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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March–8 April 2022

Opinion No. 23/2022 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 42/22.
2. In accordance with its methods of work,¹ on 20 December 2021 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).

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. The minor is an Egyptian national, born in 2005. He usually resides in North Sinai governorate. At the time of his arrest, he had just turned 12 years old and was a student.
- a. Arrest and detention
5. The source reports that on 5 December 2017, a relative of the minor was arrested and at midnight on 31 December 2017, military personnel and police officers in uniform and civilian clothes raided the minor's house. During the raid, the military personnel reportedly asked about another of the minor's relatives and arrested the minor without presenting a warrant.
 6. According to the source, the minor was subjected to enforced disappearance for nearly seven months. After he appeared for the first time before the State Security Court, it was discovered that the minor had been held at the hands of the police and military forces within the premises of Arish police station and Battalion 101. The source alleges that in Battalion 101, the minor was tortured by national security agents who hung him up by his hands and put firewood under him to frighten him and force him to confess to crimes that he had not committed, such as participating in setting up explosions.
 7. The source reports that on 2 July 2018, the minor was brought before the State Security Court and charged with belonging to a terrorist group and participating in manufacturing explosions in 2018. Reportedly, the minor was held in solitary confinement throughout the whole period of his detention. The source notes that the date of his arrest was officially registered as 2 July 2018 and therefore that the period of involuntary disappearance was not registered.
 8. According to the source, the minor was prohibited from receiving visits, food, clothes and medicine. Reportedly, his family was able to see him for the first time on 16 October 2018, during his appearance before the prosecution. The source reports that his lawyer was able to see him only at his third session before the prosecution, nearly a month and a half after the first investigation session. The source notes that the minor's lawyer was not able to visit him at the detention centre.
 9. Allegedly, the minor was not allowed to take a shower and, as a result, became infected with furuncles around June 2018. On 16 October 2018, an application for a medical examination was submitted to the prosecution, but no answer was received.
 10. The source indicates that the minor was detained in Azbakeya police station from 2 July 2018 until 27 December 2018, when the juvenile court that tried the minor ordered his release. He was transferred to Arish police station to await release. Following his transfer, his family was not able to see him and was permitted only to deliver food and clothes for him, which were allegedly collected by the police officers who affirmed that he was present in Arish police station. Reportedly, on 11 January 2019, the minor's family asked the officers about his fate and whereabouts, but the officers at Arish police station denied having him in custody.
 11. The source notes that the Working Group on Enforced and Involuntary Disappearances forwarded the case of the minor to the Government of Egypt in 2019. The Government reportedly replied in 2020, stating that the minor had been handed over to one of his relatives. Upon verifying that claim, the source was informed that, on 18 January 2019, one of the minor's relatives was called to Arish police station and asked to sign the minor's release papers as a prerequisite to his release. Reportedly, once the papers had been signed, the relative was told to go back the next day to collect the minor. However, the source reports that the minor was not released the next day and that the officers denied that he was present at Arish police station.
 12. According to the source, the minor's family later filed a lawsuit before the State Council against the Public Prosecutor, the Minister of Defence, the Minister of the Interior and the head of prison administration requesting that they respond to the family's inquiries regarding the minor's whereabouts. Reportedly, while the lawsuit was accepted, it was

merely an administrative process and the government authorities ignored all requests to clarify the minor's fate.

13. The source reports that, to date, the minor remains under enforced disappearance, having disappeared on 11 January 2019 and never having been seen since.

b. Legal analysis

14. The source argues that the detention of the minor is arbitrary under category III of the working methods of the Working Group on Arbitrary Detention given that: (a) he was held responsible for a criminal offence, despite being a minor; (b) he was brought before the State Security Court, which is a special court; (c) he was subjected to enforced disappearance; (d) he was tortured; (e) his right to counsel was violated; (f) he was detained in inhumane conditions and was subjected to torture and ill-treatment; (g) his right to contact with the outside world was violated; and (h) his right to health was violated.

i. Criminal responsibility for minors

15. The source recalls that article 1 of the Convention on the Rights of the Child, article 2 of the African Charter on the Rights and Welfare of the Child and section O (a) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa define a child as every human being below the age of 18 years. The source notes that the Committee on the Rights of the Child concluded that 12 is the lowest internationally acceptable minimum age of criminal responsibility. As a result, the source submits that not every child can be held responsible for a criminal offence.

16. In this regard, the source notes that the minor was detained and charged with committing a criminal offence allegedly committed before he was 12 years old. The source also underlines that arresting a child is a matter of concern given that the deprivation of a child's liberty must be a measure of last resort. Furthermore, the source recalls that laws cannot be applied retroactively. As such, the source argues that individuals cannot be held responsible for crimes committed when they were below the age of 12 years, even if they were arrested after reaching 12 years old.

