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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. 17/2022 concerning Kilwe Adan Farah (Somalia)

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 3 December 2021 the Working Group transmitted to the Government of Somalia a communication concerning Kilwe Adan Farah. 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. Kilwe Adan Farah is a Somali citizen, born in 1989, usually residing in Puntland State of Somalia. Mr. Farah is a journalist and the editor and founder of Kilwe Media Inc., a local online media outlet based in Puntland that reports local news stories, including issues that affect the local communities in Puntland. Mr. Farah is part of the Warsangeli community. He is married with two children.

a. Background

5. The source explains that Mr. Farah is originally from the Sanag region, whose control is disputed by Puntland and Somaliland. According to the source, Mr. Farah is part of the Warsangeli/Dubeys clan, a marginalized community in the most rural parts of the Sanag and Bari regions. The Warsangeli community, which is part of the Darod clan, is reportedly divided into three groups: one clan supporting Puntland, another clan supporting Somaliland, and a third neutral clan.

6. According to the source, while the Warsangeli clan is given the position of Speaker of the parliament in Puntland, as part of the clan power-sharing formula, members of the Warsangeli clan are seen as less privileged and do not enjoy the same rights as the main clans that govern Puntland State (Majerten/Osman Mohamed, Majerten/Isse Mohamud and Majerten/Omar Mohamud).

7. The source reports that the Sanag region faces massive water and food scarcity because of the lack of rain and recurring droughts over the past years. According to the source, the main water supply in the area is trucked in but given the poor road network, water has become very expensive for residents. The majority of Sanag residents are reportedly herders. The source explains that, at the time of Mr. Farah's detention, inflation was rising and the foreign exchange rate meant that people could not buy basic food in Puntland. This reportedly led to anti-inflation protests in many Puntland cities, including Garowe.

8. Reportedly, on 26 December 2020, dozens of men and women from the region's poorest families took to the streets of Garowe to protest the soaring inflation rate. It is noted that the protesters burned tyres and tore down the portrait of the President of Puntland. The protest was reportedly met with police gunshots and a young girl was killed. The source claims that the President accused the demonstrators of having a political agenda and trying to tarnish the image of the Government of Puntland. The source notes that protesters and journalists who reported on the protest were labelled by the Government as "anti-State". According to the source, Mr. Farah was among the few journalists who reported live from the protest and interviewed protesters. The source reports that a live feed of the protest was broadcasted on Kilwe Media Inc. and that Mr. Farah's videos of the protest were widely shared.

b. Arrest and detention

9. The source reports that, on the evening of 27 December 2020, Puntland police officers arrested Mr. Farah near the Martisor Hotel in the city centre of Garowe. At around 8.30 p.m., as Mr. Farah was returning home from dinner, he was stopped by six armed men from the Puntland Intelligence Agency wearing the uniform of the Puntland Presidential Guards. The source states that the armed men pointed their guns at Mr. Farah, who could hear them cocking the guns. Reportedly, one of the officers fired in the air and threatened to shoot him if he resisted arrest. According to the source, Mr. Farah was arrested on the spot, blindfolded, handcuffed, put into a vehicle and driven to the north-west of Garowe, to an unmarked home that he later realized belonged to a former Minister of Health of Puntland. The source alleges that a chain was put around Mr. Farah's legs and he was forced to sit on the verandah in the cold until the next day, when he was transferred to a room in the house. It is reported that the officers who held him were armed, wore police or military uniforms and were attached to the Puntland Presidential Guards.

10. The source adds that Mr. Farah's phone was confiscated and turned off, and that he was held incommunicado for 16 days, without his family knowing his whereabouts.

11. The source claims that during his incommunicado detention, Mr. Farah was beaten and tortured at the hands of the military officers holding him. It is reported that he was interrogated on three occasions between 27 December 2020 and 11 January 2021, and that during such interrogations two officers would pick him up from his cell and beat him with a stick. Additionally, Mr. Farah was allegedly punched several times, electrocuted, slapped by officers of the Puntland Intelligence Agency and beaten with the butt of their AK-47s. The source explains that, during the interrogations, the officers would shout at Mr. Farah, threaten to kill him and ask him to reveal who he was working for. The source adds that the officers repeatedly claimed that Mr. Farah was working to destroy Puntland through his news reports.

12. The source contends that, on 11 January 2021, following pressure from the media, the officers holding Mr. Farah transferred him to the central prison of Garowe without showing him a warrant or an official document for his arrest, without informing his family, and without a lawyer present. It is reported that on that day, Mr. Farah was able to see a member of his family. The source notes that he was not able to see other family members until 17 March 2021.

