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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eightieth session, 20–24 November 2017

Opinion No. 78/2017 concerning a minor (whose name is known by the Working Group), Assem Adawy, Ameen Mashaly, Omar Al Sagheer, Ahmed Al Khateeb, Sherine Bekhit, Ahmed Sayed Ahmed, Mahmoud Al Barbery, Ahmed Mabrouk, Ahmed Shawky Amasha, Abdelrehim Mohamed, Bassma Rabi', Adel Al Haddad, Reem Gobara, Omar Ali, Mahmoud Ahmed Abou-Leil, Hanane Othman and Mohamed Dessouky (Egypt)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.
2. In accordance with its methods of work (A/HRC/36/38), on 6 September 2017 the Working Group transmitted to the Government of Egypt a communication concerning the minor (whose name is known by the Working Group), Assem Adawy, Ameen Mashaly, Omar Al Sagheer, Ahmed Al Khateeb, Sherine Bekhit, Ahmed Sayed Ahmed, Mahmoud Al Barbery, Ahmed Mabrouk, Ahmed Shawky Amasha, Abdelrehim Mohamed, Bassma Rabi', Adel Al Haddad, Reem Gobara, Omar Ali, Mahmoud Ahmed Abou-Leil, Hanane Othman and Mohamed Dessouky. 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).

Submissions

Communication from the source

4. According to the source, the following 18 cases of arbitrary detention in Egypt occurred as a consequence of arbitrary arrests and unfair trials and severe violations of human rights, such as secret and/or incommunicado detention, torture and denial of medical care between 16 August 2013 and 10 March 2017. All 18 individuals were charged with “belonging to a banned group” after being severely tortured in order to get them to sign statements incriminating themselves.

5. The minor, whose name is known by the Working Group, was born in 1998. He is a secondary school student, was living in Alexandria and was a minor at the time of his arrest.

6. Assem Magdy Anour Adawy, born in 1992, is a student of information technology at the Intersat Institute of Alexandria and usually resides in Alexandria.

7. Ameen Mohamed Ameen Mashaly, born in 1979, is a civil engineer working in an engineering consultation company in Riyadh in Saudi Arabia. He is married and usually resides in Alexandria.

8. Omar Al Sayed Mohamed Al Sagheer, born in 1992, is a freelance worker. He is engaged and lives in Alexandria.

9. Ahmed Abdel Wahab Mohamed Abdel Wahab Al Khateeb, born in 1994, was a third-year student of biotechnology in the Giza Governorate at the time of his arrest. Mr. Al Khateeb is single and usually lives in the Al Monufia Governorate.

10. Sherine Said Hamed Bekhit, born in 1983 in Jordan, is a freelance journalist and reporter working with different channels and newspapers. She was, among other things, documenting and covering stories of individuals who were subjected to human rights violations. She is married and has four children. She lives in the Al Monufia Governorate.

11. Ahmed Omar Makram Ali Sayed Ahmed, born in 1992, is a student. He is single and lives in the Al Monufia Governorate.

12. Mahmoud Mohamed Mahmoud Al Barbery, born in 1980 in Cairo, is a freelance accountant and human development trainer. He is married with children and lives in Cairo.

13. Ahmed Abdelrahman Ahmed Youssef Mabrouk, born in 1993, is a medical student. He is single and used to live in the Giza Governorate.

14. Ahmed Shawky Abdelsattar Mohamed Amasha, born in 1962, is a veterinarian and a human rights defender working with the families of victims of enforced disappearances and arbitrary detention. He is a member of the “Kefaya” opposition movement and a trade unionist. He is married with four children and usually resides in Damietta.

15. Abdelrehim Mohamed Abdelrehim Mohamed, born in 1963 in Cairo, is a cardiologist. He is married and lives in Cairo.

16. Bassma Refaat Abdel Moneim Mohamed Rabi’, born in 1983, is a doctor. She is married with children and lives in the Giza Governorate.

17. Adel Ezzat Mohamed Al Haddad, born in 1979, is a freelance trader. He is married with children and lives in the Gharbia Governorate.

18. Reem Kotb Bassuiony Kotb Gobara, born in 1976, is a film-maker, director and educational technologist. She is single and lives in the Gharbia Governorate.
19. Omar Mohamed Ali, born in 1992, was an architectural engineer student at the time of his arrest. He normally resides in the Helwan Governorate.
20. Mahmoud Ahmed Mohamed Ahmed Abou-Leil, born in 1996 in Beni Mazar, is a secondary school student. He is single and lives in the Al Miniya Governorate.
21. Hanane Baderraddine Abdalhafez Othman, born in 1977, is a doctor in biology and human rights activist working with an association of families of disappeared persons in Egypt. She is married and lives in the Beni Suef Governorate.
22. Mohamed Abdulmageed Ibrahim Dessouky, born in 1965, is an architect and politician, who was a member of parliament with the Freedom and Justice Party in 2012. He is married and lives in Cairo.

Category I: Absence of a legal basis justifying the deprivation of liberty

23. The source submits that the arrests and detention of the above-mentioned individuals, having been carried out outside the framework of the law fall under category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. None of the 18 individuals were presented with arrest warrants or informed of the reasons for their arrests or the law under which they were being detained. Most of them were in a state of enforced disappearance, as the authorities denied that they had been arrested and detained. In all cases, the families who tried to access information about the fate of their relatives and their prosecution files, either directly or through a lawyer, were constantly denied that right.

24. The source notes that in case Nos. 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16 and 18, it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. The authorities have detained those individuals outside the protection of the law in violation of article 9 (1), (2), (3) and (4) of the Covenant.

