



General Assembly

Distr.: General
27 February 2025
English
Original: French

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 101st session, 11–15 November 2024

Opinion No. 61/2024, concerning Abir Moussi (Tunisia)

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, on 8 July 2022, the Working Group transmitted to the Government of Tunisia a communication concerning Abir Moussi.¹ The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States Parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

* Mumba Malila did not participate in the discussion of the case.

¹ [A/HRC/36/38](#).



1. Submissions**(a) Communication from the source**

4. Abir Moussi, born on 15 March 1975 in Tunisia, is a Tunisian politician and lawyer at the Tunis bar. She is President of the Parti Destourien Libre and usually resides in L'Ariana, Tunisia.

(i) Arrest and detention

5. The source explains that Ms. Moussi has been the subject of three committal orders in three different cases.

a. First case

6. On 3 October 2023, Ms. Moussi, accompanied by a lawyer and a bailiff, went to the registry office of the Tunisian Presidency in Carthage to file mandatory preliminary appeals to the administrative court. The purpose of these appeals was to challenge Presidential Decrees Nos. 2023–588, 2023–589 and 2023–590 of 21 September 2023, which were seen as aimed at excluding certain categories of people, including Ms. Moussi, from participating in political life. These preliminary appeals alleged the lack of jurisdiction of the President of the Republic to amend or reform an electoral law by decree, the unconstitutionality and lack of jurisdiction of the President to create new constituencies, and the violation of articles 91 and 105 of the Constitution.

7. In order to ensure that the appeals were in order and admissible, Ms Moussi reportedly asked the registry office officials for a discharge note acknowledging the filing of the mandatory preliminary appeals. After waiting for two hours, the registry refused to give her the receipt for registering her appeals. A discussion between Ms. Moussi, the bailiff and the security guards followed, during which Ms. Moussi remained polite and cooperative. The bailiff reportedly suggested waiting until the time of departure and the closing of the offices to note the refusal to register and thus avoid a pronouncement of inadmissibility before the Tunis administrative court. However, before the office closed, a car arrived and a woman got out, asking Mrs. Moussi to come closer and urging her to get in the car. As Ms. Moussi approached, law enforcement officers allegedly violently tried to drag her into the vehicle. Ms. Moussi threw herself to the ground and the officers hit her, causing trauma to her shoulders and arms. Ms. Moussi reportedly fainted as a result of the officers' violence.

8. Ms. Moussi was reportedly taken to the police station, without being formally arrested and without being given any document or informed of any legitimate reason. On her arrival at the police station, the officers allegedly jostled and verbally humiliated her before taking her to the office of the investigating police officer. Ms. Moussi was reportedly unable to speak to her lawyer and was placed in police custody without the presence of a lawyer. Her cell phones containing confidential information covered by professional secrecy were seized, and she was forced to unlock them. In addition, the Bar Association was not informed of Ms. Moussi's arrest until later.

9. According to the source, the forceful arrest of Ms. Moussi by the police caused her significant bodily injury, which was confirmed by a doctor. The prison administration reportedly refused to give a copy of Ms. Moussi's medical file to her lawyers, despite their request. The source notes that Ms. Moussi is currently taking medication prescribed by a doctor, without knowing the correct dosage or ingredients, and that her health has deteriorated.

10. The source reports that, after her arrest, Ms. Moussi was not advised of her rights and did not have access to a lawyer until 5 October 2023. On 4 October 2023, Ms Moussi's lawyers reportedly contested this procedural irregularity with the public prosecutor.

11. On 5 October 2023, the public prosecutor reportedly requested the opening of a judicial investigation into Ms. Moussi for having committed, on Tunisian territory, on 3 October 2023, an attack with the aim of changing the form of government or inciting the inhabitants to arm themselves against each other or to bring about disorder, murder and pillage, on the basis of article 72 of the Criminal Code; for having, by means of violence,

assault, threats or fraudulent manoeuvres, brought about or maintained, or attempted to bring about or maintain, an individual or collective work stoppage, on the basis of article 136 of the Criminal Code; and for having violated articles 27 and 87 of Organic Act No. 2004–63 of 27 July 2004, on the protection of personal data. After interviewing her, the examining magistrate reportedly issued a detention order against Ms. Moussi for a period of 6 months, starting on 5 October 2023.