13. The source further reports that on 11 January 2021, the military court prosecutor verbally told Mr. Farah that he was being charged with murder and attempted murder under articles 434 and 17 of the Somali Penal Code. Reportedly, Mr. Farah was not given any document or further explanation, his lawyer was not present and he was not presented with any written charge. The source alleges that Mr. Farah's family did not see the charge sheet but that it was read to them by a military court official. To this day, the charges have reportedly remained verbal and neither Mr. Farah nor his family have received a copy of the charge sheet. The source adds that no intended victim was identified.

14. According to the source, just before the trial officers from the military higher court requested that Mr. Farah's family accept the military court trial in exchange for a presidential pardon. Despite not having received consent from Mr. Farah or his family, the officers proceeded with the military court trial. The source notes that no lawyer was present to represent Mr. Farah and that he was not able to challenge the legality of the charges or his detention. It is also alleged that journalists wanting to visit Mr. Farah in prison were not allowed to do so, in order to keep his situation hidden from the outside world.

15. The source notes that Mr. Farah was held in Garowe central prison from 11 January 2021. Allegedly, Mr. Farah first had access to a lawyer after 28 January 2021, when he was sentenced by the military court. When the lawyer asked Mr. Farah about his condition, he was reportedly very scared and said that he was traumatized. The source further claims that custodial officers had warned Mr. Farah about saying too much to his lawyer and had threatened the lawyer. The source adds that Mr. Farah did not get enough time to speak to his lawyer and explain his condition.

16. According to the source, on 25 February 2021 the court of armed forces of Puntland State issued five new charges against Mr. Farah: instigation of delinquency (art. 320); instigation to disobey the law (art. 321); publication or circulation of false, exaggerated or tendentious news capable of disturbing public order (art. 328); offence against the authorities by means of damaging posters (art. 271); and bringing the nation or the State into contempt (art. 219). The source claims that all the charges appear in the outdated Somali Penal Code of 1964, which is still used to charge and prosecute journalists in Somalia. The source stresses that these new charges are different from the previous charges of attempted murder and murder. Reportedly, in the new charge sheet, the prosecutor of the first instance court of the armed forces cited a communication from the Puntland Intelligence Agency dated 20 January 2021.

17. The source reports that on 27 February 2021, Mr. Farah was brought before the first instance court of the armed forces, where a military prosecutor read out the above-mentioned charges. The prosecutor reportedly asked the military court to sentence Mr. Farah to 10 years' imprisonment. The source adds that the judge demanded that the military prosecutor bring evidence of the charges and the court session was adjourned at midday, with no mention of when the next hearing would take place.

18. On 3 March 2021, during a closed court session that took place inside Garowe central prison, the Puntland military court judge reportedly sentenced Mr. Farah to three months in

jail. The source argues that the judge did not find any evidence of the five charges put forward by the military prosecutor because no such evidence existed against Mr. Farah and that the trial was therefore a sham trial.

19. According to the source, on 17 March 2021, Mr. Farah was removed from his cell and taken to a small room inside Garowe central prison, where judges of the Puntland military court sentenced him to three years in prison for “media related offences”. Allegedly, the only other person present was the military prosecutor. Neither Mr. Farah’s lawyer nor his family were allowed to attend the hearing. The source explains that the trial was described as a kangaroo court trial and was not based on any evidence against Mr. Farah.

20. The source notes that Mr. Farah was released after 84 days in prison, on 22 March 2021, following a special pardon decree by the President of Puntland.

c. Legal analysis

21. The source argues that Mr. Farah was detained arbitrarily, in violation of national and international laws. His arrest had no legal basis and was carried out without him being shown a warrant or informed of the charges against him, in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant.

22. Additionally, the source recalls that Mr. Farah was held incommunicado in a secret centre and was not brought before a court within 48 hours. The source argues that this constitutes a direct violation of article 27 of the Constitution of Puntland, which provides that an accused person shall not be detained in a facility that is not legally recognized and shall be brought before a court of law within 48 hours. The source adds that the Constitution guarantees the rights of individuals to be visited by their relatives, lawyer, doctor and friends; to be released on bail if permitted by law; to be presumed innocent until proven guilty by a competent court of law; to protection, security and human dignity; to engage the services of a lawyer for their defence; and to not be forced to confess to the charges against them. The source also notes that the federal Constitution of Somalia also bans the detention of citizens in unlawful detention centres.

23. The source further asserts that Mr. Farah’s arrest and detention violated his right to freedom of opinion and expression, protected under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. The source adds that, given that Mr. Farah’s detention was based on his coverage of political protests, it also violated his right to freedom of peaceful assembly and of association, guaranteed under article 20 of the Universal Declaration of Human Rights and articles 21 and 22 of the Covenant.

