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# Advance Edited Version

Distr.: General  
9 October 2019

Original: English

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 24 April–3 May 2019

#### Opinion No. 29/2019 concerning a minor whose name is known to the Working Group (Egypt)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 10 December 2018 the Working Group transmitted to the Government of Egypt a communication concerning the minor. 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. The minor was born in March 1997. He is a former secondary school student. At the time of his arrest, he was 17 years old.
- (a) Arrest and detention
5. According to the source, at approximately 4 a.m. on 2 March 2015, officers from the Egyptian Special Forces, Mabahith (State Security Investigations Service), the National Security Agency and a special weapons and tactics unit forcibly entered the home of the minor's family in Ezbet El-Yemen in the town of Awsim and arrested the minor. The minor's family was present at the time. The operation involved 20 security officers, including masked soldiers, and the use of armoured vehicles. The officers did not produce a warrant and did not inform the minor of the reasons for his arrest. After arresting the minor, the officers confiscated laptops belonging to his family, along with mobile phones, cash and jewellery. The items were never returned.
  6. The source reports that, following the minor's arrest, authorities in Egypt subjected the minor to incommunicado detention from 2 March to 22 May 2015, a period of more than 80 days. During this period, his family had no information about his whereabouts or well-being, and the minor had no contact with the outside world or access to legal counsel.
  7. The source indicates that the minor was initially taken to Awsim police station upon his arrest. Shortly thereafter, he was taken to the national security office in Imbaba. During his time at the national security office, the source reports that the minor was tortured by police officers who beat him with metal objects and subjected him to electric shocks during questioning. For the entirety of his detention at this location, the minor was kept blindfolded, including when he was forced to sign a false confession, which asserted that he had planted simulated explosive devices and that he belonged to the Muslim Brotherhood. The officers warned him that if he changed his story in any way, they would subject him to further torture. Throughout this time, the minor did not have access to any medical care and was not allowed to see his family or a lawyer.
  8. The source reports that, on 21 May 2015, officers brought the minor to the Giza prosecution office in order to be questioned. The minor was then made to repeat the false confession he had made following coercion by officers at the national security office in Imbaba. At no point was the minor allowed access to legal counsel.
  9. Despite being 17 years old when he was arrested on 2 March 2015, the authorities of Egypt listed the official arrest date for the minor as 21 May 2015, by which point he was 18 years old.
  10. According to the source, on 22 May 2015, the minor was transferred to the central security camp. That day, for the first time since the beginning of his detention, a member of his family was allowed to visit him. The family member reports that the minor appeared very depressed and had been subjected to torture, because marks from electric shocks were visible on his body. In addition, the minor's eyesight had greatly deteriorated because he had been blindfolded for the entirety of his detention. At the time, the minor was being held in a cell measuring 8 metres by 1 metre, which he was sharing with 130 other inmates.
  11. The source explains that, on 1 November 2016, the minor was transferred from the central security camp to El-Qanater Prison. During his time in El-Qanater Prison, the minor was held in a cell measuring 5 metres by 8 metres with 30 other inmates, including both adult and juvenile co-defendants, for more than 15 months. Inmates had infrequent access to food, water and personal hygiene products and were forced to sleep on sheets on the floor of the prison. The minor subsisted exclusively on food brought to the prison by his family during visits. His sole opportunity to communicate with anyone on the outside was during the visits with his family, which were limited to one hour per week.
  12. The source further explains that, for an extended period of time, the prosecutors denied the minor's requests to continue his studies inside El-Qanater Prison. However, after a member of the minor's family spoke with a member of the prison's education

administration, the minor was granted permission to take his secondary school exams. On 1 May 2018, the minor was transferred from solitary confinement in El-Qanater Prison to Tora Prison to sit his exams, which took place from 2 to 14 May 2018. The minor remains detained at Tora Prison.

