipulated in article 142 of the Code of Criminal Procedure, in investigating the felonies set out in chapter 3 of the second book of the Criminal Code. The Public Prosecution Service in Egypt is part of the judicial branch, and its members enjoy judicial immunity, unlike in some other countries, where the Public Prosecution Service is part of the executive branch.

33. The acts with which the individual in question is charged constitute crimes under article 12 of the Counter-Terrorism Act. In addition, article 102 bis of the Criminal Code stipulates that anyone who intentionally broadcasts false news, statements or rumours, if they are liable to disturb public security, cause panic among the public or cause harm to the public interest, faces imprisonment and a fine of between 50 and 200 Egyptian pounds.

34. Concerning the allegations related to the violation of the individual's right to a defence, it should be noted that the Egyptian laws in force regarding criminal investigations and trials guarantee all the safeguards related to a fair trial. In the light of the dangers it faces as a result of being targeted by some terrorist organizations, and in the framework of the aforementioned strategy, Egypt is also implementing the relevant Security Council resolutions, including resolution 1373 (2001), with respect to safeguards in the investigation of terrorism cases. Egypt relies on ordinary rather than exceptional criminal procedures, and they guarantee the accused's right to a defence.

35. The case at the centre of the communication relates to terrorist activities and crimes of financing terrorism that represent a direct threat to national security. However, the individual concerned was not subjected to any exceptional procedures that would support the claim that his right to a defence was violated. He was interrogated in the presence of his lawyer and was informed of the accusations against him. The investigator allowed him to elaborate on his defence and to make statements. His lawyer was also allowed to include legal and substantive defences in the investigation report. The hearings to extend his pretrial detention took place before an independent judge, with him and his lawyer in attendance. His lack of access to secret security investigations had no bearing on the proceedings, because the results of secret investigations are not considered evidence that can be used separately in court, but rather they are merely elements that are reinforced by all of the other evidence. They do not, in and of themselves, serve as reliable evidence to support a conviction. It is also legally established that a suspect has the inalienable right to be confronted with the evidence against him or her in a criminal case, and that is one of the guarantees of a fair trial. However, the law does not establish a specific deadline by which the investigating authority must confront the accused with the evidence. Rather, the investigating authority does so while taking into account the best interests of the investigation, given that confronting the accused with the evidence may entail disclosing the names of people in respect of whom arrest warrants have not yet been issued. It may be feared that the secrets of the investigation would be disclosed or that some individuals might evade justice, which is what the investigating authorities are keen to avoid in order to optimize their response to terrorist activities and the financing of terrorism. The case is still under investigation to establish the truth.

36. As for the allegation that the individual in question was placed in a glass cage when he was brought before the judge, which made it difficult for him to communicate with his lawyer and determine what was happening during the hearings, it should be noted that the constitutional principles related to criminal trials include the requirement that hearings be held in public, which is consistent with article 14 of the International Covenant on Civil and Political Rights. That allows the general public to monitor the effectiveness of the administration of justice and to follow cases of interest.

37. In the light of the terrorist attacks committed in Egypt since 2013 by a number of very dangerous international terrorist organizations, including Ansar Bayt al-Maqdis, the Muslim Brotherhood and a number of other extremist organizations, dedicated departments working within the framework of the Code of Criminal Procedure have been designated to implement the continuous trial approach and ensure the swift administration of justice. The particular nature of terrorism cases, especially those related to major terrorist attacks, makes it difficult for them to be tried in ordinary criminal courts, given the large number of defendants and their families, victims, witnesses, seized evidence to exhibit, defence teams and security officers involved, in addition to the media and civil society organizations following the proceedings. The Ministry of Justice therefore issued a decision to fit out large halls to accommodate such cases in a way that preserves the defendants' human dignity and their right to a defence. The halls are technically equipped in such a way as to allow all the parties involved in the trial to follow clearly and participate in the proceedings in accordance with the Code of Criminal Procedure and the fair trial standards set out in international conventions.

38. In view of the dangerous nature of the accused and the resultant strict security measures in place during the proceedings, the Ministry of Justice issued a decision on the use of technically equipped glass cages to assist the judges, defence teams, security officers and the rest of the parties involved to carry out their work in achieving justice.