12. The source notes that, if justified by the interests of the investigation, the examining magistrate may, in the case of a felony, extend the period of detention twice, for a further 4 months each time, after consulting the public prosecutor and by means of a reasoned order. The source explains that, if the trial judge has not ruled on the case by 5 December 2024, the examining magistrate will have to order her release.

b. Second case

13. On 16 January 2024, the public prosecutor reportedly referred Ms. Moussi to the examining magistrate for the offence of false information aimed at disturbing public order, on the basis of article 24 of Decree-Law No. 2022–54 of 13 September 2022. This prosecution was allegedly brought after a statement criticizing the Independent High Authority for Elections.

14. According to the source, the examining magistrate, without having interviewed Ms. Moussi, issued a six-month committal order against her, starting on 1 February 2024. Five months later, and despite being held in detention, Ms. Moussi had still not been interviewed or indicted.

15. The source notes that, while Ms. Moussi's pretrial detention can be extended twice, for four months each time, the examining magistrate will have to release her on 1 April 2025 if the trial judge has not ruled on the case.

c. Third case

16. The source notes that Ms. Moussi is also being prosecuted in another case for the offence of false information aimed at disturbing public order. On 21 February 2024, the Independent High Authority for Elections reportedly filed a complaint with the public prosecutor's office of Tunis following a statement in which Ms. Moussi had criticized the authority's impartiality.

17. On 21 February 2024, after interviewing Ms. Moussi, the examining magistrate reportedly issued a six-month detention order against her. Here again, the source explains that the examining magistrate will have to pronounce a release on 21 April 2025 if the trial judge has not ruled on the case.

18. According to the source, the charge against Ms. Moussi follows her open criticism of the process for the parliamentary elections to be held 17 December 2022. The source asserts that Ms. Moussi's referral to the examining magistrate in this new case is intended solely to prolong her detention and multiply the number of legal proceedings. It notes that Ms. Moussi has still not been heard by the examining magistrate, despite being held in detention.

(ii) *Legal analysis*

19. The source argues that Ms. Moussi's detention is arbitrary under categories I, II, III and V of the methods of work of the Working Group.

a. Category I

20. The source asserts that Ms. Moussi's detention has no legal basis, as no offence has been committed. In the view of the source, Ms. Moussi has not committed any act punishable by law and is being held solely because of her political status as a potential opponent in the 2024 presidential election.

21. The source claims that Ms. Moussi's custody is invalid in several respects, and that this demonstrates a conspiracy against her. It considers that the proceedings in the first case are contrary to articles 33, 35 and 36 of the Constitution, article 85 of the Code of Criminal

Procedure, article 46 of Decree-Law No. 2011–79 of 20 August 2011 and international law, and that the proceedings in the second and third cases are contrary to article 46 of Decree-Law No. 2011–79 and article 80 of the Code of Criminal Procedure.

22. In this respect, the source notes that the procedural measures were carried out as part of a flagrante delicto investigation, even though there was no indication of the existence of an offence that was being or had just been committed. She added that the proceedings against Ms. Moussi were null and void insofar as she should have benefited from a derogatory regime. Indeed, according to the source, as a member of the Tunisian Bar, Ms. Moussi should have benefited from the regime set out in article 46 of Decree-Law No. 2011–79, which stipulates that “in the event of criminal proceedings against a lawyer, the president of the competent regional section must be notified immediately. The lawyer must be referred by the public prosecutor to the examining magistrate, who must question the lawyer in the presence of the president of the competent regional section or a person appointed by him or her”. The same article stipulates that, in cases of flagrante delicto, criminal investigation officers may initiate all procedures with the exception of hearing the lawyer. The source explains that article 13 bis of the Code of Criminal Procedure requires that the written report must, under penalty of nullity, include the date and time of the start and the end of the questioning. Consequently, given that placement in police custody requires a record of the date and time of the start of questioning, and that the police officers cannot themselves proceed with the questioning of a lawyer, the source asserts that the police officers’ decision to place Ms. Moussi in custody is null and arbitrary.