17. The source concludes that the minor, who was arrested just after he had turned 12 years old for an offence allegedly perpetrated before he turned 12, should not have been charged with committing a crime.

ii. Use of special courts

18. The source recalls that the right to a fair trial applies in trials before all courts, including special or specialized courts and military courts. Nevertheless, the source notes that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has called on States to avoid using special or specialized courts in terrorism cases.²

19. Furthermore, the source notes that, in accordance with principle 5 of the Basic Principles on the Independence of the Judiciary and sections A (4) (e) and L (c) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, special courts should not be created to displace the jurisdiction of ordinary courts, and therefore should not examine offences falling under the jurisdiction of ordinary courts. In addition, the source stresses that when special courts exist, they must be independent and impartial, and must respect fair trial standards.

20. According to the source, the reason why special courts should be used only exceptionally is that fair trial rights are more likely to be violated before such courts. The source notes that human rights bodies have raised concerns about procedures before special courts that are inconsistent with fair trial rights, including the right to a trial before an independent and impartial court, the exclusion of evidence obtained by torture or other ill-treatment and the right to appeal to a higher tribunal.

² The source refers to [A/63/223](#), para. 45 (b).

21. In addition, the source refers to the case of *Aboussedra v. Libyan Arab Jamahiriya*, in which the Human Rights Committee concluded that a trial before a special court violated the individual's fair trial rights.³

22. The source contends that juvenile courts should be established for criminal proceedings against persons who were below the age of 18 years at the time of the alleged crime. In this regard, the source notes that, even though the minor was tried before a juvenile court, he should not have been presented before the State Security Court, which it argues constitutes a special court dealing with specific cases of terrorism. The source adds that ordinary courts had jurisdiction over the minor's case and that he should have been investigated by a prosecutor specialized in children's cases.

23. The source concludes that, as a special court, the State Security Court had no jurisdiction to hear the minor's case from the outset and he should not have been brought before it, regardless of whether the criminal acts he was charged with amounted to terrorist acts.

iii. Enforced disappearance

24. The source notes that enforced disappearance is not only arbitrary per se, but is also considered a violation of the rights to be detained in humane conditions and to be free from torture and other forms of ill-treatment. The source submits that these rights are fundamental to achieving a fair trial.

25. The source emphasizes that article 17 of the International Convention for the Protection of All Persons from Enforced Disappearance provides that individuals deprived of their liberty must be held in a place of detention that is officially recognized and that no one should be held in secret detention. The source submits that children, especially, must not only be held in official places of detention but must also be treated in a manner consistent with their dignity and needs, and therefore must be detained in areas specific to children. The source submits that, in other words, States must establish a separate child-oriented juvenile justice system, in accordance with article 17 of the Arab Charter on Human Rights and section O (m) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

26. In addition, the source argues that enforced disappearance constitutes an act of torture, in violation of fair trial principles. In this regard, it recalls that the Committee against Torture found that the enforced disappearance of a victim constituted an act of torture within the meaning of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁴

27. The source argues that by placing the minor in an unknown place for seven months, the authorities placed him outside of the protection of the law. The source notes that in addition to violating the law in itself, enforced disappearance provides the opportunity to violate other rights. According to the source, the minor was more likely to be mistreated and to make a confession under torture because he was enforcedly disappeared.

28. In addition, the source submits that enforced disappearance constitutes torture, and therefore that the minor was submitted to torture. Furthermore, the source contends that the enforced disappearance violated the minor's fair trial rights and that the violation of his fair trial rights was so grave as to give his detention an arbitrary character.

iv. Right to be free from torture

29. The source submits that the minor was subjected to torture and ill-treatment, in violation of national and international norms. In particular, it recalls that article 9 (1) of the Covenant protects the right of all individuals to liberty and security of person, to be free from arbitrary arrest or detention, and not to be deprived of their liberty except on such grounds and in accordance with such procedure as are established by law.

³ CCPR/C/100/D/1751/2008, para. 7.8.

⁴ CAT/C/54/D/456/2011, para. 6.6.

30. The source notes that the right to be free from torture and other forms of ill-treatment or punishment is absolute, applies in all circumstances, may never be restricted, including during times of war or states of emergency, and irrespective of the offence allegedly committed by the accused person. Furthermore, no exceptional circumstances, including threats of terrorism or other violent crime, may be invoked to justify torture or other forms of ill-treatment.

31. The source recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that blindfolding and psychological threats are prohibited interrogation techniques and constitute pressure exerted through detention conditions to counter resistance.⁵

32. Furthermore, the source notes that any statement made as a result of torture cannot be invoked as evidence, in accordance with article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Where allegations or suspicions arise that a statement was obtained as a result of violations of human rights, authorities are required to give the accused and the court information about the circumstances in which it was obtained. The source adds that the court must then assess the issue in a separate hearing before the evidence is admitted to trial. Consistent with the presumption of innocence, the prosecution bears the burden of proving beyond reasonable doubt that the evidence was obtained lawfully.

33. In this regard, the source submits that the minor was hung up by his hands and that firewood was placed under him to frighten him and force him to confess crimes he had not committed. The source argues that such acts, especially when perpetrated against a 12-year-old child, constitute psychological and physical torture.