13. According to the source, following his initial appearance before a prosecutor on 21 May 2015, the minor was brought to a number of detention renewal hearings. From 21 May 2015 to approximately 17 September 2015 – the first 120 days of the minor’s detention, as acknowledged by authorities of Egypt – detention renewal hearings took place every 15 days. After 17 September 2015, the hearings were scheduled every 45 days until the case went to trial. At the minor’s second detention renewal hearing, in the presence of his lawyer, the minor recanted his confession to the attending prosecutor. Nevertheless, the prosecutor did not note this in any written records, as he was satisfied with the minor’s initial confession.

(b) Charges

14. The source reports that, on 12 August 2015, the prosecution officially charged the minor with the following alleged offences: (a) joining a terrorist organization with intent to violate the Constitution and the law, as well as posing a threat to the general public, and their rights and personal freedoms; (b) terrorizing an individual by placing a simulated explosive device at the individual’s place of work in Awsim Electric Authority, with the intent of causing terror and disturbing national security; (c) setting fire to a coffeeshop by bombarding it with Molotov cocktails, while chanting in favour of the former President; (d) being in possession of, and procuring, Molotov cocktails and flares; (e) throwing Molotov cocktails at Awsim City Council; (f) attempting to murder a judge; (g) placing a simulated explosive device in front of Awsim General Hospital; (h) being present while two other defendants opened fire on the rear wall of the Awsim police station; and (i) joining a terrorist organization and being in possession of weapons.

15. The source explains that, although the minor is charged with eight offences, the written judgment in the case is vague and does not indicate when the offences are alleged to have occurred. According to the source, the prosecution’s narrative – in particular, relating to a number of the incidents upon which the charges against the minor are based – is either factually inaccurate or is misrepresented by the authorities as being linked to terrorism. In addition, a number of offences for which the minor was arrested and subsequently convicted were the result of his alleged participation in public gatherings or demonstrations. The minor was charged with allegedly joining a terrorist organization, which is understood to be a reference to the Muslim Brotherhood, specifically the Awsim Popular Resistance, an alleged terrorist cell that operated in support of the Brotherhood. However, the minor’s family has indicated that neither he nor they belong to any specific political groups or organizations in Egypt, including the Muslim Brotherhood and the alleged terror cell.

16. In fact, the source explains that the minor has attended peaceful demonstrations with the Ultras Ahlawy, a group of football fans that supports Cairo’s Al-Ahly Sporting Club football team. The minor has also engaged in street demonstrations, in accordance with his right to freedom of opinion and expression and his right to freedom of peaceful assembly and association. However, the minor’s family has indicated that he attended such demonstrations only three times. Moreover, the last time he attended such a demonstration was in December 2014, well before the occurrence of the offences he is alleged to have committed.

17. The source claims therefore that the minor is not a known member of a proscribed organization in Egypt. Furthermore, contrary to the claims of the authorities, he has not attended demonstrations that turned violent. His arrest was a form of retribution against his father, who worked as a youth athletics coordinator for the regime of deposed President Mubarak and has refused to support the current regime.

18. The source reports that the minor was in fact already in police custody at the time that he is alleged to have participated in the attempted assassination of a judge. The incident in question, in which a small bomb exploded outside the outer compound wall of the

judge's house, took place on 23 March 2015, at which point the minor had already been in police custody for 21 days.

19. The minor and his family have consistently denied any affiliation with or membership in the Muslim Brotherhood, which forms the basis of the first charge. The authorities have alleged that his attendance at the Ultras Nahdawy demonstrations amounts to membership in the Muslim Brotherhood; however, no evidence has ever been provided to support the charge.

20. In addition, the source explains that, although the minor was involved with the Ultras Ahlawy, he has been accused and found guilty of being a member of the Ultras Nahdawy group. However, the Ultras Nahdawy and Ultras Ahlawy groups are separate organizations. Whereas Ultras Ahlawy is a group for fans of the Al-Ahly Football Club, Ultras Nahdawy is a political group known for the sit-in protest of the deposition of Mohammad Morsi, which took place in Cairo's el-Nahda Square. Ultras Nahdawy have organized political protests, and although there is no official affiliation to the Muslim Brotherhood, there is some overlap in membership. The source claims that the minor has never had any affiliation with the group Ultras Nahdawy.