23. In addition, the source notes that Decree-Law No. 2011–79 on the legal profession provides a framework for searches of cell phones and requires the opinion of the relevant regional section to be sought, to ensure that professional secrecy is preserved. The source asserts that Ms. Moussi’s detention in custody is null and void, as, despite containing confidential information relating to her clients, her cell phones were searched and unlocked by the police officer without her consent and without the competent regional section being notified. According to the source, a lawyer’s cell phone is a natural electronic extension of the law firm, containing exchanges with clients, files and pieces of evidence. Thus, by confiscating Ms. Moussi’s cell phones and searching through their content, the police officers committed a serious and disproportionate infringement of her fundamental freedoms and the rights of the defence.

24. The source also claims that the examining magistrate placed Ms. Moussi in detention in violation of article 84 of the Code of Criminal Procedure, which provides that pretrial detention is an exceptional measure, subject to rules. It adds that Ms. Moussi was taken into custody on 5 October 2023 and has not been released, despite the fact that the time limits prescribed under article 85 of the Code of Criminal Procedure have been exceeded. Article 85 stipulates that pretrial detention may not exceed six months, unless extended by reasoned order. In this case, the committal order has reportedly not been extended and, to date, no judgment has been handed down. The source asserts that Ms. Moussi is therefore being held illegally.

25. In addition, the source notes that article 85 of the Code of Criminal Procedure makes pretrial detention conditional on the existence of serious presumptions that detention is necessary as a security measure to prevent further offences from being committed, as a guarantee of the enforcement of a sentence or as a means of ensuring the security of information. In this case, the source considers that the conditions of article 85 have not been met and that Ms. Moussi’s detention is unjustified. It argues that the charges are ill-founded because they are too general, that Ms. Moussi does not constitute a danger to public order, and that the absence of any criminal record in relation to her confirms that there is no risk of repetition. According to the source, the examining magistrate could have settled for a simple measure of judicial oversight, a ban on leaving the country or even a restriction of certain rights. With regard to the second and third cases, the source notes that there is no risk of absconding, a substantial element provided for in article 85, since Ms. Moussi was already subject to another committal order. Noting the multiple proceedings brought against Ms. Moussi, the source considers that a committal order against a lawyer who is exercising a right of appeal against a presidential decree and who has announced her intention to run in the presidential election constitutes a manoeuvre aimed at eliminating a political rival.

26. Furthermore, under article 80 of the Code of Criminal Procedure:

After questioning the accused, the examining magistrate may, at the request of the public prosecutor, issue a committal order if the offence carries a prison sentence or a more serious penalty. If the examining magistrate's decision is not consistent with the indictment, the public prosecutor may appeal against the order to the Indictment Chamber within four days of the order being communicated, which must be done promptly.

In this instance, in the second case, Ms. Moussi was referred to the examining magistrate on 1 February 2024, in response to a request from the public prosecutor's office. Although Ms. Moussi had requested a medical report on her state of health, the examining magistrate reportedly issued a committal order against her without holding any adversarial debates. Ms. Moussi's lawyers were reportedly deprived of the opportunity to plead the guarantees of representation set out in article 85 of the Code of Criminal Procedure. The source also notes that Ms. Moussi's lawyers did not request an official interrogation and were prepared to plead against the accusation.

27. The source notes that article 9 of the Covenant provides that everyone has the right to freedom and security of person, that no one shall be subjected to arbitrary arrest or detention and that no one shall be deprived of his or her freedom except on such grounds and in accordance with such procedures as are established by law. Article 9 of the Universal Declaration of Human Rights provides that "no one shall be subjected to arbitrary arrest, detention or exile". In this case, the source claims that Ms. Moussi is being prosecuted without any factual basis and in violation of domestic procedural rules and international law.

28. The source adds that, under article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgment.

29. In this case, the source states that, in the second case, Ms. Moussi has been held in detention since February 2024, which is an excessively long period of time and renders her detention arbitrary under category I.

b. Category II

30. The source recalls that Ms. Moussi is a lawyer and is President of the Parti Destourien Libre, and therefore a political opponent of the current President of the Republic.

