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**Human Rights Council**  
Working Group on Arbitrary Detention**ADVANCE UNEDITED VERSION****Opinions adopted by the Working Group on Arbitrary  
Detention at its seventy-second, 20– 29 April 2015****No.14/2015 (Egypt)****Communication addressed to the Government on 8 January 2015****Concerning a minor (whose name is known by the Working Group).****The Government of the Arab Republic of Egypt replied to the communication of 8  
January 2015 on 18 February 2015.****The State is a party to the International Covenant on Civil and Political Rights and  
the Convention of the Rights of the Child.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (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 International Covenant on Civil and Political Rights (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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

### **Submissions**

#### *Communication from the source*

3. The case was reported to the Working Group on Arbitrary Detention as follows:
4. A minor, whose name is known by the Working Group, (hereinafter ‘the minor’) is an Egyptian national and usually resides in Alexandria, Egypt. He is a high-school student at School there.
5. On 27 December 2014, the minor was arrested at his home at approximately 6.00am in the presence of his family members. It is reported that a large group of security forces belonging to the State Security Directorate conducted the arrest in the absence of a warrant. His home was later searched.
6. The minor was initially detained for approximately two hours at the El Dekhela police station, Alexandria, and later transferred to the State Security Directorate Smouha, Alexandria, where he remains detained to date. He has not been granted access to his family.
7. On 30 December 2014, the minor, along with a group of minors, was transported in handcuffs to the Prosecutor’s office, as confirmed by his family who saw him outside the building from a distance. It is reported that the minor was represented by legal counsel before the Prosecutor.
8. The minor was initially accused of destroying a police car on 10 December 2014, at approximately 6.00pm, which the source refutes stating that he was in the company of one of his teachers at the time of the alleged act. He was later accused of taking part in a demonstration associated with support of the Muslim Brotherhood, along with a number of other minors. This allegation is refuted by the source, which states that the minor had no political involvement.
9. According to the source, the Prosecutor initially decided to release the minor, along with a number of other minors, but later that same day reversed this decision and instead confirmed the minor’s detention pending trial.
10. The source conveys that as his family has had no contact with the minor since the date of his arrest or any information regarding his wellbeing, they fear for his health and safety.

#### *Response from the Government*

11. In the communications addressed to the Government of the Arab Republic of Egypt on 8 January 2015 the Working Group transmitted the allegations made by the source. The Working Group stated that it would appreciate if the Governments could, in their reply, provide it with detailed information about the current situation of the minor and clarify the

legal provisions justifying his continued detention. The Government of the Arab Republic of Egypt replied to the communication of 8 January 2015 on 18 February 2015.

12. According to the Egypt Government, a number of leaders of the Muslim Brotherhood terrorist organization in western Alexandria had instructed some members of the organization, including the minor, to hire criminal elements, to purchase firearms and bladed weapons, and to prepare bombs and Molotov cocktails for use against the security forces and their vehicles and installations. The criminal group calls itself “Ultras Freedom Eagles”.

13. The mandatory legal steps were taken and the Supreme State Security Prosecutor’s Office issued an arrest warrant for the parties concerned. The warrant was used to arrest the minor and 23 other members of the criminal group known as “Ultras Freedom Eagles”.

14. The arrested persons admitted during the investigations that they had been involved in setting fire to a police vehicle, attacking the security forces and seizing the belongings of one of the officers. The minor was found to have been involved in El-Dekheila administrative case No. 16981 of 2014 concerning an arson attack on a vehicle belonging to the Alexandria Traffic Department and assault on an officer. In light of the foregoing, the Prosecutor’s Office decided to place him in pre-trial detention for 15 days pending investigations and renewal of detention for the legally permitted period, in accordance with the relevant legal provisions.

15. The minor is detained far from any adult detainees in the Transfer Department of the Alexandria Security Directorate, since he cannot be detained in the Directorate’s Juvenile Custody Division or in the General Juvenile Custody Department in Cairo until a final judgement has been handed down sentencing him to imprisonment, in accordance with the relevant legal procedures.

16. The minor is in good health and is not suffering from any chronic illness. He is visited by his father every Monday during official visiting hours.

*Comments from the source*

17. On 24 March 2015, the source submitted its comments to the Egypt Government’s response.

18. According to the source, the minor is assumed by the Egypt Government to be involved in anti-government activities however there is no exact dates, places or evidences provided. In this regard, the source claims that the response from the Egypt Government speaks a lot about the group, but not about the minor as an individual person.

19. The source claims that any imprisonment has to be based on a court order. The minor was arrested at home early morning with the permission of the prosecution on 27 December 2014 and he was detained in Alexandria security directorate. The source argues that the response of the government shows its failure to demonstrate it has undertaken any investigation into the legality and arbitrariness of the minor’s detention.

20. The minor is accused of political involvement in Muslim Brotherhood group regardless the fact that he was one of those who supported the President Al Sissy and all family voted for Al Sissy to be a president. The Government’s statement concerning the minor political involvement is not based on any evidence and, perhaps, created for the purpose to keep the minor imprisoned.