(c) Trial

21. According to the source, since the date of the minor's arrest, the minor has never been allowed to meet with his lawyer other than at hearings. At detention renewal hearings, and later at substantive procedural hearings, the minor has been able to whisper a few words to his lawyer, but he has never been provided with an opportunity to confer with his lawyer in order to discuss or prepare his defence.

22. The source explains that the minor's trial began on 31 October 2015. The minor was tried together with 29 other defendants, all of whom were charged with similar offences. None of the defendants was charged with a lethal offence. Two other co-defendants were also under the age of 18 at the time of the alleged offences. The hearings were closed to the public, and the family members of the defendants were not allowed to attend.

23. The source claims that, during the first hearing, the minor's lawyer submitted documents demonstrating that the minor was a child at the time of his arrest and asked that his client be transferred to a juvenile court. The minor's lawyer also informed the judge that his client had been tortured by national security officers into making a confession and asked that the confession be excluded from evidence. No steps have been taken by the court or any other authority to initiate an investigation into the minor's torture and ill-treatment. In addition, the minor informed the judge that his confession had been coerced through torture.

24. The source also explains that the case was transferred three times to new circuits. A verdict hearing was held on 9 January 2018. At that hearing, the judge issued death sentences to four of the 30 defendants, including the minor. In accordance with the laws of Egypt, the death sentences were then referred to the Grand Mufti for his recommendation. On 19 February 2018, the judge's final decision was published. All 30 defendants were found guilty. Four defendants, including the minor, received death sentences; 12 received sentences of life imprisonment; and the remaining 14, including the minor's brother, received 15-year prison terms.

25. The source indicates that the judge did not take into account the minor's juvenile status and the allegations that the confession was obtained by means of torture.

26. According to the source, on 19 February 2018, the minor was transferred to solitary confinement inside El-Qanater Prison.

27. The source further explains that, on 17 April 2018, the minor's appeal was filed before the Court of Cassation of Egypt. No trial date has been set for the minor's appeal. The minor awaits a listing before the Court in Cairo in the final determination of his case. No information has been provided to him, his lawyer or family on when a listing is anticipated.

## (d) Legal analysis

## (i) Category I

28. According to the source, the minor was arrested at his home; he was not arrested in flagrante delicto. Therefore, the authorities in Egypt failed to comply with article 40 of the Code of Criminal Procedure, by failing to present an arrest warrant at the time of the minor's arrest. His unlawful arrest is further aggravated by the State's failure to recognize him as a juvenile and to implement the enhanced requirements to protect children alleged to have infringed the penal code from arbitrary arrest, as recommended by the Committee on the Rights of the Child.<sup>1</sup>

29. The source also claims that the minor was subjected to enforced disappearance for approximately 80 days following his arrest by Egyptian authorities. During this period, the source alleges that the minor was subjected to torture. In addition, he was not formally charged with any offence or informed of the specific offences for which he had been arrested. This treatment amounts to a breach of articles 37 (c) and 40 (2) (b) (ii) of the Convention on the Rights of the Child.

30. In addition, according to the source, the prosecutor first questioned the minor, without his lawyer present, on 21 May 2015, 80 days after his 2 March 2015 arrest. The minor was then required to appear before prosecutors at approximately nine detention renewal hearings between 21 May and 31 October 2015. On 31 October 2015, the minor was brought before a judge for the first time. At that hearing, he was not provided with an opportunity to challenge the legality of his arrest or detention, and the case proceeded to trial 244 days after the date of his arrest. Thus, the source alleges that the minor has been in continuous detention for three years and five months without any attempt by the authorities in Egypt to sanction and review his detention in line with domestic legislation and article 37 of the Convention on the Rights of the Child. Furthermore, the source claims that, with regard to the pretrial detention of the minor, the authorities did not act on the authorization of the Court of Cassation and therefore acted in direct contravention of articles 142 and 143 of the Code of Criminal Procedure. In further contravention of article 143 of the Code, no official request for the minor's continued detention after his arrest has ever been presented to him, his family or his legal counsel.