31. The source points out that Ms. Moussi is being detained for exercising a right of appeal in the course of her work. In this respect, it underlines that Ms. Moussi was detained on 3 October 2023 in the first case, when she had gone to the registry office to lodge an appeal prior to administrative proceedings. The administration reportedly refused to issue her with a discharge note attesting to the registration of the appeal, and the authorities accused her of trying to cross the security barriers leading to the presidential palace. According to the source, the sole aim of this accusation is to prevent her from presenting her candidacy for the 2024 presidential election and therefore from participating in the administration of her country's political affairs.

32. In addition, the source argues that the two other cases in which Ms. Moussi is being prosecuted for giving false information are a legal ploy to keep her out of the political arena. It points out that Ms. Moussi is being prosecuted for openly criticizing the Independent High Authority for Elections, which organizes elections. It explains that Ms. Moussi's party criticizes this body's lack of independence, given that its Chair is appointed by the President of the Republic. It also argues that Ms. Moussi's involvement in leading the country's political affairs necessarily implies criticism and freedom of expression.

33. Finally, the source reports that Ms. Moussi has officially announced her intention to run in the next presidential election from her place of imprisonment. Her lawyers are said to have asked the examining magistrate to appoint a notary to take Mrs Moussi's statements, a prerequisite for her application to be registered by the Independent High Authority for

Elections. The examining magistrate reportedly rejected this request. The source is of the view that this rejection attests to the wish to keep Mrs. Moussi out of the presidential election.

c. Category III

34. The source claims that Ms. Moussi was denied a private meeting with her lawyer at the time of her arrest and placement in police custody. It adds that Ms. Moussi's telephones were searched without her consent, even though they contained confidential information covered by professional secrecy. The source notes that the authorities violated article 57 of Organic Act No. 2004-63, according to which:

It is forbidden for the persons mentioned in article 53 of the present Act to communicate personal data to private individuals without the express consent of the person concerned, his/her guardian or his/her heirs, given by any means that leaves a written trace. Where the person concerned is a child, the provisions of article 28 of the present Act apply. Other communications remain subject to the provisions of the specific laws in force.

The source recalls, furthermore, that Ms. Moussi was violently assaulted by law enforcement officers when she was taken to the police station.

35. The source reports that the lawyers for the defence are experiencing difficulties in communicating with Ms. Moussi on a confidential basis. The interview cell for visits from lawyers is reportedly equipped with a hidden camera and microphone, in breach of professional secrecy. Furthermore, each lawyer reportedly has only 20 minutes to talk to Ms. Moussi, which does not allow them to prepare freely her defence. Moreover, visit authorizations are not permanent, as they last for a period of two weeks, which may be renewed by the examining magistrate. The source explains that, since the examining magistrate has issued closing orders and confirmed the charges in each of the three cases, it is no longer possible for the lawyers to obtain authorization to visit Ms. Moussi until the public prosecutor makes the relevant submissions. The source argues that these manoeuvres constitute a real obstacle to Ms. Moussi's right to a fair trial and to the rights of the defence. In addition, the lawyers are subject to pressure and intimidation. The source explains that the proliferation of lawsuits against lawyers in political cases creates a climate of insecurity and hinders the rights of the defence. In this respect, it highlights cases in which defence lawyers have been prosecuted and others in which they have been banned by administrative decision from leaving the country.

36. The source claims that Ms. Moussi has been deprived of her right to a fair trial. It reports that, as part of the investigation, the defence lawyers asked the examining magistrate to seize the surveillance cameras on the premises of the registry office so that they could view how the events had unfolded. The source points out that, under article 97 of the Code of Criminal Procedure, "the examining magistrate must search for and seize any papers or effects likely to help establish the truth". It notes that, although the examining magistrate is required to seek evidence both for and against the accused, he allegedly refused to grant the request, while carrying out the instructions issued by the Minister of Justice, who in turn was implementing the recommendations made by her superiors. According to the source, the sole reason for Ms. Moussi's detention is her political status as a potential opponent in the 2024 presidential election. The source considers that the behaviour of the examining magistrates in charge of the cases casts serious doubt on the legality of the proceedings and the proper justification of the prosecution, and is contrary to the principles of equality of arms and adversarial proceedings, and Ms Moussi's right to a fair trial.

