



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fifth session, 14–18 November 2022****Opinion No. 76/2022 concerning Zack Shahin (Yemen and the United Arab Emirates)**

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 51/8.
2. In accordance with its methods of work,¹ on 3 August 2022 the Working Group transmitted to the Governments of Yemen and the United Arab Emirates a communication concerning Zack Shahin. The Governments have not replied to the communication. Yemen is a party to the International Covenant on Civil and Political Rights, while the United Arab Emirates is not.
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).

¹ [A/HRC/36/38](#).



Submissions

Communication from the source

4. Zack Shahin is a citizen of the United States of America, born on 21 August 1964. Until his arrest in 2008, he was an accomplished businessman. Mr. Shahin's family lives in Texas, United States of America.

5. In the years prior to his arrest, Mr. Shahin was a senior director at PepsiCo and, between 2000 and 2004, an Executive Vice-President of Mashreq Bank in Dubai. In 2004, Mr. Shahin left Mashreq Bank to join a business that became Deyaar. He was recruited to his position at Deyaar by an individual who, until 2008, was a figure of particular power and influence in the United Arab Emirates. This individual held positions of significant authority in both the business and political worlds of the United Arab Emirates.

6. During his time at Deyaar, Mr. Shahin attained rapid success. He transformed what was then a small property business into a multi-billion-dollar public company; Deyaar also became the second largest real estate company in the region. In his role as chief executive officer, Mr. Shahin reported directly to and was closely linked to the above-mentioned influential individual.

7. At the beginning of 2008, the influential individual referred to above was reportedly accused of various financial irregularities and lost his numerous positions of authority. The source notes that, notwithstanding the serious nature of allegations of financial impropriety and criminality levelled against this individual, he was never imprisoned as a result. The source submits that this is particularly illustrative of the different treatment of nationals and non-nationals in the criminal justice system of the United Arab Emirates.

8. The source notes that, at the time of the allegations unfolding against the influential individual referred to above, Mr. Shahin remained the chief executive officer of Deyaar. According to the source, the manner in which Mr. Shahin was treated during and after his arrest is wholly inconsistent with the prosecution of an ordinary case of fraud and consistent with a politically motivated arrest and prosecution.

9. On 23 March 2008, Mr. Shahin reportedly attended a meeting with the General Manager, the Audit Director and the Audit Manager of the Ruler's Court. That meeting was reportedly held to discuss a forthcoming audit of Deyaar. During the meeting, armed members of the State security services entered, confiscated Mr. Shahin's mobile phone, blindfolded him and apprehended him at gunpoint.

10. The source alleges that Mr. Shahin was subsequently detained incommunicado for 17 days. He was deprived, at times, of food, water, sleep and sanitation facilities. During the first three days of his detention, he was made to sit in an upright chair for more than 18 hours a day. He was allegedly forced to sign documents that were blank as well as documents in Arabic, a language that he did not read. During that period, he was reportedly also denied access to legal advice and consular facilities. On 8 April 2008, he was transferred to Bur Dubai Police Station.

11. The source reports that, notwithstanding Mr. Shahin's initial detention in March 2008, his case was not transferred to court for prosecution until 25 March 2009, more than a year after his initial arrest. The first court hearing in the matter did not take place until May 2009. Mr. Shahin was thereafter subjected to a prolonged trial process, which concluded with the convictions being upheld in 2017. He was tried on diverse charges of fraud, forgery, bribery and embezzlement. Notwithstanding the fact that only Deyaar was said to be the victim of these financial transgressions, Mr. Shahin was subjected to multiple indictments and five separate trial processes.

12. According to the source, the arrest, investigation and trial of Mr. Shahin violated the rule of law. Among other things, the prosecution process was allegedly manipulated so that Mr. Shahin was tried as a government employee, notwithstanding the overwhelming evidence showing that Deyaar was not a government institution nor was it listed as such by the Government.

13. In this respect, the source asserts that the designation of Mr. Shahin as a government employee was a deliberate ploy to place him within a significantly harsher sentencing regime. Mr. Shahin was prosecuted and sentenced pursuant to the Penal Code of 1987 (Federal Law No. 3) of the United Arab Emirates. This legislation provides for significantly harsher penalties for individuals deemed to be public officials. For example, under article 217 of the Penal Code, forgery of an official instrument is punished by imprisonment for a period not exceeding 10 years and forgery of an unofficial instrument is punished by detention. Detention is defined in article 69 of the Penal Code as a minimum period of imprisonment of not less than a month and no more than three years, unless the law provides otherwise.

14. The source reports that Mr. Shahin was ultimately sentenced to a cumulative sentence of imprisonment of 25 years, 5 years longer than the maximum allowed in law. Furthermore, the 25-year sentence was therefore significantly greater than that which would have been imposed had Mr. Shahin not been improperly tried as a government employee. The source adds that had Mr. Shahin been tried as a non-government employee, he would have been subject to a maximum sentence of three years in each case and thus would have already completed any sentence. Likewise, any fines that may have been imposed as a non-government employee would have been capped at sums significantly lower and no restitution would have been imposed.

15. Mr. Shahin was detained for a prolonged period before conviction. Importantly, the source recalls that Mr. Shahin's initial arrest and the subsequent investigations and the convictions are likely to have been politically motivated.

16. The source notes that of the five trial processes to which Mr. Shahin was subjected, following his initial three acquittals, he was thereafter convicted and given extraordinarily lengthy sentences of imprisonment. The source notes that it is likely that the last two trial processes and subsequent convictions were neither free nor fair and that those convictions arose as a result of direct edicts issued within the purview of the Head of the Ruler's Court.

a. Bail, assault, travel to Yemen and illegal rendition

17. Following his initial arrest in 2008, Mr. Shahin was reportedly held for four years in custody without conviction. As a result of political pressure, including media attention following a 50-day hunger strike, and the intervention of United States government officials, Mr. Shahin was released on bail on 12 July 2012.