24. According to the source, Mr. Farah’s detention was also contrary to his right to freedom of movement under article 13 of the Universal Declaration of Human Rights and article 12 of the Covenant.

25. The source argues that Mr. Farah’s detention violated his right to a fair and public hearing before an independent and impartial tribunal, guaranteed under article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant, insofar as he was not subjected to a fair trial process and was not brought before a court within 48 hours of his arrest. The source further alleges that these failures violated the Constitution of Puntland and article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant.

26. In addition, the source contends that Mr. Farah’s trial before a military court violated national and international law. The source recalls that under article 87 of the Constitution of Puntland, military tribunals have jurisdiction over offences committed by members of the armed forces and/or over members of the armed forces. Similarly, Somali federal law prohibits trials of civilians before a military court. According to the source, the Puntland authorities used a military court because of the lack of evidence supporting the charges against Mr. Farah. The source reasons that, given the lack of evidence, it would have been difficult for the authorities to prove a case against Mr. Farah or justify his detention before a civilian court. In fact, the civilian Attorney General and the military Attorney General both reportedly affirmed that neither court would accept the case given the lack of evidence against Mr. Farah. The source also stresses that during trials before military courts, lawyers and family members may be restricted from access, so that the accused are prevented from

receiving sufficient information to understand their arrest or the charges brought against them.

27. According to the source, the authorities used a military court to try Mr. Farah in order to intimidate him and stop him from criticizing the State. As evidence, the source quotes the military court prosecutor who, during the 11 January 2021 charge hearing, allegedly said that Mr. Farah was “a bad critic against Puntland Government and that the only way the authorities can get revenge is to put [him] to the military court which will sentence him to death so that [he] will not criticize the State in the future”.

28. In that regard, the source alleges that since 2011, the Government of Somalia has relied heavily on the military court of the armed forces to try a broad range of crimes and defendants. Reportedly, in addition to members of the armed forces, military courts have brought to trial alleged members of Al-Shabaab, police and intelligence agents and civilians. The source alleges that the military courts, which consist of serving military officers, do not meet the international fundamental legal requirements of competency, independence and impartiality. The source adds that trials before military courts violate the defendants’ rights to a fair trial, such as the rights to access a counsel of their choice, prepare and present a defence, receive a public hearing, not incriminate oneself and appeal a conviction.

29. Finally, the source contends that Mr. Farah’s detention was arbitrary insofar as it was discriminatory based on Mr. Farah’s clan and profession and contrary to his right to equal protection of the law. The source submits that such treatment violates articles 2 and 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.

30. With regard to Mr. Farah’s clan, the source submits that Mr. Farah was targeted because he belongs to the Warsageli clan, a reportedly marginalized community in the Sanag region whose members are continuously discriminated against in Puntland and do not enjoy the same rights as the main clans. The source notes that lawmakers from the Sanag region who criticized the President were removed from the parliament and were labelled as “anti-State” agents. The source further points out that women and girls, particularly those from marginalized communities, are allegedly targeted and sexually assaulted.

31. With regard to Mr. Farah’s profession, the source submits that Mr. Farah was targeted because he is a journalist, one of the few to report on the protests of 26 December 2020, and because his videos of the protests were shared widely. The source alleges that the Government of Puntland was unhappy with the demonstrators and labelled protesters and reporting journalists as “anti-State”. The source contends that the state of freedom of expression has considerably deteriorated in Puntland, which was the second largest jailer of journalists after Somaliland in 2019. Allegedly, the authorities in Puntland continue to intimidate, harass and attack journalists to this day.

Response from the Government

32. On 3 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 1 February 2022, detailed information about the circumstances surrounding the arrest and detention of Mr. Farah and to clarify the legal provisions justifying his detention, as well as its compatibility with the obligations of Somalia under international human rights law and in particular with regard to the treaties ratified by the State.

33. On 25 January 2021 the Government requested an extension in accordance with paragraph 16 of the Working Group’s methods of work, which was granted on the same day with a new deadline of 3 March 2022. The Working Group regrets that despite this it has received no reply from the Government.

Discussion

34. 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.

35. 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 law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.² In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

36. The Working Group reaffirms that States have the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including the right to liberty and security of person, 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.³ Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and 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.⁴

37. As a preliminary issue, the Working Group notes that Mr. Farah was released under a presidential pardon on 22 March 2021 and thus is not currently detained. However, noting the serious violations of Mr. Farah's rights alleged by the source, including the allegations that Mr. Farah was targeted because he is a journalist and the time that he spent deprived of liberty, the Working Group decides to proceed with the examination of the allegations in accordance with paragraph 17 of its methods of work.