34. The source concludes that torturing a child is a grave crime which requires an immediate trial of those responsible for the torture. The source adds that the minor's rights to a fair trial were violated in a serious manner.

v. Right to counsel during questioning

35. The source contends that everyone who is arrested or detained, whether or not on a criminal charge, and everyone who is facing a criminal charge, has the right to the assistance of legal counsel, as provided by the Human Rights Committee in its general comment No. 32 (2007) (para. 34). The source submits that although the right to the assistance of a lawyer during detention, questioning and a preliminary investigation is not expressly provided for in the Covenant, the Human Rights Committee has stated that it is required for the meaningful exercise of the right to a fair trial.⁶ Therefore, the source concludes that the right to counsel applies to the pretrial phase under the Covenant.

36. Furthermore, the source submits that suspects and accused, whether or not they are detained, should have access to and benefit from the assistance of counsel from the very beginning of a criminal investigation. In particular, the source notes that any persons who are arrested or detained should be granted access to a lawyer as soon as they are deprived of their liberty and should benefit from the assistance of counsel during questioning by the police or investigating judge, even if they choose to exercise their right to remain silent.

37. The source argues that, during pretrial detention, the right to legal representation includes the rights to access a lawyer, to have time to consult with the lawyer in confidence, to have one's lawyer present during questioning and to be able to consult with them during questioning.

38. The source notes that article 16 (4) of the Arab Charter on Human Rights requires that a lawyer be appointed to represent individuals not represented by counsel of their choice.

39. The source contends that the minor was not able to meet his lawyer until his third appearance before the prosecution. Nevertheless, the prosecution proceeded with the first and

⁵ The source refers to [A/56/156](#), para. 39 (f); [A/HRC/13/42](#), paras. 27–28 and 292 (f); [A/HRC/6/17/Add.3](#), paras. 33–35; and [A/56/156](#), para. 39 (f).

⁶ For example, [CCPR/C/79/Add.75](#), para. 27, and [CCPR/C/NLD/CO/4](#), para. 11.

the second investigation sessions without the presence of the minor's lawyer, in violation to his right to counsel. The source argues that the prosecution should have adjourned the investigation until a lawyer had been appointed.

40. Furthermore, the source submits that the minor's lawyer was not able to visit his client during detention. Reportedly, the minor did not have the opportunity to consult with his lawyer in confidence and his lawyer was unable to make sure that the minor enjoyed all of his rights in detention and that none of his rights were violated.

41. Accordingly, the source concludes that the minimum guarantees of the minor's right to counsel were violated.

vi. Rights to humane detention conditions and freedom from torture and ill-treatment

42. The source alleges that solitary confinement puts detainees outside of the protection of the law, especially protection against torture and other ill-treatment, particularly when solitary confinement is combined with isolation from the outside world, as stated by the Human Rights Committee in its general comment No. 20 (1992) (para. 6).

43. Furthermore, the source contends that solitary confinement must not be imposed on children and, if it is imposed, it should be used only as an exceptional measure, for as short a time as possible, and under judicial supervision.

44. Accordingly, the source argues that placing the minor, a child, in solitary confinement constituted a grave violation of international law. The source recalls that the minor was in solitary confinement throughout the whole period of his detention in Azbakeya police station and was isolated from the outside world. According to the source, this placed him outside of the protection of the law against torture.

45. The source concludes that placing the minor in solitary confinement violated his right to humane detention conditions and his right to be free from torture and other forms of ill-treatment.

vii. Right to have access to the outside world

46. The source stresses that the rights of detainees to communicate with the outside world and to receive visits are fundamental safeguards against human rights violations, including torture, other forms of ill-treatment and enforced disappearance. The source submits that the violation of these rights affects the ability of accused persons to prepare their defence and that these rights are required to protect the right to private and family life and the right to health.

47. The source recalls that article 17 (2) (d) of the International Convention for the Protection of All Persons from Enforced Disappearance and principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provide that detained and imprisoned persons have the right to communicate with the outside world, subject only to reasonable conditions and restrictions that are proportionate to a legitimate aim.

48. In addition, the source contends that any exception to the right to inform third parties of the arrest or detention should be strictly limited in time and any delay should not exceed a matter of days. The source recalls that the Human Rights Committee has indicated that the right of persons held in police custody or pretrial detention to access defence counsel, a doctor or their families should be enshrined in law.⁷

49. In this regard, the source submits that the minor was able to see his family only once during the entire year following his arrest on 31 December 2017, until he was brought before the prosecution. According to the source, after he appeared before the prosecution, he was detained and banned from receiving visits. As a result, his family reportedly did not know whether or not the minor was subjected to ill-treatment or torture during his detention.

⁷ CCPR/C/CAF/CO/2, para. 14.