37. The source notes that, under article 14 (3) (d) of the Covenant, everyone charged with a criminal offence is entitled, in full equality, to be tried in his or her presence and to defend himself or herself in person or through legal assistance of his or her own choosing, or to have legal assistance assigned if he or she does not have sufficient means to pay for it. Under article 13 (3) (e), anyone charged with a criminal offence shall have the right to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The source adds that article 10 of the Universal Declaration of Human Rights stipulates that everyone is entitled in full equality to a fair and public hearing by an independent and

impartial tribunal, in the determination of his or her rights and obligations and of any criminal charge against him or her.

38. The source also asserts that Ms. Moussi's detention is arbitrary under category III, since she has been held for more than five months in the second case without having been questioned at first appearance, in violation of articles 9 (3) and 14 (3) (d) of the Covenant and article 10 of the Universal Declaration of Human Rights. It adds that Ms. Moussi's detention in the third case was ordered without questioning, in the absence of an adversarial debate and in violation of the rights of the defence. It considers that the authorities have thus again violated article 14 (3) (d) of the Covenant, rendering Ms. Moussi's detention arbitrary and moot.

d. **Category V**

39. The source asserts that the deprivation of Ms. Moussi's liberty is arbitrary under category V, since she is allegedly being prosecuted for her political opinions as a potential opponent of the President of the Republic. According to the source, Ms. Moussi's detention is aimed at shutting her out from the 2024 presidential election and therefore stems from discrimination based on her political views.

40. In this respect, the source asserts that, by multiplying the legal proceedings against Ms. Moussi, the authorities are seeking to prolong her detention excessively. According to the source, the deprivation of Ms. Moussi's liberty is a clear attempt to keep her out of the 2024 presidential election, and is part of an executive policy to neutralize the Tunisian opposition.

(b) Response from the Government

41. On 18 July 2024, the Working Group transmitted a communication concerning Ms. Moussi to the Government of Tunisia, requesting it to provide detailed information about her by 16 September 2024 and to ensure her physical and mental integrity.

42. The Working Group regrets that it did not receive a response from the Government and that the Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

2. Discussion

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

44. In determining whether Ms. Moussi'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.² In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

(a) Category I

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

46. The Working Group takes note of the source's unrefuted allegations that Ms. Moussi was not informed of the reasons for her arrest at the time of her arrest, in violation of article 9 (2) of the Covenant and article 9 of the Universal Declaration of Human Rights.

47. The source further asserts that Ms. Moussi's detention has no legal basis since no offence has been committed, and that she is being held solely because of her political status as a potential opponent in the 2024 presidential election. In addition, the proceedings were

² [A/HRC/19/57](#), para. 68.

conducted as part of a flagrante delicto investigation, although there was no evidence of a crime in progress or recently committed.

48. The Working Group recalls that, for a deprivation of liberty to have a legal basis, the authorities must invoke that legal basis and apply it to the circumstances of the case.³ This is typically done through an arrest warrant or order (or equivalent document).⁴ Article 9 (2) of the Covenant provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for the arrest and is to be promptly informed of any charges against him or her. Respect for these rights is essential to the exercise of the other rights set out in article 9 of the Covenant and article 9 of the Universal Declaration of Human Rights, in order to enable all individuals to effectively challenge their arrest.

49. In the light of the source's allegations concerning the circumstances of Ms. Moussi's arrest, which the Government has not contested, the Working Group considers that Ms. Moussi's arrest was in violation of article 9 (1) and (2) of the Covenant and article 9 of the Universal Declaration of Human Rights. The Working Group is particularly disturbed by the circumstances surrounding Ms. Moussi's arrest, during which law enforcement officers allegedly tried to induce her to get into a vehicle and then forcibly took her away, inflicting injuries.⁵

50. Furthermore, the Government has not provided any factual or legal evidence to support the charges against Ms. Moussi, which appear to relate rather to the exercise of her political rights and freedoms, including her legitimate criticism of the electoral process – activities that fall within the scope of protected political expression, not criminal conduct.