31. As previously noted, the source claims that the minor has been incarcerated for more than three years since the date of his arrest and remains incarcerated pending the outcome of his appeal. It is therefore submitted that such incarceration does not comply with article 9 (3) of the International Covenant on Civil and Political Rights and that the minor's trial has most definitely not been carried out within a reasonable time.

32. Moreover, the source alleges that the minor was charged, convicted and sentenced to death for a number of offences pursuant to Laws 107/2013 (the "Protest Law") and Law 10/1914 (the "Assembly Law"). The minor is charged under articles 1, 2, 4, 8, 9, 16, 17, 20, 21 and 22 of the Assembly Law, which was amended by the Protest Law. Article 1 of the Assembly Law criminalizes a gathering or five or more persons if security personnel deem it to infringe upon public peace, thereby giving the security personnel complete discretion to assess the impact upon public peace. In addition, the term "public peace" is not defined. Under article 2 of the Assembly Law, an assembly of five or more persons is subject to criminal sanction if their intent is to commit a crime, even if the crime does not take place. Article 4 of the Assembly Law punishes assembly organizers for every act committed by the persons in the gathering, even if they are not present at the time. The authorities have not suggested that the minor was an organizer, which indicates the lack of due process of law and the arbitrary nature of the detention. These provisions clearly incorporate elements of unpredictability and lack due process of the law. In that connection, the source reports that charges brought under the Assembly Law have resulted in the arrest, detention and conviction of thousands, and the death sentences of hundreds, for a range of offences, and without consideration of individual responsibility in the offence.

<sup>1</sup> CRC/C/GC/10, para. 36.

## (ii) Category II

33. The source submits that the minor's arrest, detention and trial are arbitrary under category II because they are motivated by the Government's retaliation against the minor's father, who refused to encourage youth athletes in Egypt to support the regime. Furthermore, the minor's brother was also arrested and detained in similar circumstances. He was a co-defendant in the case and, as a result of the trial, was sentenced to a prison term of 15 years. The arrest of both siblings is a clear indicator of the motivation of the authorities of Egypt to punish their father and therefore renders the minor's arrest arbitrary under category II.

## (iii) Category III

34. According to the source, the minor was tried in a mass trial with 29 other defendants. The mass trial procedure cannot, and did not, allow for the minor's individual responsibility in the alleged offences to be determined, and consequently a decision on culpability beyond reasonable doubt could not be reached. The minor's trial was conducted in clear violation of his right to a fair trial as protected by article 10 of the Universal Declaration of Human Rights; article 40 (2) (b) (iii) of the Convention on the Rights of the Child; and articles 9 (1)–(4), 14 (2), (3) (a)–(c) and (3) (e) of the Covenant. These breaches are aggravated by the fact that the minor was not able to speak with his lawyer properly during the trial proceedings, therefore prohibiting him from access to legal representation.

35. The source also claims that the authorities failed to recognize the minor's juvenile status. At the time of his arrest, the minor was 17 years old and therefore a juvenile under domestic and international law. As a result, Egypt was obliged to recognize the minor as a juvenile and to comply with the special rules for dealing with juveniles alleged to have infringed the penal law, as stipulated in articles 37 and 40 of the Convention on the Rights of the Child. In addition, following the minor's trial in the Criminal Court, he was sentenced to death – a sentence that can only be imposed on adult defendants.

36. Moreover, the source indicates that the minor has not been charged with an offence that meets the internationally recognized threshold of “most serious crimes”; the application of the death penalty should therefore be excluded, as provided by article 6 of the Covenant. The minor was neither charged with nor convicted of any lethal offence. Nonetheless, he and three other defendants were sentenced to death for the alleged commission of number of non-lethal offences. The prosecution's request that the minor receive the death sentence therefore runs counter to the duty of Egypt under international law to ensure that capital punishment is only ordered for offences that meet the “most serious crimes” threshold.