50. The source concludes that the minor's right to have access to the outside world was violated, exposing him to possible violations of his rights inside the prison.

viii. Right to health

51. The source argues that, under article 12 of the International Covenant on Economic, Social and Cultural Rights, article 16 of the African Charter on Human and Peoples' Rights and rules 25 and 27 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), individuals have the right to the highest attainable standard of physical and mental health. According to the source, this right extends not only to timely and appropriate health care, but also to underlying determinants of health, such as adequate food, water and sanitation. The source adds that failure to provide access to adequate health care has been held to violate the right to health.

52. In this regard, the source submits that, although the arresting authorities were under the obligation to assess the minor's health, he was not examined by any doctor at the place of detention. The source further contends that, due to the lack of hygiene, the minor was infected with furuncles. Moreover, the source notes that the minor's request for medical care was rejected despite his serious need for a doctor.

53. The source therefore concludes that the minor did not benefit from the minimum guarantees to the right to health, which constituted deliberate medical negligence.

Response from the Government

54. On 20 December 2021 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 18 February 2022, detailed information about the current situation of the minor and to clarify the legal provisions justifying his continued detention, as well as the compatibility of his detention with the obligations of Egypt under international human rights law and in particular, with regard to the treaties Egypt has ratified. Moreover, the Working Group called upon the Government of Egypt to ensure the minor's physical and mental integrity.

55. The Working Group regrets that it did not receive a reply from the Government and notes that the Government did not seek an extension, as it is permitted to do under paragraph 16 of Working Group's methods of work. 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.

Discussion

56. 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.

57. In determining whether the minor's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.⁸

58. The Working Group wishes to reaffirm that States have the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including liberty of person, of all persons 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.⁹ Consequently, even if the detention is in conformity with national legislation,

⁸ A/HRC/19/57, para. 68.

⁹ General Assembly resolution 72/180 and Human Rights Council resolutions 41/2 and 41/17. See also Commission on Human Rights resolutions 1991/42 and 1997/50, Human Rights Council resolutions

regulations and practices, the Working Group is entitled and indeed obliged to assess the circumstances of the detention and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.¹⁰

59. The source has argued that the detention of the minor is arbitrary and falls under category III of the working methods of the Working Group as: (a) he was held responsible for a criminal offence, despite being a minor; (b) he was brought before the State Security Court, which is a special court; (c) he was subjected to enforced disappearance; (d) he was tortured; (e) his right to counsel was violated; (f) he was detained in inhumane conditions and was subjected to torture and ill-treatment; (g) his right to contact with the outside world was violated; and (h) his right to health was violated.

60. The Working Group will examine each allegation in turn. Before doing so, the Working Group wishes to raise an issue which has not been raised by the source, but which the Working Group nonetheless considers significant – the failure to present an arrest warrant at the time of the minor’s arrest.

61. The source indicates that when, at midnight on 31 December 2017, military personnel and police officers in uniform and civilian clothes raided the minor’s house and arrested the minor, they did so without presenting a warrant.

Category I

i. Absence of an arrest warrant

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

63. The Working Group is also mindful that article 9 (2) of the Covenant requires that anyone who is arrested is not only informed of the reasons for the arrest but also promptly informed of any charges against his or her. As explained by the Human Rights Committee in its general comment No. 35 (2014), the obligation encapsulated in article 9 (2) has two elements: information about the reasons for the arrest must be provided immediately upon arrest (para. 27) and there must be prompt information about the charges provided thereafter (para. 30).

64. The Working Group notes that, although at the time of his arrest the raiding forces reportedly asked about one of the minor’s relatives, no arrest warrant was in fact produced and the Government has chosen not to contest this. The Working Group therefore concludes that the arrest of the minor was carried out in violation of article 9 of the Universal Declaration of Human rights and article 9 of the Covenant and was arbitrary under category I.

ii. Criminal responsibility of the minor

65. The source notes that the minor was arrested just after he had turned 12 years old for an offence allegedly perpetrated before he was 12 years of age. The source submits that the minor should not have been charged and detained for the alleged crime.

6/4 and 10/9 and opinions No. 41/2014, para. 24; No. 42/2019, para. 43; No. 13/2020, para. 39; and No. 32/2020, para. 29.

¹⁰ See opinions No. 82/2018, para. 25; No. 76/2019, para. 36; No. 14/2020, para. 45; and No. 32/2020, para. 29.

¹¹ The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. For more recent jurisprudence, see opinions No. 21/2017, para. 46; No. 68/2018, para. 39; and No. 34/2020, para. 46. See also art. 14 (1) of the Arab Charter on Human Rights.

66. The Working Group acknowledges that under international human rights law, the significance of the minimum age of criminal responsibility lies in the recognition that a child has attained the emotional, mental and intellectual maturity to be held responsible for his or her actions. The Working Group is thus mindful that a child under the age of criminal responsibility lacks the capacity to commit a crime, meaning that the child is immune from criminal prosecution and cannot be formally charged by the authorities with an offence nor be subjected to any criminal law procedures or measures.