18. Within hours of his release, Mr. Shahin was physically attacked and received what appeared to be credible death threats. As a result, he crossed the border into Oman and then into Yemen and was reissued with a United States passport by the consulate officials there.

19. On 1 September 2012, Mr. Shahin was reportedly detained by a colonel, who was a Liaison Officer at the United Arab Emirates Embassy in Sana'a, and allegedly subjected to an extraordinary rendition to the United Arab Emirates by Emirati forces. The source notes that he was kidnapped and transferred back to the United Arab Emirates on an Emirates aircraft. The source adds that it is overwhelmingly likely that the physical assault and the death threats made against Mr. Shahin were part of a deliberate, orchestrated process conducted by Emirati authorities to coerce him into actions that would give rise to the revocation of his bail. Mr. Shahin was not subjected to any sort of extradition process: his return to the United Arab Emirates was allegedly extrajudicial and in breach of international law.

b. Return to custody and conviction

20. According to the source, Mr. Shahin was returned to custody and thereafter subjected to a prolonged and flawed judicial process. He was charged with forgery, embezzlement and bribery. Notwithstanding the written confirmation from the Legal Affairs Department of the government of Dubai that Deyaar was not affiliated to the government of Dubai and that its employees were not public employees or persons authorized in public service, Mr. Shahin was nonetheless prosecuted, convicted and sentenced on the basis that he was a government employee.

21. Upon his return to custody, Mr. Shahin was reportedly never afforded the opportunity of bail and was subject to a flawed process. According to the source, he was sentenced to 25 years imprisonment, an additional year in lieu of non-payment of a fine, plus a further 20 years imprisonment – pursuant to the provisions of Dubai Law No. 37 of 2009 – to be imposed in lieu of non-payment of restitution; a total of 46 years imprisonment reduced to 41 years. He has been held in custody, except for one short period of bail, since 2008. As a result, the source notes that Mr. Shahin is believed to be the longest-serving American white-collar prisoner overseas.

22. The source submits that the detention of Mr. Shahin amounts to arbitrary detention. Allegations made against Mr. Shahin allegedly bear the hallmarks of a prosecution conducted for political purposes to depose the above-mentioned influential individual. Notwithstanding Mr. Shahin's conviction for fraud and embezzlement of \$27 million (having initially been charged with embezzlement for the sum of \$315 million), Deyaar, having been independently audited by four international accountancy firms, has reportedly never indicated any loss associated with the alleged embezzlement. Mr. Shahin was convicted of the dishonest appropriation of large sums of money from a publicly traded company that has never disclosed any loss caused as a result. Furthermore, the influential individual, allegedly complicit in this wrongdoing, has never been convicted of a related offence.

23. The source reports that, in addition to the 25-year sentence of imprisonment imposed upon Mr. Shahin, he is now also subject to an effective extended sentence of at least 20 years pursuant to Law No. 37, should he fail to pay large sums of money by way of reparation. The source notes that those sums are so large that they are unpayable.

24. Consequent to Mr. Shahin's conviction in case No. 7793, for which he received a sentence of imprisonment of 10 years, it was also ordered that he should not be released until he had repaid 35,568,420 United Arab Emirates dirhams (Dh) to Deyaar as well as further sums of 6,443,165 Dh and 530,000 Dh to Deyaar. In case No. 18662, for which he received a sentence of imprisonment of 15 years, it was also ordered that he should not be released until he had repaid the sum of 56,320,000 Dh to Deyaar.

25. Pursuant to Law No. 37, Mr. Shahin is now subject to an extended sentence at the conclusion of his initial period of imprisonment. This additional sentence has been imposed by invoking provisions of Law No. 37, which came into force on 31 December 2009 and provides for further imprisonment in circumstances in which a prisoner is alleged to have failed to repay sums owed to a creditor. The enactment of this law significantly postdates the commission of the alleged offences for which Mr. Shahin has been convicted and imprisoned, as the offence is alleged to have taken place between 2006 and 2007. The source notes that, mindful of the imposition of significant restitution orders, there can be no doubt that Law No. 37 has been applied in Mr. Shahin's case.

26. The source asserts that the underlying process to which Mr. Shahin was subjected between 2008 and 2017 was fundamentally flawed. During the nine-year period in which he was engaged in his defence, his lawyers were allegedly routinely intimidated and persuaded to recuse themselves. Several of Mr. Shahin's lawyers were reportedly deported. Furthermore, judges sitting in the case routinely recused themselves and/or left the jurisdiction.

27. It is submitted that Mr. Shahin has been given a disproportionate sentence for an offence that he did not commit, in circumstances wherein no evidence has been adduced of any loss to Deyaar, following a fundamentally flawed trial process. Furthermore, he has been sentenced on the basis of a law that was not in force at the time of the alleged offence and remains in custody in Al-Aweer prison in Dubai, in conditions that are significantly detrimental to his health.

c. Analysis of violations

28. The source submits that the detention of Mr. Shahin is arbitrary and falls under categories I, III and V of the Working Group.