37. Moreover, the source claims that there was a violation of the right to a public trial before a competent, impartial court. The source claims that it is apparent from the Criminal Court's failure to apply the country's Child Law – Law No. 12/1996, as well as the amendments made to it through Law No. 126/2008 – to the minor that the Court before which he was tried was not competent. The minor was thus unable to obtain the following rights enshrined in the Child Law: (a) restrictions on who is permitted to attend his trial; (b) the right to have a guardian or custodian attend his trial; (c) the right to be exempt from a trial and have a guardian or custodian attend in his place; (d) the right for social observers to attend his trial and open a file for him containing a comprehensive assessment of his education, psychological, mental, physical and social status; (e) the requirement for the Court to deal with the case in the light of the information in the file compiled by a social observer; and (f) the right to be in a special punitive institution for children following a penalty restricting his freedom. The fact that the minor was unable to access his rights as a juvenile defendant means that he was unlawfully sentenced to death, contrary to both national and international law. The source also indicates that the transfer of the case to new circuits demonstrates the lack of impartiality.

38. Furthermore, according to the source, the fact that the minor's family was denied access to all of his hearings demonstrates a violation of the minor's right to a public trial, as enshrined in article 14 (1) of the Covenant.

39. The source claims further that no warrant detailing the charges against him was provided at the time of the arrest, and it was not until 21 May 2015 that the minor was

informed of the charges. This is in clear violation of his right to be promptly informed of the charges against him, as enshrined in article 14 (3) (a) of the Covenant. Further, the minor was not brought before a judge until 244 days after his arrest, and his first instance trial was not concluded until three years after his arrest. This procedural timetable, during which time the minor was held in prison and subjected to torture, beatings and cramped conditions, is in clear violation of his right to be tried without delay, as enshrined in article 14 (3) (c) of the Covenant.

40. According to the source, the minor has not been afforded the opportunity to prepare his defence with a lawyer. The minor's lawyer was only allowed to meet with the minor for the first time at a detention renewal session on or around 5 June 2015. Prior to that meeting with his lawyer – which did not take place in private but rather at the Giza prosecution office – the minor had been tortured extensively and questioned by a prosecutor without a lawyer present. Thereafter, the minor was prevented from speaking with his lawyer except during hearings, first at the prosecution office and later in court. The fact that the minor was not able to consult a lawyer in advance of his hearings to challenge the legality of his arrest or detention or to prepare his defence is contrary to his rights as enshrined in article 14 (3) (b) of the Covenant and article 37 (d) of the Convention on the Rights of the Child.

41. The source alleges that, during the trial, the minor's lawyer argued that the minor had been tortured and subjected to ill-treatment upon arrest and in detention for the purpose of obtaining a forced confession. No steps had been taken by the courts to investigate the minor's allegations ex officio as required by articles 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As a result, the minor's confession was submitted as evidence at the trial, in violation of article 15 of the Convention against Torture, which requires the exclusion of such evidence. The court's reliance on this evidence amounts to a violation of the minor's right to be free from self-incrimination.

42. Furthermore, the source claims that the minor has been subjected to egregious prison conditions including torture, overcrowded prison cells, solitary confinement, unsanitary conditions and limited access to his family.

43. The source also claims that the authorities failed to use pretrial detention as a last resort, and that the minor was subject to detention without being allowed recourse to challenge the legality of his arrest and detention. On the basis of these observations, the source claims that these actions amount to the use of detention as a form of punishment.

(iv) Category V

44. The source also claims that the minor has been discriminated against because the authorities of Egypt have failed to afford him protections associated with his status as a juvenile. Furthermore, as the motivation for his arrest, detention and trial is a form of retribution against the minor's father, the source submits that it amounts to discrimination contrary to article 2 of the Convention on the Rights of the Child. For these reasons, the minor's arrest is arbitrary under category V.