38. As a further preliminary issue, the Working Group wishes to address the uncontested allegations that when he was arrested on 27 December 2020, Mr. Farah was blindfolded, handcuffed, put into a vehicle and driven to the north-west of Garowe to an unmarked private residence where he was held overnight, on the verandah with a chain around his leg, in the cold, until the next day, when he was transferred to a room in the house. It is reported that the officers who held him were armed, wore police or military uniforms, and were attached to the Puntland Presidential Guards (see para. 9 above). The Government does not contest this or that it was not until 11 January 2021 that Mr. Farah was transferred to an official place of detention, namely the central prison of Garowe.

39. The Working Group recalls that deprivation of liberty can occur not only in formally designated places of detention, such as police stations and prisons, but also in other facilities, including private settings. It is therefore paramount that each instance of alleged deprivation of liberty is examined separately to ascertain whether it indeed amounts to deprivation of liberty, irrespective of the place where it is said to have occurred or the title given to such a place.⁵

40. In the present case, it is uncontested that Mr. Farah was arrested by armed guards in military or police uniforms, taken to what appears to have been a private residence, where he was chained and forced to sit on a verandah overnight before being transferred to a room in the same house. He continued to be held there until 11 January 2021, when he was transferred to the central prison of Garowe. It is clear to the Working Group that Mr. Farah was held against his will by agents of the State acting in an official capacity and that he was unable to leave the place where he was held. The Working Group therefore concludes that Mr. Farah was deprived of his liberty from the moment of his arrest on 27 December 2020, including the time he was forced to stay in the private residence.

41. Furthermore, noting that this constituted a de facto deprivation of liberty in an unofficial place of detention for over two weeks, the Working Group wishes to record its particular concern over these events. It is an uncontested fact that Mr. Farah was held in a

² [A/HRC/19/57](#), para. 68.

³ See, for example, General Assembly resolution 72/180, fifth preambular paragraph and Human Rights Council resolutions 41/2, second preambular paragraph, and 41/17, first preambular paragraph. See also Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para. 15, and Human Rights Council resolutions 6/4, para. 1 (a), and 10/9, para. 4 (b); and opinions No. 41/2014, para. 24; No. 42/2019, para.43; No. 13/2020, para. 39, and No. 32/2020, para. 29.

⁴ See opinions No. 1/1998, para. 13; No. 82/2018, para. 25; No. 76/2019, para. 36; No. 14/2020, para. 45; and No. 32/2020, para. 29.

⁵ [A/HRC/36/37](#), para. 52.

private residence upon his arrest, a place that clearly had not been designated as an official place of detention. As the Working Group has consistently found, placing individuals in unofficial places of deprivation of liberty puts them in particularly vulnerable situations, as it places them outside the protection of law and may in fact lead to situations of arbitrary detention, as is evident from the findings of the Working Group set out below. The Working Group reiterates its call upon all governments, and the Government of Somalia in particular, to refrain from holding individuals in unofficial places of detention.

Category I

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

43. The source submits, and the Government has not rebutted, that Mr. Farah's dramatic arrest on the evening of 27 December 2020, near the Martisor Hotel in the city centre of Garowe, had no legal basis as it was carried out without an arrest warrant being produced or Mr. Farah informed of the charges against him, in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant.

44. According to the source, even when, on 11 January 2021, following pressure from the media, the officers holding Mr. Farah transferred him to the central prison of Garowe, he was not shown a warrant or an official document for his arrest, but was informed verbally by the military court prosecutor that he was being charged with murder and attempted murder under articles 434 and 17 of the Somali Penal Code. To this day, the charges have reportedly remained verbal and neither Mr. Farah nor his family have received a copy of the charge sheet. The source adds that no supposed victim was identified.

45. The Working Group has repeatedly stated that in order for deprivation of liberty to be justified and in conformity with article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant, it must have a legal basis. It is not sufficient for there to be a national law or practice authorizing the arrest. The authorities must invoke a legal basis consistent with international human rights standards and apply it to the circumstances of the case.⁶

46. 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, article 9 (1) of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁷ The Working Group has been presented with no valid exceptional grounds to justify departure from prescribed requirements. The Working Group reiterates that any deprivation of liberty without, as in the present case, a valid arrest warrant issued by a competent, independent and impartial judicial authority is arbitrary and lacks legal basis. The Working Group therefore finds that the rights of Mr. Farah under article 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant have been violated.