51. The Working Group considers that the use of vague or unsubstantiated charges such as the offence of misleading information suggests that these charges are more of a pretext, and that they are a means of stifling dissent rather than tackling actual criminal behaviour. As the Working Group has already noted, such an appeal contravenes international standards on the restriction of freedom of expression and must not be used to stifle legitimate debate.⁶ Similarly, in a recent opinion, the Working Group considered that the absence of a legal or factual basis and the application under various pretexts of laws designed to target critical reporting rendered detention arbitrary under category I.⁷

52. In Ms. Moussi's case, the charges reflect a similar pattern of preventive prosecution on the basis of anti-disinformation provisions to criminalize political expression. Such legislation poses significant risks to democratic freedoms when used to silence journalists, activists or political figures.⁸

53. The Working Group also takes note of the source's observations that Ms. Moussi's pretrial detention was not based on an individual assessment of the alleged risks. The absence of such an individual assessment, as required under article 9 (3) of the Covenant, further compromises the legality of Ms. Moussi's detention.

54. The Working Group recalls that it is a well-established norm of international law that pretrial detention shall be the exception rather than the rule and that it should be ordered for as short a period as possible.⁹ Article 9 (3) of the Covenant provides that it is not to be the general rule that persons awaiting trial are to be detained in custody, but their release may be subject to guarantees to appear for trial and at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception in the interests

³ Opinions No. 9/2019, para. 29; No. 46/2019, para. 51; and No. 59/2019, para. 46.

⁴ Human Rights Committee, general comment No. 35 (2014), para. 23. See also Opinions No. 30/2017, paras. 58 and 59; No. 88/2017, para. 27; No. 3/2018, para. 43; No. 30/2018, para. 39; and No. 79/2022, para. 58. In the case of arrests made in flagrante delicto, the opportunity to obtain a warrant will not be typically available. See opinions No. 3/2018, para. 44; and No. 26/2023, para. 67.

⁵ Opinion No. 33/2021, para. 57.

⁶ Opinion No. 25/2021, para. 60.

⁷ Opinion No. 11/2024, para. 61. See also opinion No. 22/2024, para. 69.

⁸ [A/HRC/54/51](#), paras. 41–46.

⁹ Opinions No. 28/2014, para. 43; No. 49/2014, para. 23; No. 57/2014, para. 26; No. 1/2020, para. 53; and No. 8/2020, para. 54; see also Human Rights Committee, general comment No. 35 (2014), para. 38; and [A/HRC/19/57](#), paras. 48–58.

of justice. Thus, when pretrial detention takes place, it must be justified by specific risks and supported by an explanation of why alternative measures such as bail would be insufficient. In this case, the Government has not justified Ms. Moussi's pretrial detention or demonstrated why alternative measures to detention could not be envisaged. In the absence of any argument to the contrary, the Working Group finds her detention to be in violation of article 9 (3) of the Covenant.

55. Finally, the Working Group recalls that lawyers play an essential role in maintaining the rule of law and public confidence in the justice system. In Tunisia, additional safeguards apply to their arrest, including the requirement to notify the Bar Association in the event of the arrest of a lawyer who is a member of the association. The failure to comply with this procedure in Ms. Moussi's case underlines the arbitrary nature of her detention and its wider implications for the independence of the legal profession. In view of the above conclusions, and also noting that Ms. Moussi's arrest procedure violated the additional guarantees afforded to her as a lawyer, the Working Group considers that her detention has no legal basis, in violation of article 9 of the Covenant and articles 3 and 9 of the Universal Declaration of Human Rights. Her detention is therefore arbitrary under category I.

(b) Category II

56. The source maintains that Ms. Moussi's detention is arbitrary under category II, since the sole purpose of the charges brought against her was to prevent her from standing as a candidate in the 2024 presidential election, and therefore from participating in the management of her country's political affairs, and from criticizing the Government, in violation of her right to freedom of expression. The Government has chosen not to contest these allegations although it was provided with the opportunity to do so.

57. The Working Group has already noted that the charges brought against Ms. Moussi were not supported by any factual or legal evidence and seemed to relate rather to the exercise of her political rights and freedoms, including her criticism of the electoral process, which is protected under article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights. The Working Group notes in this regard that article 25 of the Covenant and article 21 of the Universal Declaration of Human Rights guarantee the right to take part in the conduct of public affairs.