67. Under article 40 (3) of the Convention on the Rights of the Child, States parties are encouraged to establish a minimum age below which children are presumed not to have the capacity to infringe the criminal law. In its general comment No. 24 (2019), the Committee on the Rights of the Child stated that: “Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings.” The Committee therefore commended States parties that had a higher minimum age, for instance 15 or 16 years of age, and urged States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention (para. 22). Additional guidance is also provided in rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), which recommends that any minimum age of criminal responsibility “shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”. Article 1 of the Convention on the Rights of the Child, article 2 of the African Charter on the Rights and Welfare of the Child, and section O (a) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa define a child as any human being under the age of 18.

68. The Working Group particularly notes that, as stated by the Committee on the Rights of the Child in its general comment No. 24 (2019):

Children who are below the minimum age of criminal responsibility at the time of the commission of an offence cannot be held responsible in criminal law proceedings. Children at or above the minimum age at the time of the commission of an offence but younger than 18 years can be formally charged and subjected to child justice procedures, in full compliance with the Convention. The Committee reminds States parties that the relevant age is the age at the time of the commission of the offence (para. 20).

69. It follows from this that the minor in the present case should never have been arrested, since the offence that he was alleged to have committed was committed prior to him attaining 12 years of age, which is the age of criminal responsibility set in Egypt. Consequently, by arresting the minor in the present case, Egypt violated its own domestic legislation as well as its obligations under article 40 (3) (a) of the Convention on the Rights of the Child. The Working Group is of the view that the Government of Egypt should have used alternatives other than arrest or detention, given that the minor had not yet reached the age of criminal responsibility established by national legislation. The Working Group thus concludes that there was no valid legal basis for the arrest of the minor and that the arrest consequently violated article 9 of the Covenant.

iii. Enforced disappearance

70. The source refers to a communication sent by the Working Group on Enforced or Involuntary Disappearances to the Government of Egypt on 3 May 2019 inquiring about the alleged enforced disappearance of the minor, which the Government allegedly answered on 24 January 2020, explaining that the minor had been released into the care of one of his relatives. However, the source denies this claim and reports that the minor’s relative was called to the police station to sign the release papers and to go back the next day to collect the minor. The next day, however, the police denied that the minor was present at the police station and as a result, the minor has reportedly been forcibly disappeared since 11 January 2019. Moreover, following his appearance in court, the minor reportedly went missing again and his whereabouts have been unknown for the past three years. These very serious allegations were put to the Government, which has chosen not to address them.

71. The Working Group finds the allegations of the source credible and therefore concludes that the minor was subjected to enforced disappearance for seven months after his arrest, as well as following his court appearance, in violation of article 9 (1) of the Covenant and articles 37 (c) and 40 (1) of the Convention on the Rights of the Child. Enforced disappearances are prohibited under international law and constitute a particularly aggravated form of arbitrary detention.¹²

72. As the Working Group has also repeatedly asserted, holding persons at secret, undisclosed locations and in circumstances undisclosed to the person's family violates their right to contest the legality of their detention before a court or tribunal under article 9 (4) of the Covenant. Judicial oversight of any detention is a central safeguard for personal liberty and is critical in ensuring that the detention has a legitimate basis. In the present case, given that the minor is detained at an unknown location, the Working Group finds that his rights to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant were also violated. The Government's failure to notify the minor's family of his arrest and the location of his detention also violated principle 16 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

73. The Working Group is particularly disturbed that the minor was only 12 years of age at the time of these grave violations of his rights. To place a child at such a young age in the situation of enforced disappearance for years is an absolute denial of his rights under every international human rights treaty that Egypt has undertaken to abide by and especially article 9 of the Covenant. The minor was also placed outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant. The Working Group condemns this in the strongest terms and refers the case to the Working Group on Enforced or Involuntary Disappearances for appropriate action.

74. Noting the authorities' failure to present an arrest warrant at the time of the minor's arrest, that the minor was arrested for an offence which was allegedly committed prior to him reaching the age of criminal responsibility established by the national legislation, and that the minor was subjected to enforced disappearance, the Working Group concludes that the arrest and subsequent detention of the minor was arbitrary as it lacked a legal basis and therefore falls under category I.

Category III

i. Use of special courts

75. In the present case the source reports that on 2 July 2018, the minor was brought before the State Security Court and charged with belonging to a terrorist group and participating in manufacturing explosives. He was reportedly kept in solitary confinement throughout the whole period of his detention.

76. Although he was initially tried before a juvenile court, the minor was subsequently presented before the State Security Court, which was constituted as a special court dealing with specific cases of terrorism.

77. The source recalls that the right to a fair trial applies in trials before all courts, including special or specialized courts and military courts. Nevertheless, the source notes that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has called on States to avoid using special or specialized courts in terrorism cases.

78. Furthermore, the source notes that, in accordance with principle 5 of the Basic Principles on the Independence of the Judiciary and sections A (4) (e) and L (c) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, special courts should not be created to displace the jurisdiction of ordinary courts, and therefore should not examine offences falling under the jurisdiction of ordinary courts. In addition, the

¹² See opinions No. 5/2020, No. 6/2020, No. 11/2020 and No. 13/2020. See also Human Rights Committee, general comment No. 35 (2014), para. 17.

source stresses that when special courts exist, they must be independent and impartial, and must respect fair trial standards.