25. In case Nos. 2, 3, 4, 7, 8, 9, 10, 12, 16 and 18, the individuals were held in secret detention:

(a) Case No. 2. Mr. Adawy was detained in secret from 6 to 22 November 2016, when he was brought before the Public Prosecutor of Bab Al Sharq in Alexandria for the first time. During that time, Mr. Adawy was never informed of the reasons for his arrest, the charges brought against him or the law under which he was being detained;

(b) Case No. 3. Mr. Mashaly was twice held without any legal basis: the first time during the initial four months following his arrest on 5 September 2015, when he was held in unacknowledged secret detention at the Azouli military prison until his presentation before the Al Raml Public Prosecutor in Alexandria in early January 2016 and the second time from 13 October 2016 (the day he was supposed to be released but was instead kept at the Al Raml police station) to 23 November 2016 when he appeared before the Public Prosecutor of Eastern Alexandria and was charged in another case. However, as he was only officially charged on 23 November 2016, the source argues that he was detained for more than a year (5 September 2015 to 23 November 2016) without any legal basis;

(c) Case No. 4. From his arrest on 6 November 2016, Mr. Al Sagheer was held in secret for 15 days at the Abees State Security Headquarters in Alexandria, in a state of enforced disappearance, and without any legal basis or justification being given to him. To date, after seven months of detention, Mr. Al Sagheer has still not been presented before a competent judicial authority nor has he been informed of any official charges brought against him;

(d) Case No. 5. While Mr. Al Khateeb was arrested on 28 October 2014, it was only on 25 March 2016, almost two years after his arrest, that he was finally informed of the charges brought against him. During this period, he did not have access to a lawyer or the prosecution file and was deliberately kept outside the protection of the law;

(e) Case No. 7. Mr. Sayed Ahmed was detained in secret and unacknowledged detention without any legal basis for 40 days from the day of his abduction on 6 December 2016 until 26 January 2017, when his family was informed of his whereabouts. While he was presented before the Public Prosecutor of Kafr El Sheikh for the first time on 11 January 2017 and charged, the hearing was secret and neither his family nor his lawyer knew about his fate at that time;¹

(f) Case No. 8. Mr. Al Barbery was abducted on 16 August 2013, but only presented before a judicial authority on 17 March 2015 for the first time and officially charged. Thus he was detained for 19 months without any legal basis;

(g) Case No. 9. Mr. Mabrouk was secretly detained from 6 September to 28 October 2016, during which time he remained outside the protection of the law and in a state of enforced disappearance. It was only on 28 October 2016 that Mr. Mabrouk reappeared before the General Prosecutor of South Giza and was officially charged;

(h) Case No. 10. Mr. Amasha was arrested on 10 March 2017, disappeared for 21 days and was detained for over a month without any legal basis and outside the protection of the law until he was finally informed of the charges against him when he was brought before the Public Prosecutor on 13 April 2017;

(i) Case No. 11. Mr. Mohamed was arrested on 16 August 2013, but only brought before the Criminal Court of Cairo on 28 February 2015, when he was informed of the official charges against him. He was thus detained for 18 months without any legal basis and outside of the protection of the law;

(j) Case No. 12. Ms. Rabi' was abducted on 6 March 2016 and subsequently held for 13 days in secret and unacknowledged detention, putting her in a state of enforced disappearance. On 28 March 2016, her family was finally informed that she was being held at the State Security Headquarters. It was only in early May 2016, after two months of detention, that Ms. Rabi' was brought before the Criminal Court at the Police Academy of Tora for the first time and informed of the charges against her;

(k) Case No. 13. Mr. Al Haddad was arrested on 24 January 2015 and was secretly detained for 48 hours at the El Mahalla El Kubra police station in a state of enforced disappearance. Mr. Al Haddad was officially charged by the Prosecutor of Tanta on 26 January 2015;

(l) Case No. 15. Mr. Ali remained in incommunicado detention outside the framework of the law and without any legal basis for just under a year from his abduction on 1 June 2015 until 29 May 2016, when he was officially charged;

(m) Case No. 16. Mr. Abou-Leil was detained without any legal basis from the day of his abduction on 17 December 2016 to the day he was brought before the State Security prosecution and officially charged on 29 January 2017. During the first 20 days of his detention, he was in a state of enforced disappearance;

(n) Case No. 18. Mr. Dessouky was arrested on 15 February 2017 and was secretly detained for 13 days by the State Security forces, putting him in a state of enforced disappearance. He was only officially charged by the Public Prosecutor on 28 February 2017.

Category II: Deprivation of liberty resulting from the exercise of the rights to freedom of expression, association and assembly

26. The source submits that a clear direct and causal link appears in case Nos. 2, 6, 10, 14 and 17, between the activities of individuals who are human rights defenders, peaceful activists, film-makers, journalists or reporters and their arrest and prosecution, which was the direct result of the exercise of their freedoms, notably under article 19 of the Covenant:

(a) Case No. 2. Mr. Adawy was arrested because of Facebook posts in which he criticized the authorities and called for peaceful and civil disobedience without any

¹ Mr. Sayed Ahmed has been missing and his case was submitted to the Working Group on Enforced or Involuntary Disappearances on 12 July 2017 (case No. 10006991).

incitement to violence or hatred. Because he had expressed criticism online, he was charged with “being a leader and preacher in a ‘terrorist group’”. The State Security forces who arrested and interrogated him blamed him for his activism on social media and the torture he was subjected to aimed to punish him and force him to sign a statement in which he confessed to “preaching in a terrorist group”. His arrest is therefore in violation of article 19 of the Covenant;

(b) Case No. 6. Ms. Bekhit was arrested because of her work as a journalist. Upon her arrest, she was specifically asked to unlock her laptops and cell phone and to show the information she had collected and shared. She was charged with “spreading false news” and “dealing with hostile channels” since she was documenting and covering stories of individuals who were subjected to human rights violations. Those charges are reportedly commonly used against journalists and reporters who communicate information to foreign media channels about human rights abuses in the country. Lastly, Ms. Bekhit was brought before the Criminal Court of Cairo and was added to case No. 761/2016, which included a group of media professionals prosecuted under the same charges. Her arrest is therefore in violation of article 19 of the Covenant;