58. In the absence of any explanation from the Government, the Working Group considers that the source has demonstrated that the accusations against Ms. Moussi were linked to her statements criticizing the Government and to her legitimate election campaign. Consequently, the Working Group considers that her detention results from the exercise of her rights under articles 19 and 25 of the Covenant and articles 19 and 21 of the Universal Declaration of Human Rights and that, consequently, her detention is arbitrary under category II.

(c) Category III

59. Given its finding that Ms. Moussi's detention is arbitrary under category II, the Working Group considers that no trial should take place. The Working Group will nevertheless examine the source's arguments concerning violations of her right to a fair trial.

60. The source claims that Ms. Moussi was denied a confidential interview with her lawyer, as the interview cell for lawyers' visits is allegedly equipped with hidden cameras and microphones, in defiance of professional secrecy.

61. The Working Group is concerned that no confidentiality has been guaranteed for Ms. Moussi's communications with her lawyer. It reiterates that respect for lawyer-client confidentiality is an important part of the rights of the defence. The right of a defendant to have private discussions with his or her legal counsel, without surveillance, constitutes one of the fundamental aspects of a fair trial.¹⁰ If a lawyer is unable to confer with his or her client and obtain confidential instructions, legal assistance is considerably compromised. In this regard, the Human Rights Committee underlined that lawyers should

¹⁰ Opinion No. 38/2021, para. 91. See also [A/HRC/54/51](#), para. 50.

be able to meet their clients in private and to communicate with them in conditions that fully respect the confidentiality of their communications. Furthermore, lawyers should be able to advise and to represent persons charged with a criminal offence without restrictions, influence, pressure or undue interference from any quarter.¹¹ Furthermore, in line with principle 8 of the Basic Principles on the Role of Lawyers, all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality.

62. In the absence of any explanation from the Government, the Working Group concludes that Ms. Moussi was deprived of effective legal representation, in breach of article 14 (3) (b) of the Covenant as well as of rule 61 (1) of the Nelson Mandela Rules and principle 18 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

63. The source further asserts that equality of arms with regard to Ms. Moussi's acquisition of evidence was not respected. The Working Group lacks sufficient information to reach a conclusion in this respect.

64. In view of its above conclusion on the violation of the rights of the defence, the Working Group finds that the violation of Ms. Moussi's right to a fair trial is of such gravity as to render her detention arbitrary under category III.

(d) Category V

65. The source claims that Ms. Moussi's detention is arbitrary under category V, as she was allegedly discriminated against because of her political opinions. The Government has not responded to this allegation.

66. The Working Group recalls, firstly that, when detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination.¹² Taking note of its above conclusions, and in the absence of any explanation to the contrary from the Government, the Working Group considers that Ms. Moussi is being detained in a discriminatory manner on account of her political or other opinions, in violation of the right to non-discrimination and equality before the law under articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. The Working Group considers that the facts of the present case therefore reveal an arbitrary deprivation of liberty falling within category V.

3. Disposition

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

The deprivation of liberty of Abir Moussi, being in contravention of articles 2, 3, 7, 9, 19 and 21 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

68. The Working Group requests the Government of Tunisia to take the steps necessary to remedy the situation of Ms. Moussi 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 Covenant.

69. The Working Group considers that, given all the circumstances of the case, the appropriate measure would be to release Ms. Moussi immediately and accord her the right to obtain redress, including compensation, in accordance with international law.

¹¹ Human Rights Committee, general comment No. 32 (2007), para. 34.

¹² Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; No. 59/2019, para. 79; No. 36/2020, para. 75; No. 42/2020, para. 93; No. 62/2020, para. 74; and No. 75/2022, para. 91.

70. The Working Group urges the Government to ensure that a thorough and independent investigation is carried out into the circumstances of Ms. Moussi's arbitrary deprivation of liberty, and to take appropriate action against those responsible for the violation of her rights.

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

4. Follow-up procedure

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

73. 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.

74. 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 of any failure to take action.

75. 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.¹³

[Adopted on 13 November 2024]

¹³ Human Rights Council resolution 51/8, paras. 6 and 9.