79. According to the source, the reason why special courts should be used only exceptionally is that fair trial rights are more likely to be violated before such courts. The source notes that human rights bodies have raised concerns about procedures before special courts that are inconsistent with fair trial rights, including the right to a trial before an independent and impartial court, the exclusion of evidence obtained by torture or other ill-treatment and the right to appeal to a higher tribunal.

80. The source contends that juvenile courts should be established for criminal proceedings against persons who were below the age of 18 years at the time of the alleged crime. In this regard, the source notes that, even though the minor was tried before a juvenile court, he should not have been presented before the State Security Court, which it argues constitutes a special court dealing with specific cases of terrorism. The source adds that ordinary courts had jurisdiction over the minor's case and that he should have been investigated by a prosecutor specialized in children's cases.

81. The source concludes that, as a special court, the State Security Court had no jurisdiction to hear the minor's case from the outset and he should not have been brought before it, regardless of whether the criminal acts he was charged with amounted to terrorist acts.

82. The Working Group observes that all these specific and very serious allegations were put to the Government, which chose not to address any of them. In particular, the Working Group notes the failure of the Government to present any exceptional reasons to justify the referral of the minor to specialized courts. In these circumstances, the Working Group finds that the rights of the minor under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant, as well as article 40 (2) (b) (iii) of the Convention on the Rights of the Child, were violated as the minor was not tried by an independent and impartial court. In making this finding the Working Group wishes to emphasize once again that the alleged crime was committed before the minor reached the age of criminal responsibility established in the national legislation and consequently, the minor should never have appeared before any court in this matter.

ii. Right to be free from torture and solitary confinement

83. The source submits that the minor was subjected to torture and ill-treatment, in violation of national and international norms.

84. The source notes that the right to be free from torture and other forms of ill-treatment or punishment is absolute, applies in all circumstances, may never be restricted, including during times of war or states of emergency, and irrespective of the offence allegedly committed by the accused person. Furthermore, no exceptional circumstances, including threats of terrorism or other violent crime, may be invoked to justify torture or other forms of ill-treatment.

85. The source refers to the observation by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment that blindfolding and psychological threats are prohibited interrogation techniques and constitute pressure exerted through detention conditions to counter resistance.

86. Furthermore, the source notes that any statement made as a result of torture cannot be invoked as evidence, in accordance with article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Where allegations or suspicions arise that a statement was obtained as a result of violations of human rights, authorities are required to give the accused and the court information about the circumstances in which it was obtained. The source adds that the court must then assess the issue in a separate hearing before the evidence is admitted to trial. Consistent with the presumption of innocence, the prosecution bears the burden of proving beyond reasonable doubt that the evidence was obtained lawfully.

87. In this regard, the source submits that the minor was hung up by his hands and that firewood was placed under him to frighten him and force him to confess crimes he had not

committed. The source argues that such acts, especially when perpetrated against a 12-year-old child, constitute psychological and physical torture. None of these very grave allegations have been contested by the Government, although it had an opportunity to do so.

88. The Working Group recalls that international human rights law requires that detainees be protected from any practices that violate their right to be free from any act which could cause severe pain or suffering, whether physical or mental, and which is inflicted intentionally on a person. This is clearly stated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Egypt has been a party since 25 June 1986. According to the Committee against Torture, the right to freedom from torture and other ill-treatment or punishment is absolute. This applies in all circumstances, and it may never be restricted, including during times of war or states of emergency. No exceptional circumstances whatsoever, including threats of terrorism or other violent crime, may be invoked to justify torture or other ill-treatment. That prohibition applies irrespective of the offence allegedly committed by the accused person. A similarly explicit prohibition is contained in article 37 (a) of the Convention on the Rights of the Child.

89. The Working Group's mandate clearly extends to alleged ill-treatment that negatively affects the ability of detainees to prepare their defence and their chances of a fair trial.¹³ In the present case, the appalling treatment to which the minor, a 12-year-old boy, was subjected was inflicted with the aim of extracting a confession from him. As the Working Group has stated before, confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.¹⁴ Furthermore, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.¹⁵ The burden is on the Government to prove that statements were given freely,¹⁶ but in this case it has not done so.