(c) Case No. 10. Mr. Amasha was arrested and prosecuted solely on the basis of his activities as a member of the “Kefaya” opposition movement, a trade unionist and a peaceful human rights defender. He was arrested and allegedly subjected to torture and raped because he was documenting cases of enforced disappearances, which he had brought to the attention of the Working Group on Enforced or Involuntary Disappearances. The charge of “belonging to a banned group” under the Anti-Terrorism Law refers to the association of families of victims of enforced disappearances and the Kefaya peaceful political movement and is therefore criminalizing Mr. Amasha’s peaceful and legitimate exercise of his freedoms under articles 19 and 22 of the Covenant;

(d) Case No. 14. Following her arrest at Cairo airport, Ms. Gobara was interrogated about her activities and the reasons why she was carrying filming equipment, cameras and sound mixers. When she explained to the security officers that she was working as a freelance film-maker and director, she was arrested and charged the next day with “joining a banned group”, conspiracy, spying and promoting a misleading image of Egypt, in violation of article 19 of the Covenant;

(e) Case No. 17. As a human rights activist working on cases of enforced disappearances in Egypt, it appears evident to the source that Ms. Othman was arrested and investigated solely on that basis. The source recalls that Ms. Othman was arrested while investigating her husband’s disappearance at the Al Qanater prison and helping other women in their search for their own missing relatives. The charges against her criminalize the peaceful and legitimate exercise of her freedoms under articles 19 and 22 of the Covenant, as well as her effective remedy under article 2 (3) of the Covenant.

27. The source reports that the following cases demonstrate a pattern of arrests of individuals deemed to be opposed to the Government, without being necessarily active as journalists or activists, as in all cases the individuals were arrested on suspicions of having critical political thoughts or being affiliated with banned political groups. Most were charged with “belonging to a banned group” under article 86 bis of the Criminal Code. That charge refers in most cases to the Muslim Brotherhood movement but also encompasses any group deemed to be opposed to the 2013 military takeover, from left-wing movements to workers and student unions. Such political groups and movements are reportedly banned and some of them considered as “terrorist” even though they do not call for violence and hatred and peacefully oppose the current Government. The source thus argues that these cases fall more largely into a pattern of arrest of individuals who are considered to be opposed to the Government, even when their opposition is peaceful.

28. The source submits that this practice, which is facilitated by mass cybersurveillance, is in clear violation of articles 19, 21 and 22 of the Covenant. According to the source, this pattern of arrest of individuals derives from the use of the criminal law to prevent and punish criticism of the Government or under the pretext of “maintaining public order”:

(a) Case No. 1. The minor was arrested because he found himself near a demonstration, even though he was not taking part in it. His arrest is the result of a common

practice of arbitrary arrests of individuals who take part in a “non-authorized demonstration”, even when such demonstrations are peaceful. He was sentenced to two years’ imprisonment, while he was still a minor, for having peacefully demonstrated against his transfer to the Al Merg Juvenile Detention Centre in Alexandria, where he feared mistreatment. The source submits that his sentence is in violation of his right to freedom of expression and in violation of the principle that except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights and the Covenant;²

(b) Case No. 4. Mr. Al Sagheer reported that while being tortured he was mainly interrogated about his opinion of the political situation in Egypt, the revolution of 25 January 2011 and his activities on social media;

(c) Case No. 7. Mr. Sayed Ahmed was interrogated by the Public Prosecutor and charged with “belonging to the Muslim Brotherhood banned group” and “incitement to terrorism”;

(d) Case No. 8. While Mr. Al Barbery was in solitary confinement, he was tortured and interrogated mostly about his political affiliations and connections with individuals belonging to the Muslim Brotherhood;

(e) Case No. 9. While being tortured, Mr. Mabrouk was asked about his political opinions and about his brother Omar Abdulrahman Ahmed Youssef Mabrouk who was the subject of opinion No. 60/2016 of the Working Group on Arbitrary Detention. The source fears that his arrest is a form of reprisal for the public actions taken by the family to defend Omar Mabrouk and for having publicly criticized the authorities for the arbitrary nature of his detention;

(f) Case No. 11. Mr. Mohamed was prosecuted in the “Raba’a Operation Room” case on charges that criminalize peaceful political opposition, including “membership and funding of the outlawed Muslim Brotherhood group”. The charges of “attempt to suspend the implementation of the Constitution” and “attempt to spread chaos in the country” refer to his participation in peaceful protests against the military takeover of July 2013;

(g) Case No. 12. The charges against Ms. Rabi’ were “incitement to demonstrate” and “belonging to a banned group”, which refer to peaceful demonstrations against the Government and to her political views opposed to the Government.

(h) Case No. 13. Mr. Al Haddad was abducted on 24 January 2015 while walking with friends near a protest on Mansoura Road and then charged with “belonging to a banned group” and “protesting without authorization” under the restrictive Law on Demonstrations, in violation of articles 21 and 22 of the Covenant;

(i) Case No. 15. Mr. Ali was arrested with friends after their phones were checked and later charged with “leaking classified military information to a terrorist cell targeting military and police personnel” for having in fact shared information on arrests and abductions carried out by the military;

(j) Case No. 18. Mr. Dessouky was charged with “belonging to a banned group” as he was suspected of being a political opponent of the Government.

Category III: Non-observance of the right to a fair trial

29. The source submits that all 18 individuals have been subjected to severe violations of their fundamental rights to liberty and security from the time of their arrest and throughout their detention. The violations of their pretrial rights have been systematic and they were all subjected to torture in order to force them to make confessions.