39. Mr. Shaath's claims that he was unable to follow what was happening during the trial or to communicate with his lawyer due to the glass cage are unfounded. He could have drawn the court's attention to that fact or argued that he was unable to follow the proceedings. His lawyer could also have had that fact noted in the record of the proceedings, and it would have been taken seriously by the court. The court also conducts inspections of the cages before the trial. Any of the other defendants present with him at the hearing could have lodged an objection to the court, but that did not happen.

40. The claim that he has not received any visits in prison is untrue. He has received regular weekly visits from his family members and relatives, most recently a visit from his daughter and sister on 26 February 2020. He also received a visit from his lawyer on 27 February 2020, with permission from the Public Prosecution Service. The lawyer has not submitted any more recent requests to visit. Following the decision to stop visits to prison inmates in March as part of precautionary measures to deal with the COVID-19 pandemic, the individual concerned has been allowed, like all other prisoners, to regularly receive food and some other necessities from his family. His wife was also allowed to enter the country alone for a week to visit him after the end of the COVID-19 crisis. She was also allowed to call him in his prison cell, at her request, on 12 May and 29 August 2020 to check on his condition. The Ministry of the Interior issued a decision to allow visits to prisons to resume, starting on 22 August 2020, subject to specific controls related to preventive measures to protect inmates from the virus.

41. Mr. Shaath was added to the official terrorist list pursuant to decision No. 1 of 2020 issued by the Cairo Criminal Court in case No. 571/2020 at its 16 April 2020 session, at the request of the Public Prosecution Service. The procedure does not necessarily require the presence of the accused or his defence, because it is a judicial procedure that results merely in measures which the accused has the right to appeal.

42. The individual's wife was deported from the country for security reasons pursuant to articles 25 and 26 of Act No. 89 of 1960 on entry and residence in Egypt, which gives the Ministry of the Interior the right to deport foreign nationals whose presence in the country is considered a threat to national security and safety.

43. Turning to the freedom of expression, the Government explains that the charges against the individual in question are not connected with his exercise of the rights mentioned in the complaint, or the denial thereof, but rather to the violation of the laws that regulate those rights, which is prohibited in accordance with international obligations, and the commission of criminal offences punishable by law. The exercise of the rights and freedoms set forth in international and regional human rights conventions is not an absolute right exercised without limits or controls, but rather are exercised pursuant to article 29 (2) of the Universal Declaration of Human Rights, that is, within such limitations as are determined by

law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and the general welfare in a democratic society. International and regional practice has established controls on the exercise of the aforementioned rights and freedoms.

44. In conclusion, the Government of Egypt stresses that it is not acceptable to use the term “human rights defender” as a means of gaining immunity which is not recognized under domestic or international law. In addition, the Government’s continued struggle against terrorist organizations, within the limits defined by the Constitution and laws and in accordance with the basic principles of a democratic society, is one of the most significant challenges that Egypt currently faces. There is no doubt that ensuring that those affiliated with terrorist groups with subversive goals are held accountable and eliminating the constant threat of terrorist attacks in Egypt is also part of the positive obligations of any State.

*Additional comments from the source*

45. On 1 October 2020, the response of the Government was transmitted to the source for further comments, which were submitted on 19 October 2020. In the comments, the source reiterates that Mr. Shaath is a political activist.

46. The source explains that, following the arrest, the prosecutor informed Mr. Shaath that he was accused of “aiding a terrorist group in achieving its goals” without any specific information as to what he had done. In addition, prosecutors did not present any evidence of his involvement with the Muslim Brotherhood or any terrorist entities or individuals.

47. Moreover, the source reiterates that the authorities failed to provide Mr. Shaath’s lawyers with the prosecution file or the exact official charges or any alleged evidence, in order for him to be able to contest such allegations in court. According to the authorities, the investigations in the case relate to a “plot by civil activists in cooperation with the Muslim Brotherhood to undermine the State”. The case includes people from extremely diverse political backgrounds, who are not connected to one another. Among them are at least 15 politicians, students, journalists and a labour rights activist who are arbitrarily detained over unfounded charges that relate to their legitimate political activities and human rights work and the peaceful expression of their opinions; many of them have for years been political opponents of political Islam groups like the Muslim Brotherhood.