*Response from the Government*

45. On 10 December 2018, the Working Group transmitted the allegations made by the source to the Government through its regular communication procedure. The Working Group requested the Government to provide, by 8 February 2019, detailed information about the current situation of the minor and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure the minor's physical and mental integrity.

46. On 28 January 2019, the Government sought an extension of the deadline to submit its response. In conformity with paragraph 16 of its methods of work, the Working Group granted an extension of one month for the Government to submit its response by 8 March 2019. The Working Group regrets that it did not receive a response from the Government.

## Discussion

47. 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.

48. 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 (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.

49. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights, the Covenant and other applicable international and regional instruments.<sup>2</sup> Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and obliged to assess the judicial proceedings and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.<sup>3</sup>

50. In the discharge of its mandate to investigate cases of deprivation of liberty imposed arbitrarily, the Working Group refers to relevant international standards, including the Convention on the Rights of the Child, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), in accordance with paragraph 7 of its methods of work. The Working Group notes that Egypt informed the Secretary-General on 31 July 2003 that it had decided to withdraw its reservation made upon its signature of the Convention on the Rights of the Child on 5 February 1990, and confirmed its ratification of the Convention on 6 July 1990. Moreover, the Working Group takes notes of the views of the Committee on the Rights of the Child, which urged Egypt not to carry out the death penalty on children or on persons who were under the age of 18 at the time of the commission of the crime, in compliance with its obligations under international and domestic law (CRC/C/EGY/CO/3-4, para. 39).

### *Category I*

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

52. In line with article 9 (1) of the Covenant, no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law. The source submits, and the Government does not contest, that the minor was not presented with an arrest warrant or informed of the reasons for his arrest when he was taken into custody on 2 March 2015. The Working Group recalls the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security and the prohibition of arbitrary deprivation of liberty under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) of the Covenant and article 37 (b) of the Convention on the Rights of the Child, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>4</sup> The Working Group finds no valid grounds to justify exception to this principle in the present case and finds a violation of article 9 of the Universal Declaration

<sup>2</sup> General Assembly resolution 72/180; Commission on Human Rights resolutions 1991/42 and 1997/50; and Human Rights Council resolutions 6/4 and 10/9.

<sup>3</sup> Opinions No. 1/1998, para. 13; No. 5/1999, para. 15; No. 1/2003, para. 17; No. 76/2017, para. 49; and No. 94/2017, para. 47.

<sup>4</sup> Opinions No. 51/2018, para. 80; 63/2018, para. 27; 68/2018, para. 39; 82/2018, para. 29.

of Human Rights, article 9 (1) and (2) of the Covenant, article 40 (2) (b) (ii) of the Convention on the Rights of the Child and principle 10 of the Body of Principles.<sup>5</sup>

53. Moreover, the source argues that the minor was not promptly informed of any charges against him. Article 9 (2) of the Covenant requires that a person who has been arrested be given prompt notice of any charges in order to facilitate the determination of whether provisional detention is appropriate.<sup>6</sup> In this case, the minor was first informed of the charges on 21 May 2015, which therefore amounts to a failure to promptly inform him of the charges and violates article 9 (2) of the Covenant. The Working Group thus concludes that the first 11 weeks of detention after his arrest are without any legal basis.

54. The source further maintains, and the Government does not dispute, that the minor was held incommunicado between 2 March 2015 and 22 May 2015, for a period of more than 80 days. Such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts or to acknowledge detention, lacks any valid legal basis under any circumstance and is inherently arbitrary as it places the person outside the protection of the law in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.<sup>7</sup>

55. The Working Group also notes that the minor was not brought promptly before a judge, that is within 24 hours of his arrest, barring absolutely exceptional circumstances, as per the international standard.<sup>8</sup> The minor was also not afforded the right to take proceedings before a court so that it could decide without delay on the lawfulness of his detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights; article 2 (3) and article 9 (1), (3) and (4) of the Covenant; article 37 (d) of the Convention on the Rights of the Child; and principles 11, 32 and 37 of the Body of Principles.<sup>9</sup> In addition, it is indicated in the report of the Working Group on the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, paras. 2 and 3) that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and that that right is essential to preserve legality in a democratic society. This right applies to all forms and situations of deprivation of liberty.<sup>10</sup>