30. The source reports that in every case, the individuals were arrested without any warrant and without being given any reasons for their arrest, in clear violation of article 9 (1) and (2) of the Covenant. In all cases, the individuals were arrested by agents affiliated with the State Security forces (Amn Al Watani or Amn al Dawly). They reportedly act under the

² See principle 5 of the Basic Principles for the Treatment of Prisoners.

command and control of the Ministry of the Interior and oversee counter-intelligence, internal and border security, counter-terrorism and surveillance activities. They have discretionary powers to arrest, interrogate and detain, without any judicial oversight, individuals suspected of crimes against the security of the State.

31. The source notes that except for case Nos. 1, 6, 13, 14 and 17, in which the individuals were presented before a judicial authority within 48 hours, the right to be informed promptly of the reasons for their arrest and the charges against them was denied to the individuals, in violation of articles 9 (2) and (3) and 14 (3) of the Covenant. In all cases, the individuals were brought before a judge without the assistance of a lawyer and forced to incriminate themselves.

- (a) Case No. 2. Mr. Adawy was charged after 16 days of detention;
- (b) Case No. 3. Mr. Mashaly was informed of the charges against him 14 months after his arrest;
- (c) Case No. 4. Mr. Al Sagheer was arrested on 6 November 2016 and had still not been charged, more than nine months after his arrest;
- (d) Case No. 5. Mr. Al Khateeb was officially charged after 17 months in detention;
- (e) Case No. 7. Mr. Sayed Ahmed was charged after 36 days in secret detention;
- (f) Case No. 8. Mr. Al Barbery was charged after 20 months in detention;
- (g) Case No. 9. Mr. Mabrouk was charged after 52 days in detention;
- (h) Case No. 10. Mr. Amasha was charged after one month in detention;
- (i) Case No. 11. Mr. Mohamed was charged after 18 months in detention;
- (j) Case No. 12. Ms. Rabi' was charged two months after her arrest;
- (k) Case No. 15. Mr. Ali was charged one year after his arrest;
- (l) Case No. 16. Mr. Abou-Leil was charged after 42 days of secret detention;
- (m) Case No. 18. Mr. Dessouky was charged after 13 days of secret detention.

32. The source reports that the individuals were kept outside the protection of the law during their questioning, either incommunicado or in secret and unacknowledged detention, and that they were subjected to torture to force them to sign statements incriminating themselves, in violation of articles 6, 7, 10, 15 (3) and 16 of the Covenant and articles 1 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The source states that the use of secret or incommunicado detention is a common pattern in all cases of arbitrary detention in Egypt, which the authorities often justify by citing the "fight against terrorism", in order to deliberately keep individuals outside the protection of the law.

33. The source submits that in addition, in all 18 cases, the individuals were denied access to legal assistance at all stages of their detention and were unable to challenge the legality of their detention, in violation of article 9 (4) of the Covenant. They were all denied the right to have their lawyers visit them in prison and all interrogations were carried out without legal assistance. Access to pretrial hearings and to prosecution files, either directly by the family or through lawyers, was constantly denied, in violation of the right to legal counsel, as enshrined in article 14 (3) of the Covenant.

34. The source notes that all individuals were also denied contact with their families for prolonged periods of time and sometimes placed in solitary confinement. In each case, requests made by the detainees to see a medical doctor were denied from the time of arrest throughout the pretrial detention period.

35. The source submits that in each case, the 18 individuals were denied the right to challenge their detention before an independent authority, in violation of article 14 of the Covenant. While in most cases violations of article 14 are the consequence of an incommunicado or secret detention, the source notes that even after being charged and

allowed to contact their lawyers, the individuals were never allowed to challenge the legality of their detention.

36. The source recalls that from the outset of their detention, all the individuals were denied the right to be assisted by their lawyers, all prison visits were forbidden and the lawyers were only occasionally allowed access to trial sessions. That made it impossible for the individuals to prepare their defence adequately and to communicate with their lawyers, undeniably constituting a violation of their right to defence.

37. The source reports that while in secret and incommunicado detention, all 18 individuals were subjected to torture and ill-treatment by the security forces, especially the State Security forces, in order to punish them and force them to sign self-incriminating statements that they were not allowed to read beforehand. The source submits that such acts amount to torture and therefore violate articles 1 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and articles 7, 10 and 14 (3) (g) of the Covenant.

38. According to the source, torture was inflicted in order to extract confessions to be used later during trial, since in every case the individuals reported having been forced to confess to belonging to a violent, banned or terrorist group. Such confessions were subsequently admitted as evidence in the course of their trials, in violation of article 14 (3) (g) of the Covenant and article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In case No. 2, torture was reportedly inflicted in order to force the victim to incriminate someone else.

39. According to the source, particularly severe forms of torture were used, such as electrocution all over the body, including the genitals (case Nos. 1, 2, 3, 4, 8, 9, 10, 11, 12, 15 and 16); rape (case Nos. 10 and 18) and threats of rape against the victim or female relatives (case Nos. 2, 6, 10 and 12); waterboarding (case Nos. 1 and 8); cigarette burns all over the body and other mutilations (case Nos. 4, 9 and 15); suspension from the ceiling by the wrists (case Nos. 1, 2, 3, 4, 5 and 15); severe and prolonged beatings (case Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16 and 18); blindfolding and hooding (case Nos. 2, 3, 4 and 15); and food and sleep deprivation (case Nos. 5, 6, 9 and 14).

40. The source notes that not only such acts of torture, but also the prolonged secret or incommunicado detention and the appalling conditions of detention, violate the absolute prohibition of torture. According to the source, the Egyptian authorities have systematically resorted to this practice in recent years, in order to obtain confessions that are used as sole evidence against the defendant in court. The source emphasizes that it has received numerous similar testimonies of torture, which demonstrate the widespread and systematic character of the practice. Claims of torture made by detainees are systematically ignored by judges and investigations are never ordered.