48. The source reiterates that, when arrested, Mr. Shaath was taken to an undisclosed location and his whereabouts were unknown for about 36 hours. The following day, on 6 July at about 5 p.m., his family was informed by a lawyer that Mr. Shaath had appeared before a prosecutor at the Supreme State Security Prosecution in New Cairo. He was not allowed to call his family or legal counsel and was represented during the interrogation session by a lawyer who happened to be present in the building at the time. Mr. Shaath was subsequently able to tell his lawyers and family that he had been taken to the State security service headquarters and that, during the entire time of his disappearance, he had been kept handcuffed and blindfolded.

49. The source highlights that, in its response, the Government concedes that Mr. Shaath was not allowed to examine the investigation file against him owing to security concerns and that those investigations are not evidence.

50. The Government claims that prosecutors have shown that he presents a risk to “investigations”, but did not explain how, and that in none of the hearings did they make that case. Instead, prosecutors extended Mr. Shaath’s detention for a total of 143 days, before requesting that judges do so, without explaining how he could undermine investigations. Furthermore, the first and only time that Mr. Shaath was questioned about the case was on 6 July 2019, but the questions were unrelated to the case and no evidence against him was presented. The pretrial detention hearings however are near-automatic detention renewal hearings, where Mr. Shaath and his lawyers are not able to challenge the claim by the prosecution.

51. The source concludes by reiterating that the arrest and detention of Mr. Shaath is arbitrary.

## Discussion

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

53. As a preliminary issue, the Working Group wishes to address the point raised by the Government that the proceedings against Mr. Shaath have not been finalized yet and therefore the domestic remedies available to him have not been exhausted. The Working Group would like to stress that the procedural rules to handle communications from sources and responses of Governments are contained in its methods of work, and not in other international instruments that the parties might consider applicable. In that regard, the Working Group clarifies that, in its methods of work, there is no rule applicable that impedes the consideration of communications due to the lack of exhaustion of domestic remedies in the country concerned. Sources have no obligation therefore to exhaust domestic remedies before sending a communication to the Working Group.<sup>1</sup>

54. As another preliminary issue, the Working Group takes note of the submissions concerning the renewal of Mr. Shaath's passport and the response provided by the Government in that regard. That issue however falls outside the mandate of the Working Group and will therefore not be examined per se.

55. In determining whether the deprivation of liberty of Mr. Shaath is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of the 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. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).

56. The source has argued that Mr. Shaath's detention is arbitrary and falls under categories II, III and V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. The Government rejects the allegations and argues that Mr. Shaath was arrested and is detained strictly in accordance with the national legal provisions. The Working Group shall proceed to examine the allegations in turn.

### *i. Category I*

57. The Working Group notes the allegation that Mr. Shaath was arrested on 5 July 2019 without being presented with a warrant. The Government contests that allegation, arguing that Mr. Shaath was arrested following a warrant issued by the prosecution in case No. 930/2019. Noting that discrepancy in the submissions, the Working Group is unable to arrive at a conclusion as to whether the arrest warrant was indeed issued prior to Mr. Shaath's arrest.

58. However, the Working Group observes the Government has not addressed the allegations that the arrest was executed by some dozen armed officers, who broke into Mr. Shaath's domicile during the night. It is to be noted that Mr. Shaath had not attempted to evade the authorities or to in any way obstruct the execution of an arrest and, as such, the manner in which the arrest was executed is clearly disproportionate. Moreover, the Government has merely stated that the arrest was carried out following a warrant issued by the prosecutor's office but, noting the detailed allegations by the source that Mr. Shaath was neither presented with a warrant nor explained the reasons for his arrest, the Working Group observes the failure of the Government to explain how and when the contents of the arrest warrant was communicated to Mr. Shaath.

59. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested not only be informed of the reasons for arrest but also be promptly informed of any charges against them. As explained by the Human Rights Committee in its general comment No. 35 (2014), the obligation encapsulated in article 9 (2) has two elements: information about the reasons for arrest must be provided immediately upon arrest<sup>2</sup> and there must be prompt information about the charges provided thereafter.