21. Furthermore, the source refutes the statement of the Egypt Government that the minor pleaded guilty of all charges. The source informs that the minor was not recognized by other detainees. The search, conducted in his family house, did not give any evidences against him. As there were no evidences to imprison him he should be allowed to go free.

22. The source refutes the Government's statement concerning the health conditions of the minor, and claims that he suffers from stuttering and has worrying health conditions.
23. The source further claims that because the minor is a school student, his detention has impeded his study. Also it has devastating effect on him and all his family.

### **Discussion**

24. According to its Methods of work, the Working Group is in a position to render an Opinion on the case on the basis of the submissions that have been made.
25. Neither the source nor the Government has provided much in terms of precise information about the criminal proceedings upon which the Working Group can base its opinion. The main issues in the present case relate to the competence of the Supreme State Security Prosecutor's Office to render a decision on deprivation of liberty pending trial, as well as compliance of detention of a minor in the Transfer Department of the Alexandria Security Directorate as applied to the minor with the pertinent international human rights norms.
26. The Working Group notes that, according to the source, the minor is a minor and a 17 years old school student, who has been detained since 27 December 2014 in the Transfer Department of the Alexandria Security Directorate. In its response, the Government confirms that the minor is detained in that facility, since he cannot be detained in the Directorate's Juvenile Custody Division or in the General Juvenile Custody Department in Cairo until a final judgement has been handed down sentencing him to imprisonment, in accordance with the relevant legal procedures.
27. While noting the Government's submission that the minor is held for four months in the Transfer Department of the Alexandria Security Directorate far from any adult detainees. The Working Group considers that the irregular detention for such a long period in a security agency facility is a grave violation of the requirements related to any form of pre-trial detention.
28. The Working Group expresses a grave concern that no further details were provided regarding compliance of the minor's detention with applicable international human rights standards, in particular, with the principle that the deprivation of liberty of a child shall be used only as a measure of last resort and for the shortest appropriate period of time, as set forth in article 37(b) of the Convention on the Rights of the Child, ratified by Egypt on 6 July 1990, and affirmed by Sections 1 and 2 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 of 14 December 1990 and by Sections 13(1), 18(2) and 19(1) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted by General Assembly resolution 40/33 of 29 November 1985.
29. The minor is held in detention on decision rendered by the Supreme State Security Prosecutor Office, and he has never been brought before the judicial authority that could verify the legality of his arrest and detention by the State Security agents. In its General Comment No. 35, the Human Rights Committee has reaffirmed that paragraph 3 [of article 9 of the ICCPR] requires, firstly, that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. That requirement applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it. The requirement applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity. The right is intended to bring the detention of a person in a criminal investigation or prosecution under judicial control. It is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. Accordingly, a public prosecutor

cannot be considered as an officer exercising judicial power under paragraph 3. (see General Comment No. 35, UN Doc. CCPR/C/GC/35, para. 32)

30. The Working Group shares views of the Human Rights Committee that while the exact meaning of “promptly” may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances. An especially strict standard of promptness, such as 24 hours, should apply in the case of juveniles. The individual must be brought to appear physically before the judge or other officer authorized by law to exercise judicial power. The physical presence of detainees at the hearing gives the opportunity for inquiry into the treatment that they received in custody and facilitates immediate transfer to a remand detention centre if continued detention is ordered. It thus serves as a safeguard for the right to security of person and the prohibition against torture and cruel, inhuman or degrading treatment. In the hearing that ensues, and in subsequent hearings at which the judge assesses the legality or necessity of the detention, the individual is entitled to legal assistance, which should in principle be by counsel of choice. (see General Comment No. 35, UN Doc. CCPR/C/GC/35, para. 33 and 34)

31. The Government failed to demonstrate that it has safeguarded the minor his due process rights and guarantees, as well as the right to fair trial, in compliance with articles 9 and 10 of the Universal Declaration of Human Rights and 9 and 14 of the International Covenant on Civil and Political Rights, which is binding on Egypt by virtue of its ratification. This is furthermore in violation of Section 14 of the "The Beijing Rules". This case falls under category I and III of the categories applicable to the cases before the Working Group.

32. The Working Group expresses a grave concern by the present case, which, when considered together with the previously adopted opinions related to Egypt, indicates systemic and widespread arbitrary detentions of young individuals. The Working Group also considers that the violations of fundamental right to be free from arbitrary deprivation of liberty, which cannot be derogated from, will render subsequent convictions unsafe.

#### **Disposition**

33. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of the minor is arbitrary and in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and 9 and 14 of the International Covenant on Civil and Political Rights. It falls into category I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

34. Consequent upon the opinion rendered, the Working Group requests the Government of Australia to take the necessary steps to remedy the situation of the minor and bring it into conformity with the standards and principles in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

35. The Working Group requests the Government of Egypt to release the minor immediately and accord him an enforceable right to reparation in accordance with article 9, paragraph 5 of the International Covenant on Civil and Political Rights and the Working Group’s jurisprudence.<sup>1</sup>

[Adopted on 27 April 2015]

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<sup>1</sup> See for instance Opinion No.52/2014 (Australia and Papua New Guinea).