41. According to the source, the Egyptian Code of Criminal Procedures allows for individuals to be held in pretrial detention for up to six months if charged with misdemeanours, 18 months if charged with felonies and two years if the alleged offence is punishable by life imprisonment or death (article 143 of the Code).

42. The source reports that to date, the following individuals remain in pretrial detention:

(a) Case No. 2. After nine months in detention, Mr. Adawy has still not been informed of his trial date and his detention continues to be extended by the Public Prosecutor every two weeks;

(b) Case No. 3. No trial date has been scheduled for Mr. Mashaly after 22 months in detention;

(c) Case No. 4. Mr. Al Sagheer's trial has not yet started, seven months after his arrest.

43. For the following individuals, their trials started after long periods of pretrial detention:

(a) Case No. 5. Mr. Al Khateeb's trial started on 25 March 2016, 17 months after his arrest;

- (b) Case No. 6. Ms. Bekhit's trial started on 29 November 2016 and is still ongoing, her detention is renewed every 45 days;
- (c) Case No. 7. Mr. Sayed Ahmed's trial started on 19 June 2017, eight months after his arrest;
- (d) Case No. 8. Mr. Al Barbery's trial started on 17 March 2015, having been charged after 20 months of detention. Mr. Al Barbery has since been sentenced;
- (e) Case No. 9. Mr. Mabrouk has still not been informed of a scheduled trial date, after 10 months in detention, which continues to be renewed;
- (f) Case No. 10. Mr. Amasha has still not been informed of a trial date after five months in detention;
- (g) Case No. 11. Mr. Mohamed's retrial in the Mokattam case mass trial of 28 February 2015 continues to be postponed and his next trial session is supposed to take place on 17 September 2017;
- (h) Case No. 12. Ms. Rabi's trial, scheduled for 10 June 2017, 16 months after her arrest, was postponed to 20 July 2017;
- (i) Case No. 13. Mr. Al Haddad has been added to four criminal cases since his arrest. He was sentenced to 20 years' imprisonment in absentia in case No. 6020/2015 in March 2017 and the trials for the three other cases have still not been scheduled;
- (j) Case No. 14. After six months in detention, Ms. Gobara has still not been informed of her trial date and her detention continues to be renewed every 45 days;
- (k) Case No. 15. Mr. Ali was charged on 29 May 2016, almost one year after his arrest;
- (l) Case No. 16. After seven months in detention, Mr. Abou-Leil's trial date has still not been scheduled;
- (m) Case No. 17. Ms. Othman has still not been informed of a trial date, more than three months after her arrest;
- (n) Case No. 18. Mr. Dessouky has still not been informed of the date of his trial, six months after his arrest.

Violations of the right to a fair trial

44. The source submits that the violation of the right to a fair trial, as enshrined in article 14 (2) of the Covenant was particularly evident in all cases, when during their trials, the individuals appeared handcuffed. In addition, in case No. 11, Mr. Mohamed was held behind a soundproof glass window, which prevented him from expressing himself, as the judge was in control of activating the microphones for detainees. The judge could also decide whether lawyers could have access to their clients, which was refused in the case of Mr. Mohamed.

45. The sources further notes that in case Nos. 6 and 16, the individuals appeared in videos published on the website of the Ministry of the Interior, in which they were forced to make confessions. The publication of those videos and the mention of their names as the perpetrators of the alleged crimes, violate their right to be presumed innocent.

46. The source submits that since all 18 individuals were denied access to their files and to a lawyer, they were unable to access, let alone challenge, the evidence against them. In case No. 4, when Mr. Al Sagheer's lawyer insisted on having access to his client, he was himself threatened with arrest. In all other cases, the lawyers were not able to gain access to their clients' files and all their attempts to assist them during interrogation were denied. For each individual, the authorities failed to ensure that their lawyers could advise and represent their clients free from intimidation, hindrance, harassment or improper interference. None of the individuals were given adequate time and facilities to communicate with their lawyers in confidentiality, in order to prepare their defence and challenge the legality of their detention before an impartial tribunal.

47. According to the source, all the individuals therefore faced the impossibility of (a) preparing their defence, owing to the denial of confidential access to a lawyer and to the prosecution files; (b) challenging the evidence, including the self-incriminating statements; (c) challenging prosecution witnesses and cross-examining them; (d) bringing in exculpatory evidence or defence witnesses.

48. The source reports that in all cases, the individuals were victims of gross violations of fair trial norms and their rights to be tried by a competent, independent and impartial tribunal established by law and also to a fair and public hearing were constantly violated by the Egyptian authorities. In addition, the excessive periods of pretrial detention, in some cases for over one year, violated the presumption of their innocence.

49. The source submits that the Egyptian authorities continue to try civilians before military courts, which poses significant challenges regarding the full and effective realization of the rights to a fair trial set out in the Covenant and other international human rights instruments. Hearings before such courts are often closed to the public, access for the lawyers of the defendants is often impeded and sentences issued solely on the basis of confessions extracted under torture.

50. In case No. 15, on 29 May 2016, Mr. Ali, an ordinary civilian, was brought before the military court of Alexandria where he was tried, without legal assistance, and sentenced to life imprisonment.

51. In case No. 1, the minor was brought before the Al-Raml criminal court, although he should have been prosecuted before a juvenile court. According to the source, that goes against the principle that a juvenile justice system shall be established and that minors shall be tried before separate courts. The source refers to article 37 (b) of the Convention on the Rights of the Child which expressly states that: “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

52. The source reports that in all 18 cases, the Egyptian authorities refused to provide the appropriate and necessary medical attention for treatment of the health conditions of the individuals concerned. The denial of medical care was of particular significance in case Nos. 1, 5, 6, 8, 12, 13 and 15, and constitutes a violation of their right to health enshrined in article 25 of the Universal Declaration of Human Rights.