29. In relation to category I, the source submits that Mr. Shahin was deprived of his liberty without any legal justification. The basis for justifying detention must be accessible,

understandable, non-retroactive and applied in a consistent and predictable way to everyone equally.²

30. It is argued that Mr. Shahin's ongoing detention is disproportionate. The source notes that any assessment of arbitrariness under customary international law requires a thorough examination of the lawfulness, reasonableness, proportionality and necessity of any measures depriving persons of their liberty. Equally, in order to avoid a characterization of arbitrariness, detention should not continue beyond the period for which the State party can provide appropriate justification.

31. The source further submits that the initial conviction of Mr. Shahin, and in particular the imposition of a retroactive extension of his sentence, meets the requisite definition of arbitrariness.

32. In this respect, the source notes that, while the underlying proceedings resulting in Mr. Shahin's conviction were so unfair as to render his subsequent detention arbitrary in any event, the subsequent extension of his sentence was unfair, unlawful and without legal basis justifying the deprivation of liberty.

33. Mr. Shahin enjoys the inalienable right not to be held guilty or sentenced for any offence on account of an act or omission that did not constitute an offence at the time when it was committed. No greater penalty may be imposed upon Mr. Shahin than the penalty that was applicable at the time of the alleged criminality.

34. A particular component of Mr. Shahin's sentence was imposed pursuant to Law No. 37, which came into force on 31 December 2009. This new law is punitive and retroactive, and it received significant press coverage in the United Arab Emirates. The alleged offence for which Mr. Shahin was arrested, charged, tried and convicted was said to have taken place between 2006 and 2007, and he has been in custody since March 2008.

35. The source highlights that the alleged conduct for which Mr. Shahin was sentenced therefore occurred before the enactment of Law No. 37. Nevertheless, an extended component of Mr. Shahin's sentence of some 20 years was imposed in lieu of non-payment of restitution, and that could only apply pursuant to Law No. 37. With reference to article 11 (2) of the Universal Declaration of Human Rights, the source notes that the principle of *nulla poena sine lege* (no penalty without law) is fundamental to the most basic understanding of the rule of law.³

36. According to the source, the enactment of Law No. 37 and the subsequent application to Mr. Shahin's case represents retroactive law.⁴ The source submits that there is no basis for any distinction between laws dealing with the commission of offences and laws relating to the imposition of sentences, in accordance with the provisions of the Universal Declaration of Human Rights and the Covenant. Hence, the penal punishment must, at the minimum, satisfy the principle of necessity, the prerequisite of injustice and the principle of guilt in the interest of justice.⁵

37. An additional sentence of 20 years imprisonment in lieu of payment of a sum equivalent to approximately \$27.5 million by way of reparation and fines imposed is arbitrary, on the basis of its retroactive nature. There was no law in force in the United Arab Emirates at the time of the commission of the offences for which Mr. Shahin was convicted that provided for the extended sentence. The source also refers to article 27 of the Constitution of the United Arab Emirates.

38. Furthermore, the source submits that, in light of the total failure by the authorities to provide reasons for the initial arrest and subsequent detention of Mr. Shahin, his detention was arbitrary.⁶

² A/HRC/22/44, para. 62.

³ The source also refers to article 15 (1) of the Covenant.

⁴ Opinion No. 10/2018, para. 44.

⁵ Ibid., para. 53.

⁶ Opinion No. 30/2017.

39. Moreover, the source submits that Mr. Shahin was also subjected to an unlawful, extraordinary rendition process in Yemen. On 1 September 2012, security forces in Sana'a reportedly escorted Mr. Shahin to the airport following his receipt of a new United States passport. Upon arrival at Sana'a airport, Mr. Shahin's escort was reportedly detained by armed Yemeni government officials under the apparent control of a colonel, who was a Liaison Officer at the United Arab Emirates Embassy in Sana'a. Mr. Shahin was allegedly forced at gunpoint to board an Emirates flight to Dubai. The source adds that, notwithstanding initial attempts by the crew to abort the flight, it departed to Dubai.

40. According to the source, there can be no doubt that this transfer from Yemen to the territory of the United Arab Emirates was unlawful. The source notes that, for the avoidance of doubt, irrespective of the mechanism of Mr. Shahin's arrival in Yemen from the United Arab Emirates and/or the basis for the same – which was wholly justified given the death threats and assault that he had been subjected to – Mr. Shahin was entitled to due process to ascertain whether he should be transferred from the sovereign territory of Yemen to the United Arab Emirates. The source submits that no such due process was afforded to Mr. Shahin.

41. The source asserts that Mr. Shahin was kidnapped and returned to the United Arab Emirates and has remained in custody ever since. Consequently, the source submits that the rendition of the type to which Mr. Shahin was subjected represents a clear category I violation. Mr. Shahin was not given any arrest warrant in Yemen; he was not informed of the reasons for his transfer nor was he given an opportunity to challenge his transfer from Yemen. The source thus submits that the kidnap and rendition of Mr. Shahin in 2012 are matters relating to categories I and III.

42. In relation to category III, according to the source, there have been numerous breaches of Mr. Shahin's due process and fair trial rights that render his ongoing detention arbitrary.

43. In light of Mr. Shahin's age and the sentence imposed upon him, he has been given a de facto life sentence. Furthermore, mindful of Mr. Shahin's health condition, it is also noted that should he be required to serve the remainder of his sentence it is certain that he will die in prison.

44. The source recalls that Mr. Shahin was arrested without a warrant and in a way that was more consistent with a kidnapping rather than the proper and lawful exercise of the State's law enforcement functions. On 23 March 2008, while in a meeting with the Audit Manager of the Ruler's Court, Mr. Shahin was allegedly abducted at gunpoint. His mobile phone was taken away and turned off. He was taken blindfolded at gunpoint to security premises, where he was kept for 17 days incommunicado. Mr. Shahin was deprived of sleep, food, water and lavatory facilities. He was made to sit upright in a chair and kept in cold rooms. He was also forced to sign blank documents and documents in Arabic language, which he does not read. In addition, he was reportedly denied access to legal advice.