<sup>1</sup> See, e.g., opinions No. 11/2000; No. 30/2020; and No. 51/2020.

<sup>2</sup> Human Rights Committee, general comment No. 35 (2014), para. 27.

60. It is true that the requirement of prompt information is not to be equated with the requirement to provide information at the time of the arrest.<sup>3</sup> However, in the present case, the Working Group notes that Mr. Shaath was arrested on 5 July 2019 and that it was not until the following day, when he was interrogated by the prosecution, that he was informed of the reasons for his arrest. The Government has not furnished any reasons to explain the delay in informing Mr. Shaath of the reasons for his arrest, which should have been immediately provided. Noting that no such information was provided in relation to the arrest of Mr. Shaath, the Working Group finds a breach of article 9 (2) of the Covenant.<sup>4</sup>

61. Furthermore, the Working Group takes note of the allegation by the source that, following the arrest on 5 July 2019, the whereabouts of Mr. Shaath remained unknown until he appeared before the prosecution the following day. Although that very serious allegation was presented to the Government, it summarily dismissed it without explaining the whereabouts of Mr. Shaath during the time immediately after the arrest. The Working Group therefore finds that Mr. Shaath was subjected to enforced disappearance following his arrest on 5 July 2019 until he appeared before the prosecution the following day. Enforced disappearance is prohibited by international law and constitutes a particularly aggravated form of arbitrary detention,<sup>5</sup> and the Working Group therefore finds a breach of article 9 (1) of the Covenant. The Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances for appropriate action.

62. Moreover, in accordance with article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge must be brought promptly before a judge to exercise judicial power. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge or other officer authorized by law following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.<sup>6</sup>

63. In the present case, the source has submitted and the Government does not contest that, following Mr. Shaath’s arrest on 5 July 2019, he appeared before the prosecution and that the decision to remand him in custody was also taken by the prosecution. In fact, Mr. Shaath did not appear before a judicial authority until 25 November 2019 for a pretrial hearing, when he was yet again remanded in custody. Although the Government has argued that that was strictly in accordance with national law and that the appearance before the prosecutor was in fact appearance before a judicial authority, the Working Group recalls that, in its jurisprudence, it has consistently held that, even when the detention of a person is carried out in conformity with national legislation, it must ensure that the detention is also consistent with the relevant provisions of international law.<sup>7</sup> In its jurisprudence and practice, the Working Group has also consistently found that the prosecutor is not an independent judicial authority and does not satisfy the criteria of article 9 of the Covenant.<sup>8</sup> The initial detention and subsequent pretrial detention imposed by the prosecution upon Mr. Shaath therefore was in violation of article 9 (3) of the Covenant. Furthermore, the source has argued and the Government has not rebutted that Mr. Shaath was remanded in pretrial detention first by the prosecution and then by the judge through near automatic hearings, which failed to examine the necessity to detain him, as required by article 9 (3) of the Covenant. It is a well-established norm of international law that pretrial detention should be the exception and not the rule and that it should be ordered for as short a time frame as possible.<sup>9</sup> Liberty is therefore

<sup>3</sup> *Ibid.*, para. 30.

<sup>4</sup> See opinions No. 10/2015, para. 34; and No. 46/2019, para. 51.

<sup>5</sup> See opinions No. 5/2020; No. 6/2020; No. 11/2020; and No. 13/2020. See also Human Rights Committee, general comment No. 35 (2014), para. 17; see also the Declaration on the Protection of All Persons from Enforced Disappearance; and A/HRC/16/48/Add.3, para. 21.

<sup>6</sup> Human Rights Committee, general comment No. 35 (2014), paras. 32–33.

<sup>7</sup> See, e.g., opinions No. 46/2011; No. 42/2012; No. 50/2017; No. 79/2017; No. 1/2018; No. 20/2018; No. 37/2018; and No. 50/2018.

<sup>8</sup> E/CN.4/1995/31/Add.4, para. 57 (c); opinions No. 75/2017; No. 35/2018; No. 46/2018; No. 44/2019; No. 45/2019; No. 14/2020; No. 15/2020; No. 16/2020; and No. 36/2020; and Human Rights Committee, general comment No. 35 (2014), para. 32.