90. Moreover, the Government has not contested that the minor was held in solitary confinement throughout his detention. As the Working Group has held,¹⁷ according to rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by several safeguards. Solitary confinement must be used only in exceptional cases as a last resort, for as short a time as possible, subject to independent review and authorized by a competent authority. These conditions do not appear to have been met in the present case. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b) and 44 of the Nelson Mandela Rules. Moreover, the Working Group emphasizes that solitary confinement must not be used for a child.¹⁸ Solitary confinement may amount to torture or other cruel, inhuman or degrading treatment or punishment.¹⁹

91. The Working Group consequently finds that the rights of the minor under article 14 (3) (g) of the Covenant and articles 37 (a), (b) and (c) and 40 (2) (b) (iv) of the Convention on the Rights of the Child were violated. The Working Group is particularly alarmed that the treatment was inflicted upon a child of 12 years of age and condemns the actions of the authorities in the strongest terms, referring the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

iii. Right to legal assistance

92. The source contends that everyone who is arrested or detained, whether or not on a criminal charge, and everyone who is facing a criminal charge, has the right to the assistance

¹³ See e.g. opinions No. 47/2017, para. 28, and No. 29/2017, para. 63. See also [E/CN.4/2004/3/Add.3](#), para. 33.

¹⁴ [A/HRC/45/16](#), para. 53. See also opinions No. 1/2014, para. 22; No. 14/2019, para. 71; No. 59/2019, para. 70; and No. 73/2019, para. 91; and [E/CN.4/2003/68](#), para. 26 (e).

¹⁵ Opinions 43/2012, para. 51; No. 34/2015, para. 28; No. 52/2018, para. 79 (i); No. 32/2019, para. 43; No. 59/2019, para. 70; and No. 73/2019, para. 91.

¹⁶ Human Rights Committee, general comment No. 32 (2007), para. 41.

¹⁷ See e.g. opinion No. 83/2018.

¹⁸ The Nelson Mandela Rules, rule 45 (2), and Committee on the Rights of the Child, general comment No. 24 (2019), para. 95 (h). See also opinion No. 2/2021.

¹⁹ General Assembly resolution 68/156. See also [A/66/268](#), para. 71.

of legal counsel, as provided by the Human Rights Committee in its general comment No. 32 (2007). The source submits that although the right to the assistance of a lawyer during detention, questioning and a preliminary investigation is not expressly provided for in the Covenant, the Human Rights Committee has stated that it is required for the meaningful exercise of the right to a fair trial. Therefore, the source concludes that the right to counsel applies to the pretrial phase under the Covenant.

93. Furthermore, the source submits that suspects and accused, whether or not they are detained, should have access to and benefit from the assistance of counsel from the very beginning of a criminal investigation. In particular, the source notes that any persons who are arrested or detained should be granted access to a lawyer as soon as they are deprived of their liberty and should benefit from the assistance of counsel during questioning by the police or investigating judge, even if they choose to exercise their right to remain silent.

94. The source argues that, during pretrial detention, the right to legal representation includes the rights to access a lawyer, to have time to consult with the lawyer in confidence, to have one's lawyer present during questioning and to be able to consult with them during questioning. The source notes that article 16 (4) of the Arab Charter on Human Rights requires that a lawyer be appointed to represent individuals not represented by counsel of their choice.

95. The source contends that the minor was not able to meet his lawyer until his third appearance before the prosecution. Nevertheless, the prosecution proceeded with the first and the second investigation sessions without the presence of the minor's lawyer, in violation to his right to counsel. The source argues that the prosecution should have adjourned the investigation until a lawyer had been appointed.

96. Furthermore, the source submits that the minor's lawyer was not able to visit his client during detention. Reportedly, the minor did not have the opportunity to consult with his lawyer in confidence and his lawyer was unable to make sure that the minor enjoyed all of his rights in detention and that none of his rights were violated. Accordingly, the source concludes that the minimum guarantees of the minor's right to counsel were violated. All these allegations were presented to the Government, which chose not to address any of them.

97. The Working Group recalls that the Human Rights Committee, in its general comment No. 32 (2007), stated that a detainee has the right to have "prompt access" to legal counsel, which means that a lawyer should be able to meet his or her client in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications and to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter (para. 34). A detainee ought to have access to effective counsel. According to principle 21 of the Basic Principles on the Role of Lawyers, this means that: "It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time." The effectiveness of legal representation is fundamentally related to the principle of equality of arms, as enshrined in article 11 of the Universal Declaration of Human Rights, which draws on the right of detainees to be given the time and facilities necessary to prepare and present their defence with their counsel in preparation for their trial.

98. The Working Group considers that the denial of the minor's right to legal assistance substantially undermined and compromised his capacity to defend himself in any subsequent judicial proceedings, contrary to the principle of equality of arms and in violation of article 11 of the Universal Declaration of Human Rights. As the Working Group has stated, principle 9 and guideline 8 of 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 provide that persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the

moment of apprehension, and must be promptly informed of this right upon apprehension. Access to legal counsel should not be unlawfully or unreasonably restricted.²⁰

99. The Working Group reiterates that any denial of legal representation constitutes a violation of a core element of the right to a fair trial under article 14 (3) of the Covenant and finds that this right was violated in the present case. Noting the age of the minor, the Working Group also finds a violation of his rights under article 40 (2) (b) (ii) of the Convention on the Rights of the Child.

iv. Right to have access to the outside world

100. The source stresses that the rights of detainees to communicate with the outside world and to receive visits are fundamental safeguards against human rights violations, including torture, other forms of ill-treatment and enforced disappearance. The source submits that the violation of these rights affects the ability of an accused persons to prepare their defence and that these rights are required to protect the right to private and family life and the right to health.