45. The source emphasizes that Emirati security services held Mr. Shahin in incommunicado detention for a period of 17 days. There can be no justification in law in these circumstances for the detention of Mr. Shahin. There has therefore been a breach of Mr. Shahin's fundamental rights. In this regard, the source refers to principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

46. It is argued that Mr. Shahin has been subjected to torture and inhuman and degrading treatment throughout his detention. In addition to the mistreatment amounting to torture to which he was subjected within the first days of detention and throughout his period of imprisonment, he has reportedly been denied access to medical appointments on numerous occasions. More than 20 complaints have reportedly been filed with the United States Embassy and Consulate. He has also missed specialist consultations at the hospital, at least six procedures ordered by doctors and has routinely been denied access to medication. Consequent to his incarceration, Mr. Shahin has been diagnosed with apnoea, cardiovascular diseases, hypertension, high cholesterol, arthritis, diverse orthopaedic problems, gastroenteritis, a cataract in his left eye, as well as depression, panic attacks and anxiety. These significant and ongoing medical conditions can be attributed to the conditions in which Mr. Shahin is being held.

47. Mr. Shahin's ongoing conditions of detention satisfy international definitions of torture. He is now reportedly detained at the Al-Aweer prison, where the conditions of detention are known to meet the necessary threshold of severity for them to be considered as torture – sleep deprivation is routine and prisoners are allegedly held in profoundly cold conditions. Moreover, the disproportionately lengthy periods of imprisonment that Mr. Shahin has been subjected to are likely to have had an adverse psychological effect on him, amounting to torture.

48. The prolonged period before Mr. Shahin's eventual trial undermined his due process rights. The period during which Mr. Shahin remained in custody until he was deemed to be a government employee was significantly greater than the maximum period of any sentence that he might have received as a non-government employee. The designation of Mr. Shahin as a government employee is an example of a deliberate distortion and manipulation of the trial process, such as to be at odds with the rule of law and to render his detention arbitrary.

49. Moreover, there are no particular features of Mr. Shahin's case that would merit any delay in prosecuting him. The source recalls that Mr. Shahin was arrested in 2008 and ultimately convicted in 2017. He was given a sentence of 25 years and a further sentence in lieu of payment for restitution, but no initial consideration was taken into account concerning the prolonged period he had already spent in detention. However, following numerous petitions and the direct intervention of the United States Consul General, the initial period of pre-conviction detention was finally offset. While there has now been a remedy of the initial failure to take account of time spent in pretrial detention, the source notes that the initial failure is wholly consistent with Mr. Shahin's treatment throughout this process and is supportive of his contention that his treatment, both past and ongoing, is arbitrary.

50. The source further notes that, during the protracted trial process to which Mr. Shahin was subjected, there was a total lack of judicial continuity. Judges often recused themselves or otherwise left the country. Likewise, lawyers retained by Mr. Shahin were allegedly recused, deported or threatened. Between 2009 and 2017, more than 20 judges sat in hearings during the course of the prosecution process. The source asserts that this lack of continuity represents a failure to afford Mr. Shahin a fair trial.

51. The source notes breaches of Mr. Shahin's right to prepare a defence. In this regard, the source recalls that, during the prosecution of Mr. Shahin, 28 public prosecution witnesses were unavailable for cross-examination by the presiding judges and the defence. Various witnesses gave evidence in 2008 to the public prosecutor and thereafter they were not available for cross-examination. Furthermore, documents relied upon by the prosecution during the proceedings against Mr. Shahin were reportedly not available for examination by Mr. Shahin's legal team.

52. The source further notes the absence of any evidence of sufficient weight that would justify Mr. Shahin being charged, let alone convicted. The authorities have not presented any credible evidence to raise a prima facie case against Mr. Shahin. The absence of proper evidence strongly corroborates the suggestion that the prosecution of Mr. Shahin was political. He was tried as a government employee, without justification. Mr. Shahin and his lawyers obtained written confirmation from the Legal Affairs Department of the government of Dubai expressly confirming that Deyaar was not a government entity and that its employees were not public officials. Furthermore, notwithstanding the significant sums said to have been embezzled, Deyaar has never posted any loss in its accounts. Furthermore, Mr. Shahin's former co-accused was acquitted.

53. In relation to category V, the source notes that Mr. Shahin's detention and the length of the sentence imposed on him are at odds with sentences imposed – or time required to be served in prison – on other individuals of Emirati origin. Even in situations in which sentences of comparable length are imposed, Emirati nationals are typically released after only having served a fraction of their sentences. The source is also aware of numerous other non-Emirati nationals who have had similar extensive sentences imposed, again apparently at odds with those typically imposed on Emirati nationals.

54. The source therefore argues that it is highly likely that there is a deliberate policy of imposing prolonged sentences on non-Emirati nationals. Mr. Shahin is reportedly believed to be the longest serving prisoner convicted of a financial crime in Dubai. Unlike numerous

Emirati nationals who have also been convicted of financial crimes and released well before the term of their sentences, Mr. Shahin has reportedly been detained in custody with no chance of parole.

55. The source recalls that Mr. Shahin's former co-accused was never remanded in custody, notwithstanding his apparently greater culpability in the alleged offence.