56. In addition, the Working Group observes that the death sentence against the minor for the offences he is alleged to have committed when he was below 18 years of age is in contravention of article 6 (5) of the Covenant and article 37 (a) of the Convention on the Rights of the Child.<sup>11</sup>

57. For these reasons, the Working Group considers that the minor's arrest, detention and death sentence lack a legal basis and are thus arbitrary, falling under category I.

### *Category III*

58. The Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give the minor's deprivation of liberty an arbitrary character, so that it falls within category III.

59. First, the source explains that the minor did not have the opportunity to prepare his defence with a lawyer, as he was only allowed to meet him for the first time at his detention

<sup>5</sup> See also articles 14 (3) and 16 (1) of the Arab Charter on Human Rights.

<sup>6</sup> Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 30.

<sup>7</sup> See also the Declaration on the Protection of All Persons from Enforced Disappearance; article 22 of the Arab Charter on Human Rights; article 5 of the African Charter on Human and Peoples' Rights; and opinion No. 82/2018, para. 28.

<sup>8</sup> Committee on the Rights of the Child, General Comment No. 10 (2007) on children's rights in juvenile justice, para. 83.

<sup>9</sup> See also articles 12, 14 (5) and (6), and 23 of the Arab Charter on Human Rights.

<sup>10</sup> Opinion No. 39/2018, para. 35.

<sup>11</sup> See also article 5 (3) of the African Charter on the Rights and Welfare of the Child.

renewal hearing on about 5 June 2015, and that meeting was not held in private. The source submits that the minor was tortured and questioned by the prosecutor without the presence of his lawyer. The minor was not able to speak to his lawyer, except during hearings, and could not consult him to prepare for his defence. The Working Group thus considers that the interrogation of the minor without the presence of his lawyer deprived him of his right to legal counsel at the critical stage of criminal proceedings and removed the effective checks against torture and other coercive means used to extract his confession. Moreover, the Working Group takes note of the fact that the minor's family was denied access to the trial and that the minor raised the allegations of torture during the trial, but the allegations were not followed by any investigation, in contravention of his right to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Working Group therefore finds serious violations of articles 10 and 11 (1) of the Universal Declaration of Human Rights; article 14 (1) and (3) (d) of the Covenant; and article 40 (2) (b) (ii) and (iii) of the Convention on the Rights of the Child.<sup>12</sup>

60. The source also contends, and the Government does not rebut, that the mass trial conducted together with 29 other defendants undermined the due process of the minor, his fair trial rights and the presumption of innocence guaranteed by article 11 (1) of the Universal Declaration of Human Rights, article 14 (2) of the Covenant and article 40 (2) (b) (i) of the Convention on the Rights of the Child.<sup>13</sup> The Working Group is also of the view that such mass trials are incompatible with the interest of justice or human rights.

61. The Working Group cannot fail to express its gravest concern at the allegations of torture and ill-treatment, which would amount to violations of articles 5 and 25 (1) of the Universal Declaration of Human Rights, articles 7 and 10 (1) of the Covenant and articles 24 (1) and 37 (a) and (c) of the Convention on the Rights of the Child. The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further consideration.<sup>14</sup>

62. In the Working Group's view, not only is torture a grave violation of human rights per se, but it also undermines the ability of persons to defend themselves and hinders their exercise of the right to a fair trial, especially in the light of the right not to be compelled to testify against oneself or to confess guilt, pursuant to article 14 (3) (g) of the Covenant, article 15 of the Convention against Torture and article 40 (2) (b) (iv) of the Convention on the Rights of the Child.<sup>15</sup>

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

#### *Category V*

64. The Working Group will now examine whether the minor's deprivation of liberty constitutes discrimination under international law with respect to category V.