101. In addition, the source contends that any exception to the right to inform third parties of the arrest or detention should be strictly limited in time and any delay should not exceed a matter of days. The source recalls that the Human Rights Committee has indicated that the rights of persons held in police custody or pretrial detention to access defence counsel, a doctor or their families should be enshrined in law.

102. In this regard, the source submits that the minor was able to see his family only once during the entire year following his arrest on 31 December 2017, until he was brought before the prosecution. According to the source, after he appeared before the prosecution, he was detained and banned from receiving visits. As a result, his family reportedly did not know whether or not the minor was subjected to ill-treatment or torture during his detention.

103. The source concludes that the minor's right to have access to the outside world was violated, exposing him to possible violations of his rights inside the prison. All these allegations were put to the Government, which chose not to address any of them.

104. The rights of any detainee to communicate with the outside world and to be visited by family are fundamental safeguards against any attempts by the authorities to violate detainees' human rights, including through torture or any other ill-treatment and enforced disappearance, which, as established above, was inflicted upon the minor in the present case.

105. The Working Group recalls that principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days". This was denied to the minor and the Working Group considers that, especially noting how young he was at the time, this had a significant negative effect upon his ability to defend himself and prepare for his trial. The Working Group therefore finds a breach of article 14 (3) (b) of the Covenant and of article 40 (2) (b) (ii) of the Convention on the Rights of the Child.

v. Right to health

106. The source argues that, under article 12 of the International Covenant on Economic, Social and Cultural Rights, article 16 of the African Charter Human and Peoples' Rights and rules 25 and 27 of the Nelson Mandela Rules, individuals have the right to the highest attainable standard of physical and mental health. According to the source, this right extends not only to timely and appropriate health care, but also to underlying determinants of health, such as adequate food, water and sanitation. The source adds that failure to provide access to adequate health care has been held to violate the right to health.

107. In this regard, the source submits that, although the arresting authorities were under the obligation to assess the minor's health, he was not examined by any doctor at the place of detention. The source further contends that, due to the lack of hygiene, the minor was

²⁰ A/HRC/30/37, annex. See also Human Rights Committee, general comment No. 32 (2007), para. 34.

infected with furuncles. Moreover, the source notes that the minor's request for medical care was rejected despite his serious need for a doctor.

108. The source therefore concludes that the minor was denied the minimum guarantees to his right to health, which constituted deliberate medical negligence.

109. The Government has chosen not to address any of these very serious allegations, although it had an opportunity to do so.

110. The Working Group has already expressed its great concern over the appalling treatment to which the minor has been subjected, including enforced disappearance and forced confessions. It also recalls that every detainee has the right to the highest attainable standard of physical and mental health. This right extends not only to timely and appropriate health care, but also to underlying determinants of health, such as adequate food, water and sanitation.

111. In the present case, the prison authorities have allegedly denied the minor a medical examination and adequate treatment, although he has a serious health condition that needs urgent and effective medical care. The Working Group considers that the denial by the authorities of a medical examination and adequate treatment had very serious adverse effects on the minor's ability to exercise his rights to defence and fundamentally undermined the principle of equality of arms, especially as he was also denied access to a lawyer and his family. The Working Group therefore finds a breach of article 14 (1) of the Covenant and article 40 (1) of the Convention on the Rights of the Child.

112. Given all of the above, the Working Group concludes that the violations of the minor's fair trial rights were of such gravity as to give his detention an arbitrary character, falling under category III.

Concluding remarks

113. The Working Group wishes to emphasize that it is deeply disturbed by the treatment to which the minor – a boy of only 12 years of age – has been subjected and is particularly troubled by the failure of the Government to respond to these exceptionally serious allegations. The present case reveals the most terrible treatment of this minor who has been subjected to torture and ill-treatment in order to extract confessions, denied access to a lawyer and his family, denied medical treatment, subjected to enforced disappearance and whose whereabouts in fact remain unknown to date. The Working Group is particularly disturbed at the finding of the Working Group on Enforced or Involuntary Disappearances that the minor may have died while in the authorities' custody as a result of the treatment to which he has been subjected. The Working Group calls upon the Government to immediately commence an impartial investigation into the whereabouts and treatment of the minor.

114. The Working Group refers the present case to the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the Secretary-General on Violence against Children and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

Disposition

115. 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 3, 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 9, 14 and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

116. 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.

117. 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. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of the minor.

118. 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.

119. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Enforced or Involuntary Disappearances; the Special Representative of the Secretary-General on Violence against Children; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for appropriate action.

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

Follow-up procedure

121. 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.

122. 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.

123. 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.

124. 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.²¹

[Adopted on 4 April 2022]

²¹ Human Rights Council resolution 42/22, paras. 3 and 7.