56. In June 2009, the court imposed bail conditions on Mr. Shahin, including a security deposit of 4 million Dh (approximately \$1 million). It is noted that the same court, which dealt with other financial crime matters at approximately the same time, reportedly treated Emirati defendants far more leniently. The source submits that there tends to be a disparity in both bail conditions and sentence outcomes for Emirati nationals involved in similar types of cases. The source also points to many further examples of systematic leniency as regards the actual time served of a sentence in cases concerning Emirati nationals.

57. The source therefore concludes that there is a pattern of discriminatory behaviour in which non-Emirati nationals are regularly detained in custody for longer periods of time than those served by Emirati nationals.

Responses from the Governments

58. On 3 August 2022, the Working Group transmitted the allegations made by the source to the Governments of Yemen and the United Arab Emirates through its regular communications procedure.

59. The Working Group requested the Government of Yemen to provide, by 3 October 2022, detailed information about the arrest of Mr. Shahin on 1 September 2012 and clarify the legal provisions justifying his arrest, as well as his subsequent transfer to the United Arab Emirates.

60. The Working Group further requested the Government of the United Arab Emirates to provide, by 3 October 2022, detailed information about Mr. Shahin and clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of the United Arab Emirates under international human rights law. Moreover, the Working Group called upon the Government of the United Arab Emirates to ensure the physical and mental integrity of Mr. Shahin.

61. The Working Group regrets that it did not receive responses from the Governments, nor did they request an extension of the time limit for their replies, as is provided for in the Working Group's methods of work.

Discussion

62. The present case involves two States, and the Working Group will discuss the issues relating to each State separately. In determining whether Mr. Shahin's detention is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.⁷ In the present case, both Governments have chosen not to challenge the prima facie credible allegations made by the source.

63. The Working Group wishes to reaffirm that States have the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including the liberty of person, and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights, the Covenant and other applicable international and regional instruments.⁸

⁷ A/HRC/19/57, para. 68.

⁸ General Assembly resolution 72/180, fifth preambular paragraph; Human Rights Council resolutions 41/2, second preambular paragraph; 41/6, para. 5 (b); 41/10, para. 6; 41/17, first preambular paragraph; 43/26, thirteenth preambular paragraph; 44/16, twenty-fifth preambular paragraph; 45/19, ninth preambular paragraph; 45/20, second preambular paragraph; 45/21, third preambular paragraph; and 45/29, third preambular paragraph. See also Commission on Human Rights resolutions 1991/42,

Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and obliged to assess the circumstances of the detention and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.⁹

a. Allegations against Yemen

64. In the absence of a response from the Government of Yemen, the Working Group has decided to render the present opinion in conformity with paragraph 15 of its methods of work.

i. Category I

65. With respect to Mr. Shahin's arrest and detention by Yemeni officials prior to his forced transfer to the United Arab Emirates on 1 September 2012, the source submits, and the Government does not contest, that Mr. Shahin was not presented with an arrest warrant or informed of the reasons for his arrest by the Yemeni officials at the time of his arrest in Sana'a airport on 1 September 2012. Rather, upon arrival at Sana'a airport, Mr. Shahin's escort was reportedly detained by armed Yemeni government officials under the apparent control of a colonel, who was a Liaison Officer at the United Arab Emirates Embassy in Sana'a. Mr. Shahin was allegedly forced at gunpoint to board an Emirates flight to Dubai.

66. In order for a deprivation of liberty by the Yemeni officials to have a legal basis, the authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant, which was not implemented in the present case.¹⁰

67. International law includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights, as well as under principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹¹

68. The Working Group finds that, in order to invoke a legal basis for deprivation of liberty, the authorities of Yemen should have informed Mr. Shahin promptly of the reasons for his arrest, at the time of arrest, and of the charges against him.¹² Their failure to do so violates article 9 of the Universal Declaration of Human Rights and article 9 (1) and (2) of the Covenant, as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and renders his arrest devoid of any legal basis.¹³

69. The Working Group further observes that Mr. Shahin was not afforded the right to take proceedings before a court in Yemen so that the court may decide without delay on the lawfulness of his detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of

para. 2; and 1997/50, para. 15; Human Rights Council resolutions 6/4, para. 1 (a); and 10/9, para. 4 (b); and opinions No. 41/2014, para. 24; No. 3/2018, para. 39; No. 18/2019, para. 24; No. 36/2019, para. 33; No. 42/2019, para. 43; No. 51/2019, para. 53; No. 56/2019, para. 74; No. 76/2019, para. 36; No. 6/2020, para. 36; No. 13/2020, para. 39; No. 14/2020, para. 45; and No. 32/2020, para. 29.

⁹ See opinions No. 1/1998, para. 13; No. 82/2018, para. 25; No. 36/2019, para. 33; No. 42/2019, para. 43; No. 51/2019, para. 53; No. 56/2019, para. 74; No. 76/2019, para. 36; No. 6/2020, para. 36; No. 13/2020, para. 39; No. 14/2020, para. 45; and No. 32/2020, para. 29.

¹⁰ See, for example, opinions No. 10/2018, paras. 45 and 46; No. 36/2018, para. 40; No. 46/2018, para. 48; No. 9/2019, para. 29; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; and No. 46/2019, para. 51.

¹¹ The Working Group has maintained that the practice of arresting persons without a warrant renders their detention arbitrary. See, for example, opinions No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; and No. 82/2018, para. 29. See also article 14 (1) of the Arab Charter on Human Rights.

¹² See, for example, opinion No. 10/2015, para. 34. See also opinions No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; and No. 46/2019, para. 51.

¹³ See also article 14 (1) and (3) of the Arab Charter on Human Rights.