<sup>9</sup> See opinions No. 28/2014; No. 49/2014 and No. 57/2014; and A/HRC/19/57, paras. 48–58; see also A/HRC/30/19; *Kovsh v. Belarus* (CCPR/C/107/D/1787/2008); CAT/C/TGO/CO/2, para. 12;

recognized as a principle and detention as an exception in the interests of justice.<sup>10</sup> In the present case, noting that Mr. Shaath's pretrial detention was extended without due consideration of the individualized need to detain him, the Working Group finds a breach of article 9 (3) of the Covenant.

64. In addition, as the Working Group has consistently asserted,<sup>11</sup> in order to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant. The Working Group wishes to recall that, according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserving legality in a democratic society.<sup>12</sup> That right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,<sup>13</sup> including not only to detention for the purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention and detention under counter-terrorism measures.<sup>14</sup> That right was denied to Mr. Shaath, in breach of article 9 (4) of the Covenant, given that he was subjected to enforced disappearance and held incommunicado.

65. The Working Group considers that judicial oversight of detention is a fundamental safeguard of personal liberty<sup>15</sup> and is essential to ensuring that detention has a legal basis. Given that Mr. Shaath was not able to challenge his continued 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 also violated.

66. The Working Group takes note of the Government's submission that the actions of Mr. Shaath amounted to crimes under the Counter-Terrorism Law. In that regard the Working Group recalls that it is not the first time that it has been asked to examine the detention of individuals under that law.<sup>16</sup> In each of the previous opinions, the Working Group raised serious concerns over its vaguely and broadly worded provisions, which cannot qualify as *lex certa*, in violation of the due process of law which is undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights. The Working Group reiterates that view, underlining that such vaguely worded provisions may be used to deprive individuals of their liberty without a legal basis that conforms with the essential prerequisite of the principle of legality.

67. The Working Group considers that the provisions of the Counter-Terrorism Law, which prescribe various prison terms for harmless online posting, are neither necessary to protect the public or private interests against injury, nor proportionate to the perceived offence. As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can gain access to and understand the law and regulate his or her conduct accordingly.<sup>17</sup> The Working Group also emphasizes that laws that are vaguely and/or broadly worded may have a deterrent effect on the exercise of the rights and freedoms of individuals, given that they have the potential to cause abuse, including the arbitrary deprivation of liberty.<sup>18</sup>

68. Taking note of the foregoing, the Working Group concludes that the detention of Mr. Shaath from the moment of his arrest and detention lacked legal basis and was therefore arbitrary, falling under category I. The Working Group refers the case to the Special

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A/HRC/25/60/Add.1, para. 84; E/CN.4/2004/56, para. 49; A/HRC/19/57, para. 48; and CCPR/C/TUR/CO/1, para. 17.

<sup>10</sup> A/HRC/19/57, para. 53.

<sup>11</sup> See, for example, opinions No. 1/2017; No. 79/2018 and No. 49/2019.

<sup>12</sup> A/HRC/30/37, paras. 2–3.

<sup>13</sup> *Ibid.*, para. 11.

<sup>14</sup> *Ibid.*, para. 47 (a).

<sup>15</sup> A/HRC/30/37, para. 3.

<sup>16</sup> See, for example, opinions No. 42/2019; No. 6/2020; and No. 14/2020.

<sup>17</sup> *Fardon v. Australia* (CCPR/C/98/D/1629/2007), para. 7.4 (2). See also opinions No. 20/2017, para. 51; No. 36/2017, para. 103; No. 41/2017, para. 99; and No. 6/2020, para. 50.

<sup>18</sup> See opinions No. 10/2018, para. 55; and No. 14/2020, para. 59.

Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

ii. *Category II*

69. The source has argued that the detention of Mr. Shaath was based purely on his peaceful exercise of the freedom of expression and assembly, as protected by articles 19 and 21 of the Covenant. The Government rejects the allegations, arguing that Mr. Shaath is accused of being part of the Muslim Brotherhood terrorist group. The Working Group notes however that, when arguing as much, the Government failed to explain what Mr. Shaath is alleged to have done as part of the group and how it would amount to a criminal activity. The Working Group also notes that the Government has not replied to the series of allegations by the source concerning the persistent persecution of Mr. Shaath by the authorities prior to his arrest. The Working Group is also mindful that Mr. Shaath was arrested on 5 July 2019 and, to date, remains in pretrial detention, which has been repeatedly renewed with no trial date given, a point which the Working Group examines below.

70. The Working Group recalls that freedom of expression protects even that which may shock, offend or disturb<sup>19</sup> or which may insult an individual or group<sup>20</sup> or criticise an institution.<sup>21</sup> Moreover, the Working Group reiterates that it applies a heightened standard of review in cases in which the freedom of expression and opinion is restricted or where human rights defenders are involved.<sup>22</sup>

71. The Working Group recalls its earlier jurisprudence concerning the arrests and detention of those allegedly associated with the Muslim Brotherhood in Egypt, in which it found that the arrests had been in fact due to the peaceful exercise of the rights protected by the Covenant.<sup>23</sup> The Working Group takes note of the most recent universal periodic review of Egypt, concluded at the very end of 2019, during which nearly 20 States urged Egypt to cease the detention of individuals for exercising their right to freedom of expression, including all journalists, activists and human rights defenders.<sup>24</sup> The Working Group notes that, according to the Government, Mr. Shaath is charged in accordance with the Counter-Terrorism Law, a law which Egypt was urged to review in the context of the same universal periodic review cycle, due to its being utilized to restrict the activities and rights of human rights defenders.<sup>25</sup>

72. The present case concerns a prominent political activist and human rights defender in Egypt who has taken active part in the political arena of Egypt for years. Although it had the opportunity, in its response to the allegations, the Government did not explain the threat posed by Mr. Shaath's conduct to the legitimate interests of a State which it might invoke under articles 19 (3), 21 or 22 of the Covenant. The Government merely argued that all individuals should be equal before the law, including human rights defenders, and that the term "human rights defender" should never be used as a tool to avoid prosecution for criminal acts, especially terrorism. The Government insisted that the arrest of Mr. Shaath was not related to his exercise of protected rights, but rather due to his having violated national law. It failed to provide any information however as to what activities of Mr. Shaath may have amounted to a criminal act.

73. The Working Group takes particular note of the fact that Mr. Shaath was charged with offences under the Counter-Terrorism Act, legislation which it has recognized as failing to respect the principle of legal certainty in the present case (see paras. 66–67 above), as well as previously.<sup>26</sup> The Working Group also takes note of the charges relating to false news

<sup>19</sup> See, for example, opinion No. 33/2019.

<sup>20</sup> See, for example, opinions No. 46/2013; and No. 4/2019.

<sup>21</sup> See, for example, opinions No. 7/2008; and No. 35/2012.

<sup>22</sup> See opinions No. 64/2011, para. 20; No. 4/2012, para. 29; No. 62/2012, para. 39; No. 41/2017, para. 95; No. 57/2017, para. 46; and No. 88/2017.

<sup>23</sup> Opinion No. 21/2010. See also opinions No. 3/2007; and No. 27/2008.

<sup>24</sup> A/HRC/43/16, paras. 31.126, 31.130, 31.163, 31.178, 31.194, 31.197–31.200 and 31.202–31.208.

<sup>25</sup> *Ibid.*, paras. 31.134 and 31.203.

<sup>26</sup> See, for example, opinions No. 42/2019; No. 6/2020; and No. 14/2020.

against Mr. Shaath and recalls that 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.<sup>27</sup>

74. The Working Group consequently finds that the detention of Mr. Shaath resulted from his peaceful exercise of rights protected under articles 19, 21 and 22 of the Covenant and was therefore arbitrary under category II. The Working Group refers the 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, for appropriate action.

*iii. Category III*

75. Given its finding that the detention of Mr. Shaath is arbitrary under category II, the Working Group emphasizes that no trial proceedings should take place. However, multiple pretrial hearings have already taken place, and Mr. Shaath remains detained and charged, with further proceedings ongoing. The information submitted by the source discloses violations of his right to a fair trial during those proceedings, which the Government contests.