53. In addition, the source submits that all individuals are currently detained in very poor conditions. They are reportedly kept in overcrowded cells infested with insects and unbearable odours. They are also at great risk of developing infectious and chronic diseases, owing to the lack of ventilation, very high temperatures in the cells in summer and the lack of preventive measures taken by the authorities. Sleeping conditions and basic hygiene installations are extremely poor, water does not run at a steady rate but only for a few minutes a day and electricity cuts happen regularly for long periods of time. The source notes that such appalling conditions, combined with the absence of medical care, are of grave concern.

54. According to the source, the denial of medical care is a strong pattern that families of individuals detained on political charges denounce almost systematically, as it is used as a means of punishing detainees. The source therefore submits that this denial of treatment of the 18 individuals is particularly cruel, inhuman and degrading and in violation of article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Category V: Arbitrary detention for reasons of discrimination

55. The source submits that the circumstances which led to the detention of the above-mentioned individuals indicate that their arrest and detention are grounded in discrimination based on their political views. Their arrests were reportedly carried out either because the individuals were considered to be opposed to the Government, perceived as belonging to or supporting the Muslim Brotherhood or any other opposition political movement, or merely because of their peaceful activities as human rights defenders or journalists. As such, their arrests were based on the mere suspicion of “belonging to a political movement” opposed to

the Government and can be seen as an act of retaliation on the part of the Government because they were critical of it. Accordingly, the source submits that the deprivation of liberty of the individuals results from reasons of discrimination owing to political or other opinions, thereby falling under category V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Response from the Government

56. On 6 September 2017 the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 6 November 2017, detailed information on the current situation of the minor, Assem Adawy, Ameen Mashaly, Omar Al Sagheer, Ahmed Al Khateeb, Sherine Bekhit, Ahmed Sayed Ahmed, Mahmoud Al Barbery, Ahmed Mabrouk, Ahmed Shawky Amasha, Abdelrehim Mohamed, Bassma Rabi', Adel Al Haddad, Reem Gobara, Omar Ali, Mahmoud Ahmed Abou-Leil, Hanane Othman and Mohamed Dessouky and any comments on the source's allegations.

57. The Working Group regrets that it did not receive a response from the Government, nor did the Government request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

58. 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.

59. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

60. The source has alleged and the Government has not contested that the arrest and detention of the 18 individuals is arbitrary and falls under categories I, II, III and V. The Working Group will consider these in turn.

61. The source has alleged that all 18 individuals were arrested without a warrant and none of them were informed of the reasons for their arrest. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is not only promptly informed of the reasons for arrest but also promptly informed of any charges against him or her. The right to be promptly informed of charges concerns notice of criminal charges and, as the Human Rights Committee has noted in its general comment No. 35 (2014) on liberty and security of person, that right "applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment". The Working Group wishes to emphasize that when arrests are carried out without a warrant and there is no prompt information provided to the detained person of the charges against him or her, it effectively means that the authorities in question have failed to invoke any legal basis which would justify the arrest and detention. Such arrests and detention would thus fall under category I as lacking legal basis.

62. In the present case, all 18 individuals were arrested without a warrant, which is a breach of article 9 (2) of the Covenant, and most of them were not informed of any charges against them for considerable periods of time, as indicated in para. 31 above. Those delays significantly impacted upon the ability of the individuals to challenge their detention, as they were simply not aware of the reasons for it. That constitutes a breach of article 9 (3) of the Covenant.

63. In addition, the Working Group notes that many of the 18 individuals (see para. 25 above) were initially held in secret, incommunicado detention.

64. The Working Group in its practice has always consistently argued that holding persons incommunicado breaches the right to challenge the lawfulness of detention before a judge

and is thus contrary to article 9 (4) of the Covenant.³ The Working Group wishes to recall that according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.⁴ That right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,⁵ to “all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes”.⁶ It also applies “irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary”.⁷

65. In the present case, the individuals concerned, while being held incommunicado were effectively prevented from challenging the legality of their detention before a court. Without their having the effective possibility to exercise that right, the authorities cannot claim that their detention is legal, since the judiciary has not had the possibility of affirming its legality. Incommunicado detention is also a violation of the right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant,⁸ as well as a denial of the right to an effective remedy in accordance with article 8 of the Universal Declaration of Human Rights.

66. The Working Group therefore concludes that since all 18 individuals were arrested without a warrant, most of them were not informed of the charges against them for a considerable period after the arrest and some of them were held incommunicado, the detention of them all is arbitrary, since it lacks a legal basis and therefore falls under category I.

67. The source has also submitted that the detention of Mr. Adawy, Ms. Bekhit, Mr. Amasha, Ms. Gobara, Ms. Othman, Mr. Ahmed, Mr. Al Sagheer, Mr. Sayed Ahmed, Mr. Al Barbary, Mr. Mabrouk, Mr. Mohamed, Ms. Rabi’, Mr. Al Haddad, Mr. Ali and Mr. Dessouky is arbitrary under category II, as it resulted from the peaceful exercise of their rights to freedom of expression, association and assembly. The Government has not challenged those allegations.

68. The Working Group observes that all 18 individuals were arrested as perceived Government opponents (see paras. 26–28 above). That is further evidenced by the fact that most were charged with “belonging to a banned group” under article 86 bis of the Criminal Code.

69. The Working Group notes that the freedoms of opinion and of expression, as expressed in article 19 of the Covenant, are indispensable conditions for the full development of the person; they are essential for any society and in fact constitute the foundation stone for every free and democratic society.⁹ According to the Human Rights Committee, no derogations can be made to article 19 simply because “it can never become necessary to derogate from it during a state of emergency”.¹⁰

70. Freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and that right includes the expression and receipt

³ See, for example, opinions No. 56/2016, No. 53/2016, No. 6/2017 and No. 10/2017.

⁴ See A/HRC/30/37, paras. 2 and 3.

⁵ *Ibid.*, para. 11.