All Persons under Any Form of Detention or Imprisonment.¹⁴ In addition, the Working Group notes that judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.¹⁵

70. The Working Group finds that Mr. Shahin's forced transfer from Yemen to the United Arab Emirates, coordinated by both Governments, circumvented the regular extradition procedure and resulted in deprivation of his liberty without a legal basis, in violation of articles 3, 9 and 13 of the Universal Declaration of Human Rights, as well as article 9 (1) and (2) of the Covenant.

71. For these reasons, the Working Group considers that there was no legal basis for the arrest, detention and forced transfer of Mr. Shahin. The Working Group concludes that his deprivation of liberty lacks a legal basis and is thus arbitrary, falling under category I.

ii. Category III

72. The Working Group notes that Mr. Shahin was seized and transferred to the United Arab Emirates by the authorities without the benefit of a fair and public hearing by an independent and impartial tribunal. Involuntary expulsion to a foreign State without a hearing by judicial authorities cannot be in conformity with the due process of the law.

73. As the Working Group has previously observed,¹⁶ international law regarding extradition provides procedures that must be observed by countries in arresting, detaining and returning individuals to face criminal proceedings in another country in order to ensure that their right to a fair trial is protected. Those procedures have not been observed in the present case and the Working Group considers that the arrest, detention and forced transfer of Mr. Shahin did not meet any minimum international standards of due process. Furthermore, Mr. Shahin never had any access to legal counsel, as he was removed to the United Arab Emirates immediately after apprehension.

74. As the Working Group has stated, individuals should not be expelled to another country when there are substantial grounds for believing that their life or freedom would be at risk, or they would be in danger of being subjected to torture or ill-treatment.¹⁷ In addition, the Working Group considers that the risk of arbitrary detention in the receiving State must also be among the elements taken into consideration before individuals are expelled. The Working Group notes that the Government of Yemen did not avail itself of the option of resorting to the regular extradition procedure, or obtaining credible assurances from the United Arab Emirates on due process and fair trial guarantees or on prevention of torture and enforced disappearance. The Working Group considers that Mr. Shahin's forced transfer to the United Arab Emirates by Yemen violated the principle of non-refoulement, as well as other obligations of Yemen under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 7 of the Covenant.

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

b. Allegations against the United Arab Emirates

76. In the absence of a response from the Government of the United Arab Emirates, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

¹⁴ See also articles 12, 14 (1), (5) and (6) and 23 of the Arab Charter on Human Rights; and 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 (A/HRC/30/37, annex), principles 2 and 3 and guideline 1.

¹⁵ See opinions No. 35/2018, para. 27; No. 83/2018, para. 47; No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64.

¹⁶ See opinions No. 11/2018, para. 53; No. 68/2018, para. 58; and No. 10/2019, para. 71.

¹⁷ A/HRC/4/40, paras. 44 and 45.

i. Category I

Arrest without a warrant

77. The source submits, and the Government does not contest, that Mr. Shahin's initial arrest by armed members of the State security services on 23 March 2008, while he was attending a meeting with the General Manager, the Audit Director and the Audit Manager of the Ruler's Court, was at gunpoint and without a warrant.

78. The Working Group would like to reiterate that, for deprivation of liberty to be justified, it must have a legal basis. It is not sufficient for there to be a national law or practice authorizing the arrest and detention of a suspect. The authorities must invoke a legal basis consistent with international human rights standards, through an arrest warrant, and apply it to the circumstances of the case.¹⁸ This does not appear to have been the case with Mr. Shahin.

79. International human rights law requires arrests must be based on a duly issued arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

80. The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary.¹⁹ The Working Group notes the source's contention that the arrest of Mr Shahin was consistent with a kidnap or abduction and that there was no arrest warrant presented. The arrest was thus in violation of article 9 of the Universal Declaration of Human Rights. The Working Group reiterates that any deprivation of liberty without, as in the present case, a valid arrest warrant is arbitrary and lacks legal basis and is therefore arbitrary under category I.

Incommunicado detention

81. The source submits, and the Government does not contest, that Mr. Shahin was held incommunicado for 17 days from the date of his arrest and was allegedly tortured during this period. During that period, he allegedly was not brought before a competent judicial authority and neither had he access to a lawyer or his family. International standards set out in the Working Group's jurisprudence prescribe that the arrested person is to be brought before a judge within 48 hours.²⁰ The Working Group finds that, in failing to bring Mr. Shahin before

¹⁸ See, for example, opinions No. 93/2017, para. 44; No. 10/2018, para. 45 and 46; No. 36/2018, para. 40; No. 46/2018, para. 48; No. 9/2019, para. 29; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; No. 46/2019, para. 51; No. 65/2019, para. 59; No. 71/2019, para. 70; No. 72/2019, para. 40; No. 82/2019, para. 74; No. 6/2020, para. 39; No. 11/2020, para. 37; No. 13/2020, para. 46; No. 14/2020, para. 49; No. 31/2020, para. 40; No. 32/2020, para. 32; No. 33/2020, paras. 53 and 71; and No. 34/2020, para. 45.

¹⁹ See, for example, decisions No. 1/1993, paras. 6 and 7; No. 3/1993, paras. 6 and 7; No. 4/1993, para. 6; No. 5/1993, paras. 6, 8 and 9; No. 27/1993, para. 6; No. 30/1993, paras. 14 and 17 (a); No. 36/1993, para. 8; No. 43/1993, para. 6; and No. 44/1993, paras. 6 and 7. For more recent jurisprudence, see opinions No. 38/2013, para. 23; No. 48/2016, para. 48; No. 21/2017, para. 46; No. 63/2017, para. 66; No. 76/2017, para. 55; No. 83/2017, para. 65; No. 88/2017, para. 27; No. 93/2017, para. 44; No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; No. 82/2018, para. 29; No. 6/2020, para. 40; No. 11/2020, para. 38; No. 13/2020, para. 47; No. 14/2020, para. 50; No. 31/2020, para. 41; No. 32/2020, para. 33; No. 33/2020, para. 54; and No. 34/2020, para. 46.