76. The source has argued that Mr. Shaath was denied legal assistance when he was first interrogated after his arrest on 5 July 2019 and was then denied the legal assistance of his choice, given that, although a lawyer was present during his interrogation on 6 July 2019, that lawyer was not appointed by Mr. Shaath. Thereafter, the source reports numerous further obstacles encountered by Mr. Shaath in acquiring access to legal assistance, in particular the denial of private communication with his lawyer and the difficulty in communicating with his lawyer when in court due to his being in a glass cage. Although the Government has contested the allegation that Mr. Shaath could not converse with his lawyer when in court, it has not addressed the allegations that Mr. Shaath was initially interrogated without a lawyer and that subsequently his right to private communication with his lawyer was violated. In the light of that fact, the Working Group finds a breach of article 14 (3) (b) of the Covenant and emphasizes that legal assistance should be available at all stages of criminal proceedings, namely, during the pretrial, trial, retrial and appellate stages, to ensure compliance with fair trial guarantees.<sup>28</sup>

77. With regard to the allegations by the source that Mr. Shaath and his lawyer were not given full access to the case file, the Working Group notes the explanation provided by the Government that, although there is confidentiality imposed on the file, it does not mean that Mr. Shaath will not be given access to the file, given that the law does not stipulate when such access should be given and the investigations against him are ongoing.

78. The Working Group cannot accept such an argument, because to follow it would mean that the accused could be kept unaware of the accusations and evidence supporting such accusations until the trial, thereby rendering his ability to mount a credible defence nearly impossible. As the Working Group has previously indicated, every individual deprived of liberty has the right to access to material related to the detention or presented to the court by the State, in order to preserve the equality of arms, including information that may assist the detainee in arguing that the detention is not lawful or that the reasons for the detention no longer apply.<sup>29</sup> However, that right is not absolute, and the disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, and if the State has demonstrated that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.<sup>30</sup> In the present case, Mr. Shaath's pretrial detention has been extended on numerous occasions, and throughout the proceedings

<sup>27</sup> Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda, para. 2 (a); see also opinion No. 46/2020, para. 54.

<sup>28</sup> A/HRC/45/16, para. 53; see also A/HRC/42/39/Add.1, para. 54; and A/HRC/30/37, annex, principle 9.

<sup>29</sup> See, e.g., opinions No. 19/2018; No. 76/2018; No. 53/2019; and No. 29/2020. See also A/HRC/30/37, annex, principle 12 and guideline 13.

<sup>30</sup> *Ibid.*, guideline 13, paras. 80–81.

he has had to contest his continued detention without any knowledge of the evidence against him and has had to prepare for his defence in the absence of any access to his case file. In such circumstances, the Working Group finds a breach of article 14 (1) and (3) (b) of the Covenant.

79. Furthermore, the Working Group notes the allegations that, on at least two occasions, owing to the restrictions imposed to combat the COVID-19 pandemic, the pretrial detention of Mr. Shaath was extended without him or his lawyer being present or even allowed to present their case. The Government has not contested those allegations.

80. Whereas the Working Group is mindful of the global challenges faced in combating the pandemic and the need for various measures to be put into place to that effect, it recalls that arbitrary detention can never be justified, for any reason, whether it be related to national emergency or maintaining public security or health.<sup>31</sup> It recalls its deliberation No. 11 (para. 21), which reads as follows:

If the exigencies of the prevailing public health emergency require restrictions on physical contact, States must ensure the availability of other ways for legal counsel to communicate with their clients, including secured online communication or communication over the telephone, free of charge and in circumstances in which privileged and confidential discussions can take place. Similar measures can be taken for judicial hearings. The introduction of blanket measures restricting access to courts and legal counsel cannot be justified and could render the deprivation of liberty arbitrary.