⁶ *Ibid.*, para. 47 (a).

⁷ *Ibid.*, para. 47 (b).

⁸ See, for example, opinions No. 46/2017, No. 47/2017, No. 69/2017 and No. 70/2017.

⁹ See Human Rights Committee general comment No. 34 (2011) on the freedoms of opinion and expression, para. 2.

¹⁰ *Ibid.*, para. 5.

of communications of every form of idea and opinion capable of transmission to others, including political opinions.¹¹ The permitted restrictions to that right may relate either to respect for the rights or reputations of others or to the protection of national security, public order or public health or morals. The Human Rights Committee has stipulated that: “Restrictions are not allowed on grounds not specified in paragraph 3 [of article 19], even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.”¹² It should be noted that article 21 of the Covenant permits restrictions to the right of assembly on the same three grounds.

71. In the present case, the Government of Egypt has chosen not to make any submissions regarding the permitted restrictions to those rights. It is quite clear to the Working Group that in fact the basis for the arrest and subsequent detention of the individuals concerned was their exercise of the freedoms of expression and of assembly. There is no evidence whatsoever that any of their actions were violent, that they incited to violence or that their actions indeed led to violence by others. While the freedoms of expression and assembly are not absolute rights, “when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself”.¹³ Moreover, “paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights”.¹⁴ The Working Group therefore concludes that the detention of Mr. Adawy, Ms. Bekhit, Mr. Amasha, Ms. Gobara, Ms. Othman, Mr. Ahmed, Mr. Al Sagheer, Mr. Sayed Ahmed, Mr. Al Barberly, Mr. Mabrouk, Mr. Mohamed, Ms. Rabi’, Mr. Al Haddad, Mr. Ali and Mr. Dessouky was due to their exercise of the freedoms of expression and of assembly, falling under category II.

72. The Working Group notes that the source has cited the same reasons in arguing that the detention of all 18 individuals also falls under category V. However, the Working Group is unable to make such a finding, as the source has not provided detailed information to substantiate this.

73. Finally, the source has argued that the detention of all 18 individuals is arbitrary and falls under category III, owing to violations of their rights to a fair trial being of such gravity as to give their detention an arbitrary character. The Government has chosen not to challenge those allegations.

74. The Working Group has already observed that Mr. Adawy was charged only 16 days after his detention; Mr. Mashaly was informed of the charges against him 14 months after his arrest; Mr. Al Sagheer was arrested on 6 November 2016 and has still to learn of any charges against him; Mr. Al Khateeb was officially charged after 17 months in detention; Mr. Sayed Ahmed was charged after 36 days of secret detention; Mr. Al Barberly was charged after 20 months of detention; Mr. Mabrouk was charged after 52 days of detention; Mr. Amasha was charged after one month of detention; Mr. Mohamed was charged after 18 months of detention; Ms. Rabi’ was charged two months after her arrest; Mr. Ali was charged one year after his arrest; Mr. Abou-Leil was charged after 42 days of secret detention; and Mr. Dessouky was charged after 13 days of secret detention. The delays in bringing charges against these individuals also prevented them from preparing their defence as envisaged in article 14 (3) (b) of the Covenant.

75. Furthermore, the Working Group also notes that a number of individuals were subjected to incommunicado detention (see paragraphs 25 and 63 above). The incommunicado detention not only prevented them from effectively exercising their right to challenge the legality of their detention but also adversely impacted upon their ability to prepare for their defence, in a further violation of article 14 (3) (b) of the Covenant.

76. The Working Group further observes that the Committee against Torture has made it clear that incommunicado detention creates conditions that lead to violations of the

¹¹ Ibid., para. 11.

¹² Ibid., para. 22.

¹³ Ibid., para. 21.

¹⁴ Ibid., para. 23.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁵ and that the Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment have consistently argued that use of incommunicado detention is unlawful.¹⁶ In the present case, all those in incommunicado detention, as well as others, were subjected to serious ill-treatment and even torture in order to force them to make confessions and self-incriminating statements in breach of articles 7, 14 (2) and (3) (g) of the Covenant. Moreover, the treatment described reveals a prima facie breach of the absolute prohibition of torture, which is a peremptory norm of international law and of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 1 of the Standard Minimum Rules for the Treatment of Prisoners. The Working Group will refer the present case to the Special Rapporteur on torture for further consideration.

77. The Working Group is alarmed at the allegations that Ms. Bekhit and Mr. Abou-Leil appeared in videos published on the website of the Ministry of the Interior, in which they were forced to make confessions. Such public broadcasting of the alleged confessions constitutes a total disregard for the presumption of innocence, as encapsulated in article 14 (2) of the Covenant.

78. Moreover, all 18 individuals were denied legal assistance, which constitutes a serious breach of the right to a fair trial. Denial of legal assistance is a violation of article 14 (3) (b) of the Covenant, principle 17 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. The Working Group also observes that the 18 individuals had their right to adequate time and facilities for the preparation of their defence (article 14 (3) (b) of the Covenant) violated.

79. The 18 individuals were also denied the possibility to challenge evidence, cross-examine witnesses and bring witnesses in their own defence in breach of article 14 (3) (f) of the Covenant. As the Human Rights Committee states in paragraph 39 of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, there is a strict obligation to respect the right of the accused to have witnesses admitted who are relevant for their defence and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.

80. The Working Group further finds that the failure to allow the 18 individuals to notify their respective families of their whereabouts and the failure by the authorities to inform their families of their whereabouts is a violation of principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

81. The Working Group also notes that most of the individuals have been subjected to prolonged pretrial detention (see paragraphs 42 and 43 above), in violation of article 14 (3) (c) of the Covenant and that the minor (case No. 1) was brought before the Al-Raml Criminal Court instead of a juvenile court, in breach of articles 10 and 14 (4) of the Covenant.