²⁰ See opinions No. 57/2016, paras. 110 and 111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; No. 20/2019, para. 66; No. 26/2019, para. 89; No. 30/2019, para. 30; No. 36/2019, para. 36; No. 42/2019, para. 49; No. 51/2019, para. 59; No. 56/2019, para. 80; No. 76/2019, para. 38; No. 82/2019, para. 76; No. 6/2020, para. 45; No. 14/2020, para. 53; No. 31/2020, para. 45; No. 32/2020, para. 38; No. 33/2020, para. 75; and No. 34/2020, para. 51. See also Human Rights Committee, general comment No. 35 (2014), para. 33, citing *Kovsh v. Belarus*

a judicial authority promptly, the Government violated articles 3 and 9 of the Universal Declaration of Human Rights and principles 11, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.²¹

82. Moreover, the Working Group has consistently asserted that holding persons at secret, undisclosed locations, and in circumstances that are not revealed to their families, violates the right of those persons to contest the legality of their detention before a court or tribunal. Judicial oversight of any detention is a central safeguard for personal liberty and is critical in ensuring that detention has a legitimate basis. Mr. Shahin was, for some time, unable to challenge his detention before a court. Consequently, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights was violated. He was also placed outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights.

83. The act of keeping detainees at locations unknown to their families and lawyers entails a wilful refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention. The detention thus lacks any valid legal basis under those circumstances and is inherently arbitrary as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights. The Government's failure to provide notification of the arrest and location of detention to Mr. Shahin's family also violated principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Additional retroactive sentence

84. The source reports that the alleged conduct for which Mr. Shahin was sentenced occurred before the enactment of Law No. 37, which came into force on 31 December 2009. Nevertheless, an extended component of Mr. Shahin's sentence of some 20 years has been imposed pursuant to Law No. 37, in lieu of non-payment of restitution.

85. The source submits that the subsequent extension to Mr. Shahin's sentence and his ongoing detention pursuant to Law No. 37 is unfair, unlawful and without legal basis justifying the deprivation of liberty. The source adds that the new law is punitive. The alleged criminality for which Mr. Shahin was arrested, charged, tried and convicted was said to have taken place between 2006 and 2007. Mr. Shahin has been in custody since 2008. The alleged conduct for which Mr. Shahin now remains in prison therefore occurred before the enactment of Law No. 37.

86. The Working Group observes that the principle of legality (*nulla poena sine lege*) is a fundamental guarantee, which includes:²²

- (a) The principle of non-retroactivity (*nullum crimen, nulla poena sine lege praevia*);
- (b) The prohibition against analogy (*nullum crimen, nulla poena sine lege stricta*);
- (c) The principle of certainty (*nullum crimen, nulla poena sine lege certa*);
- (d) The prohibition against uncodified – for example, unwritten or judge-made – criminal provisions (*nullum crimen, nulla poena sine lege scripta*).

87. Accordingly, an act is only punishable by law if, when committed, it was the object of a valid, sufficiently precise, written criminal law to which a sufficiently certain sanction was attached.²³

(CCPR/C/107/D/1787/2008), paras. 7.3–7.5. See also CCPR/C/79/Add.89, para. 17; CCPR/C/SLV/CO/6, para. 14; and CCPR/CO/70/GAB, para. 13.

²¹ See also articles 14 (1) and (5) and 23 of the Arab Charter on Human Rights.

²² Opinion No. 10/2018, para. 50, in which the Working Group cites, inter alia, the *Max Planck Encyclopedia of Public International Law*.

²³ Ibid.

88. Mr. Shahin's ongoing detention is based on a conviction under Law No. 37, being applied retroactively. As such, the Working Group finds a violation of article 11 (2) of the Universal Declaration of Human Rights.

89. For the reasons set out above, the Working Group finds that the Government failed to establish a legal basis for the arrest and detention of Mr. Shahin and that his detention is arbitrary under category I.

ii. Category III

90. The source argues that, in addition to the breaches of category I, the Emirati authorities have committed significant violations of Mr. Shahin's due process rights through total or partial non-observance of the international norms associated with that right, as established and protected under various international human rights instruments, notably the Universal Declaration of Human Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment²⁴ and that those violations are serious and significant.

91. In particular, the source submits that, following his apprehension on 23 March 2008, Mr. Shahin was subsequently detained for 17 days incommunicado. He was allegedly forced to sign documents that were blank, as well as documents in Arabic, a language he did not read. During this period, he was reportedly also denied access to legal advice and consular facilities.

92. Furthermore, the source has also presented a prima facie credible allegation of the denial of the right to present a defence and to present and cross-examine witnesses, in a judicial process that ensued. This allegation was un rebutted by the State. In particular, the source notes that, during the prosecution of Mr. Shahin, 28 public prosecution witnesses were unavailable for cross-examination by presiding judges and the defence. Various witnesses who gave evidence in 2008 to the public prosecutor thereafter were not available for cross-examination. Furthermore, documents relied upon by the prosecution during the proceedings against Mr. Shahin were reportedly not available for examination by Mr. Shahin's legal team.

93. His inability to instruct and consult a lawyer has also denied Mr. Shahin the ability to appear before an independent and impartial tribunal to determine his rights, and to seek an effective remedy from a competent national tribunal for the violation of his fundamental rights, thus preventing him from challenging the circumstances of his detention, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights.