81. In the present case, the pretrial detention of Mr. Shaath was extended without him or his lawyer being present or alternative means of presenting the defence being provided for. In such circumstances, the Working Group finds a violation of article 14 (3) (d). In making that finding, the Working Group also notes that Mr. Shaath was added to the so-called “terrorist list” through proceedings from which he was entirely excluded and in fact learned about it only through the press. Although the Government has argued that it was an administrative procedure, the Working Group notes the severe consequences that individuals placed on such a list may face. The Working Group determines that it amounts to a violation of the presumption of innocence, in breach of article 14 (2) of the Covenant. In making that finding, the Working Group takes specific note of the source’s submissions that Mr. Shaath was presented in a glass cage during the proceedings. Although the Government has argued that neither Mr. Shaath nor his lawyer made any complaints about it at the time, the Working Group is mindful that the Government has not explained the need for the use of the glass cage. Noting the placing of Mr. Shaath on a “terrorist list” through proceedings from which he was excluded entirely, the Working Group considers that such presentation in a glass cage was prejudicial.<sup>32</sup>

82. The Working Group observes that Mr. Shaath has been in pretrial detention for over 16 months, that his pretrial detention has been renewed repeatedly, even in his and his lawyers’ absence, and that, in its reply, the Government was not able to confirm a trial date for Mr. Shaath. Given that, and mindful that it has already established that the detention of Mr. Shaath is arbitrary under category II, the Working Group also finds that his right to expeditious trial under articles 9 (3) and 14 (3) (c) of the Covenant has been violated.<sup>33</sup>

83. Consequently, taking note of the foregoing, the Working Group considers that the continued detention of Mr. Shaath results from the denial of his fair trial rights, rendering his detention arbitrary under category III.

*iv. Category V*

84. With regard to the allegations by the source under category V, the source has argued that the detention of Mr. Shaath was due to his political activism in Egypt and that he has been subjected to various persecution attempts by the authorities over the years. The

<sup>31</sup> Deliberation No. 11 (A/HRC/45/16, annex II), para. 5.

<sup>32</sup> Human Rights Committee, general comment No. 32 (2007), para. 30.

<sup>33</sup> See opinions No. 15/2020, para. 71; and No. 16/2020, para. 77.

Government denies the allegations, arguing that Mr. Shaath was arrested and remains in detention due to his suspected membership in the Muslim Brotherhood terrorist group.

85. The Working Group has already established that the arrest and detention of Mr. Shaath was arbitrary under category II and considers that the source has presented credible information of the persecution of Mr. Shaath for his political activism spanning many years (see paras. 10 and 24 above), which the Government has failed to rebut. Although the Working Group will not examine the submissions concerning the renewal of Mr. Shaath's passport and the response provided by the Government in that regard per se, it nevertheless takes note of those proceedings in the context of the present discussion.

86. The Working Group has previously concluded that being a human rights defender is a status protected by article 26 of the Covenant.<sup>34</sup> Accordingly, the Working Group finds that Mr. Shaath was deprived of his liberty on discriminatory grounds, that is, due to his political or other opinions and status as a human rights defender, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. His deprivation of liberty is arbitrary and falls within category V. The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders, for further consideration.

v. *Situation of Céline Lebrun, Mr. Shaath's wife*

87. Although the Working Group was not asked to examine the situation of Céline Lebrun, Mr. Shaath's wife, it cannot ignore the allegations made by the source regarding her forceful deportation from Egypt following the arrest of Mr. Shaath. The Working Group reminds the Government that all non-nationals lawfully present in the territory of a State have the right to contest their expulsion from the country and that fair trial guarantees during such proceedings must be strictly observed.

**Disposition**

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

The deprivation of liberty of Ramy Shaath, being in contravention of articles 2, 3, 8, 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 2 (1) and (3), 9, 14, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

89. The Working Group requests the Government of Egypt to take the steps necessary to remedy the situation of Mr. Shaath 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. In particular, the Government is to bring its Counter-Terrorism Law into conformity with the Government's obligations under international human rights law.

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

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

92. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of human rights and fundamental

<sup>34</sup> See, e.g., opinions No. 48/2017; No. 50/2017; No. 19/2018; and No. 83/2018; and A/HRC/36/37, para. 49.

freedoms while countering terrorism, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 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, for appropriate action.

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

#### **Follow-up procedure**

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

95. 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.

96. 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.

97. 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 that they have taken.<sup>35</sup>

*[Adopted on 25 November 2020]*

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<sup>35</sup> Human Rights Council resolution 42/22, paras. 3 and 7.