65. The source maintains, and the Government does not contest, that the minor has been targeted by the Government as a form of retribution against his father, who worked as a youth athletics coordinator for the regime of the former President and has refused to support the current regime. The minor's brother was also arrested, detained and prosecuted in similar circumstances, and was tried and sentenced to a term of 15 years. To the source, this is another indication of the Government's motivation to retaliate against their father, which the Government did not contest.

<sup>12</sup> See also articles 12, 13 (1) and 16 (2) and (3) of the Arab Charter on Human Rights; article 7 (1) (c) of the African Charter on Human and Peoples' Rights; and article 17 (2) (c) (iii) of the African Charter on the Rights and Welfare of the Child.

<sup>13</sup> See also article 16 of the Arab Charter on Human Rights; article 7 (1) (b) of the African Charter on Human and Peoples' Rights; and article 17 (2) (c) (i) of the African Charter on the Rights and Welfare of the Child.

<sup>14</sup> Opinion No. 39/2018, para. 42.

<sup>15</sup> See also article 16 (6) of the Arab Charter on Human Rights.

66. The Working Group is of the view that this case relates to the political opinion of the minor's father and considers it as retaliation, therefore falling under category V, rather than category II.

67. The Working Group reaffirms that no one should be deprived of his or her liberty for the crimes, real or not, committed by his or her family member by birth or marriage in a free, democratic society. The practice of collective punishment or guilt by association has no place in modern criminal law, which is built upon the principle of individual criminal responsibility.<sup>16</sup>

68. Therefore, the Working Group considers that the minor's deprivation of liberty constitutes a violation of article 2 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant on the grounds of discrimination based on birth and family relations aimed at and resulting in ignoring the equality of human beings and that it therefore falls under category V.

69. The Working Group notes that the present opinion is only one of many other opinions in the past five years in which the Working Group has found the Government to be in violation of its international human rights obligations.<sup>17</sup> The Working Group is concerned that this indicates a systemic problem with arbitrary detention in Egypt, which, if it continues, could amount to a serious violation of international law.<sup>18</sup> 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 could constitute crimes against humanity.

70. Finally, the Working Group expresses its grave concern in relation to the death sentence imposed on the minor. Given the finding of the Working Group that he was arbitrarily deprived of his liberty without any legal basis and in violation of his right to a fair trial and non-discrimination, the Working Group urges the Government not to proceed with carrying out the death sentence. The Working Group also reminds the Government that the General Assembly in its resolution 73/175 of 17 December 2018 called upon all States to establish a moratorium on executions with a view to abolishing the death penalty.

### **Disposition**

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

The deprivation of liberty of the minor, being in contravention of articles 2, 3, 8, 9, 10, 11 (1) of the Universal Declaration of Human Rights; articles 2 (1), 6 (5), 9 (1), (2), (3) and (4), 14 (1), (2), (3) (d) and (g), 16 and 26 of the International Covenant on Civil and Political Rights; and articles 24 (1), 37 (a), (b), (c) and (d), and 40 (2) (b) (ii), (iii) and (iv) of the Convention on the Rights of the Child is arbitrary and falls within categories I, III and V.

72. The Working Group requests the Government of Egypt to take the steps necessary to remedy the situation of the minor without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

73. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the minor immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

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

<sup>16</sup> Opinions No. 33/2017, para. 98, and No. 38/2018, para. 76.

<sup>17</sup> See, for example, opinions No. 83/2017, No. 26/2018, No. 27/2018, No. 47/2018, No. 63/2018, No. 82/2018 and No. 87/2018.

<sup>18</sup> Opinion No. 47/2018, para. 85.

75. The Working Group requests the Government to end the practice of mass trials, which are incompatible with the right to a fair trial and the presumption of innocence under international law.

76. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

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

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

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

79. 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.

80. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

81. 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.<sup>19</sup>

*[Adopted on 3 May 2019]*

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<sup>19</sup> Human Rights Council resolution 33/30, paras. 3 and 7.