82. Finally, the source has also argued that in case No. 15, Mr. Ali, a civilian, was subjected to trial by a military court, in violation of article 14 of the Covenant. The Working Group observes that it is within its mandate to assess the overall proceedings of the court and the law itself to determine whether they meet international standards.¹⁷ In relation to the jurisdiction of the military court, the Working Group in its practice has consistently argued that the trial of civilians by military courts is in violation of the Covenant and customary international law and that under international law, military tribunals can only be competent to try military personnel for military offences.¹⁸ Furthermore, in the present case, the Government had the possibility to explain the transfer of the case of Mr. Ali to the jurisdiction of the military court, but has failed to do so.

¹⁵ See, for example, A/54/44, para. 182 (a).

¹⁶ See for example, A/54/426, para. 42 and A/HRC/13/39/Add.5, para. 156.

¹⁷ See opinions No. 33/2015, No. 15/2017 and No. 30/2017.

¹⁸ See A/HRC/27/48, paras. 67 and 68, and opinions No. 44/2016 and No. 30/2017.

83. The Working Group therefore concludes that the breaches of the rights to a fair trial of the 18 individuals were of such gravity as to give their detention an arbitrary character, falling under category III.

84. The Working Group would like to express its concern over the deplorable conditions in which the 18 individuals are held and the denial of medical assistance. The Working Group feels obliged to remind the Government that in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person, and that denial of medical assistance constitutes a violation of the Standard Minimum Rules for the Treatment of Prisoners, in particular rules 24, 25, 27 and 30.

85. The Working Group also wishes to express its concern at the various forms of retaliatory measures undertaken vis-à-vis the lawyer of Mr. Al Sagheer, who was allegedly threatened with arrest when he insisted on having access to his client. The Working Group emphasizes that it is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide remedies whenever a violation occurs. The Working Group especially recalls that under principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of their Liberty to Bring Proceedings Before a Court, “Legal counsel shall be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment”. The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

86. The present case is one of several cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty of persons in Egypt¹⁹ and concerns a large number of individuals, arrests and detention spanning a considerable period of time. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.²⁰ The Working Group would welcome the opportunity to engage constructively with the Government of Egypt to address the issues raised by the present case.

87. Finally, the Working Group would like to express its most serious concern at the reports received that the arrest and detention of Mr. Ahmed Mabrouk appears to be connected to the opinion that the Working Group issued in relation to his brother, Omar Abdulrahman Ahmed Youssef Mabrouk.²¹ The Working Group reminds the Government of Egypt that States have a duty to protect individuals and groups and to exercise due diligence in doing so. Intimidation or reprisals may be the result of acts or omissions by both State and non-State actors. However, acts or omissions are attributable to the State when they are carried out with the consent or acquiescence of an official or other person acting in an official capacity against any individuals or groups who are seeking to cooperate, who are cooperating or who have cooperated with the United Nations (A/HRC/33/19). The Working Group requests the Government to ensure that all acts of intimidation against Mr. Ahmed Mabrouk cease, that an impartial and effective investigation is carried out into such acts and those responsible brought to justice. The Working Group refers the present case to the focal point on reprisals of the Coordination Committee of Special Procedures and the Assistant Secretary-General for Human Rights for them to lead United Nations efforts to put an end to intimidation and reprisals against those cooperating with the United Nations on human rights.

88. The Working Group recalls that on 15 November 2016, it requested an invitation from the Government of Egypt to conduct a country visit. The Working Group reiterates that it would welcome the opportunity to visit Egypt in order to engage with the Government in a constructive manner and to offer its assistance in addressing its serious concerns relating to instances of arbitrary deprivation of liberty.

¹⁹ See, for example, opinions No. 30/2017, No. 60/2016, No. 54/2016, No. 42/2016, No. 41/2016, No. 7/2016 and No. 6/2016.

²⁰ See opinion No. 47/2012, para. 22.

²¹ Opinion No. 60/2016.

Disposition

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

The deprivation of liberty of the minor, Assem Adawy, Ameen Mashaly, Omar Al Sagheer, Ahmed Al Khateeb, Sherine Bekhit, Ahmed Sayed Ahmed, Mahmoud Al Barbery, Ahmed Mabrouk, Ahmed Shawky Amasha, Abdelrehim Mohamed, Bassma Rabi', Adel Al Haddad, Reem Gobara, Omar Ali, Mahmoud Ahmed Abou-Leil, Hanane Othman and Mohamed Dessouky, being in contravention of articles 3, 5, 8, 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and of articles 7, 9, 10, 14, 16, 19, 21 and 22 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II (in relation to Mr. Adawy, Ms. Bekhit, Mr. Amasha, Ms. Gobara, Ms. Othman, Mr. Ahmed, Mr. Al Sagheer, Mr. Sayed Ahmed, Mr. Al Barbery, Mr. Mabrouk, Mr. Mohamed, Ms. Rabi', Mr. Al Haddad, Mr. Ali and Mr. Dessouky) and III.

90. The Working Group requests the Government of Egypt to take the steps necessary to remedy the situation of those 18 individuals without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

91. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the 18 individuals immediately and accord each one of them an enforceable right to compensation and other reparations, in accordance with international law.

92. 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 the Special Rapporteur on the independence of judges and lawyers for further action.

93. The Working Group also refers the present case to the Coordination Committee of Special Procedures and the Assistant Secretary-General for Human Rights for them to lead United Nations efforts to put an end to intimidation and reprisals against those cooperating with the United Nations on human rights.

Follow-up procedure

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

- (a) Whether the 18 individuals have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to the 18 individuals;
- (c) Whether an investigation has been conducted into the violation of the rights of the 18 individuals and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Egypt with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

95. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

96. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would

enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

97. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.²²

[Adopted on 22 November 2017]

²² See Human Rights Council resolution 33/30, paras. 3 and 7.