94. The Working Group notes with concern Mr. Shahin's treatment by the authorities, and that he was induced to sign documents in Arabic – a language that he was unable to read – without any legal representation. The Working Group finds that this failure to provide translation assistance constitutes a breach of principle 14 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, as Mr. Shahin could not read or understand Arabic.²⁵

95. The Working Group recalls that persons deprived of their liberty should have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension.²⁶ Upon apprehension, all persons should be promptly informed of this right.²⁷ This right entitles persons deprived of liberty to be accorded adequate time and facilities to prepare their defence, including through the disclosure of information.²⁸

²⁴ Opinion No. 48/2016, para. 41.

²⁵ See, for example, opinions No. 70/2021, para. 107; and No. 19/2022, para. 61.

²⁶ 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, principle 9 and guideline 8; [A/HRC/45/16](#), paras. 51 and 52; and the Basic Principles on the Role of Lawyers, paras. 16–22.

²⁷ 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, principle 9, first paragraph.

²⁸ *Ibid.*, third paragraph.

96. The Government has breached Mr. Shahin's right to legal assistance at all times, which is inherent in the right to liberty and security of person and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights, as well as principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and principle 1 of the Basic Principles on the Role of Lawyers.²⁹ The Working Group considers that these violations substantially undermined Mr. Shahin's capacity to defend himself in the judicial proceedings.³⁰

97. Regarding the right to equality before courts and tribunals and to a fair trial, there is a strict obligation to respect the right to have witnesses admitted who are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses for the prosecution at some stage of the proceedings. In the present case, that right was denied to Mr. Shahin; the fact that witnesses were not available to be cross-examined by the defence, as well as denial of Mr. Shahin's legal team's access to documents used by the prosecution, bears the hallmarks of a serious denial of equality of arms in the proceedings. Accordingly, the Working Group finds that the rights of Mr. Shahin to equality of arms and to a fair hearing under articles 10 and 11 (1) of the Universal Declaration of Human Rights were violated.

98. Furthermore, there can be no justification for a prolonged trial, during which time Mr. Shahin remained deprived of his liberty, a manifest violation of the right to be tried without undue delay, guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights.

99. Moreover, the Working Group also expresses its grave concern at the prima facie allegation of torture that Mr. Shahin was subjected to throughout his detention. He was also reportedly denied access to medical appointments and medications. The source also submits that the present conditions of detention of Mr. Shahin at the Al-Aweer prison fit the definition of torture. He is reportedly deprived of sleep and allegedly held in profoundly cold conditions.

100. Accordingly, the Working Group finds that the source has presented credible allegations that the absolute prohibition of torture enshrined in article 5 of the Universal Declaration of Human Rights and articles 2 and 16 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been violated in Mr. Shahin's case. The failure by the United Arab Emirates to take remedial measures also violates articles 12, 13 and 14 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

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

iii. Category V

102. The source contends that the deprivation of liberty of Mr. Shahin constitutes a violation of international law on the grounds of discrimination based on his national status or origin, arguing that Mr. Shahin's detention and length of the sentence imposed on him is not comparable to those imposed on other individuals of Emirati origin.

103. The source also claims that bail conditions for non-Emirati nationals are more onerous than for Emirati nationals in similar circumstances. The source alleges a pattern of discriminatory behaviour in which non-Emirati nationals are regularly detained in custody

²⁹ A/HRC/29/26/Add.2, para. 56.

³⁰ 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, principle 9, first and fourth paragraphs, and guideline 8, first and fifth paragraphs.

for longer periods than Emirati nationals. This, according to the source, renders the deprivation of liberty in these cases, and in Mr. Shahin's case, arbitrary under category V.

104. While there is no evidence to suggest that the arrest, trial and detention on a criminal charge of Mr. Shahin was based solely on his nationality or origin, it seems that the uncontested narration of the source regarding the treatment of non-Emirati nationals in the justice system, bail conditions, sentencing and remission of sentences follow a discriminatory path. The Working Group is thus inclined to accept the source's submission and considers that Mr. Shahin's deprivation of liberty constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights on the grounds of discrimination based on his being a non-national. His deprivation of liberty therefore falls under category V.

Disposition

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

Regarding Yemen:

The deprivation of liberty of Zack Shahin, being in contravention of articles 3, 8, 9 and 13 of the Universal Declaration of Human Rights and articles 7 and 9 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

Regarding the United Arab Emirates:

The deprivation of Zack Shahin, being in contravention of articles 2, 3, 5, 6, 7, 9, 10 and 11 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, III and V.

106. The Working Group requests the Governments of Yemen and the United Arab Emirates to take the steps necessary to remedy the situation of Mr. Shahin 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. The Working Group encourages the Government of the United Arab Emirates to accede to the International Covenant on Civil and Political Rights.

107. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be for the Government of the United Arab Emirates to release Mr. Shahin immediately and for both Governments to accord him an enforceable right to compensation and other reparations, in accordance with international law.

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

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

110. The Working Group requests both Governments to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

111. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Governments of Yemen and the United Arab Emirates to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Shahin has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Shahin;
- (c) Whether an investigation has been conducted into the violation of Mr. Shahin'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 Yemen and the United Arab Emirates with their international obligations in line with the present opinion;

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

112. The Governments are invited to inform the Working Group of any difficulties they 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.

113. The Working Group requests the source and the Governments 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.

114. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.³¹

[Adopted on 16 November 2022]

³¹ Human Rights Council resolution 51/8, paras. 6 and 9.