47. The Working Group also finds that in order to constitute a legal basis for deprivation of liberty, the authorities should have informed Mr. Farah of the reasons for his arrest, at the time of arrest, and informed him promptly of the charges against him.⁸ The failure of the authorities to do so constitutes a violation of Mr. Farah's rights under article 9 (2) of the Covenant, articles 3 and 9 of the Universal Declaration of Human Rights and principle 10 of the Body of Principles, and renders his arrest devoid of any legal basis.⁹ In making this

⁶ See, for example, opinions No. 93/2017, para. 44; No. 9/2019, para. 29; No. 71/2019, para. 70; No. 11/2020, para. 37; and No. 33/2020, paras. 53 and 71.

⁷ The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See, for example, decisions No. 1/1993, paras. 6–7, and No. 44/1993, paras. 6–7. For more recent jurisprudence, see opinions No. 21/2017, para. 46; No. 68/2018, para. 39; and No. 34/2020, para. 46. See also article 14 (1) of the Arab Charter on Human Rights.

⁸ See, for example, opinion No. 10/2015, para. 34. See also opinions No. 32/2019, para. 29; No. 65/2019, para. 60; No. 6/2020, para. 41; and No. 34/2020, para. 47.

⁹ See also article 14 (1) and (3) of the Arab Charter on Human Rights.

finding, the Working Group takes note of and wishes to record its great concern at the clearly disproportionate manner in which the arrest was carried out on 27 December 2020, when Mr. Farah was initially detained. The Government has provided no explanation as to what circumstances justified the large number of armed officers executing the arrest of Mr. Farah, who was unarmed and did not resist the arrest in any way. That adds weight to the findings of the Working Group that the arrest of Mr. Farah did not conform to the requirements of article 9 of the Covenant.

48. Additionally, the source recalls that Mr. Farah was held incommunicado in a private residence, a de facto secret detention facility, for 16 days and was not brought before a court within 48 hours, contrary to the provisions of article 27 of the Constitution of Puntland, which provides that an accused shall not be detained in a facility that is not legally recognized and shall be brought before a court of law within 48 hours.

49. The Working Group recalls that article 9 (3) of the Covenant provides that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge or other officer authorized by law following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.¹⁰ The Working Group finds that Mr. Farah was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant and, as a result, the authorities failed to establish the legal basis of his detention in accordance with the provisions of the Covenant.

50. Furthermore, according to article 9 (3) of the Covenant, pretrial detention should be the exception rather than the norm and should be ordered for the shortest time possible.¹¹ In other words, article 9 (3) of the Covenant acknowledges liberty as a principle with detention merely as an exception.¹² Detention pending trial must thus be based on an individualized determination that it is reasonable and necessary for such purposes as to prevent flight, interference with evidence or the recurrence of crime.¹³ That was not satisfied in the present case.

51. Furthermore, to establish that detention is legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged in article 9 (4) of the Covenant. The Working Group recalls that the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.¹⁴ That right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty¹⁵ and to “all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures”.¹⁶ Moreover, it applies: “Irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.”¹⁷

52. The right to take proceedings before a court in order that the court decides on the lawfulness of the detention must also be afforded without delay, as specified in article 9 (4) of the Covenant. As stated by the Human Rights Committee in its general comment No. 35 (2014), adjudication of the case should take place as expeditiously as possible (para. 47). In the present case, Mr. Farah was not provided with the opportunity to exercise his right to challenge the legality of his detention and the Government has presented no explanation for this. The Working Group therefore finds a breach of article 9 (4) of the Covenant, articles 3, 8, 9 and 10 of the Universal Declaration of Human Rights and principles 11, 32, 37 and 38

¹⁰ Human Rights Committee, general comment No. 35 (2014), paras. 32–33.

¹¹ [A/HRC/19/57](#), paras. 48–58.

¹² *Ibid.*, para. 54.

¹³ Human Rights Committee, general comment No. 35 (2014), para. 38.

¹⁴ [A/HRC/30/37](#), paras. 2 and 3.

¹⁵ [A/HRC/30/37](#), para. 11.

¹⁶ Basic Principles and Guidelines, guideline 1, para. 47 (a).

¹⁷ *Ibid.*, para. 47 (b).

of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

53. Turning to the uncontested allegations that Mr. Farah was held incommunicado in locations unknown to his family and lawyers for 16 days, the Working Group considers that such deprivation of liberty, entailing a wilful refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their 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 26 of the Covenant.¹⁸ The Government's failure to notify Mr. Farah's family of his detention and location also violated principle 16 (1) of the Body of Principles. The Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances.

54. For all the reasons articulated in the preceding paragraphs, the Working Group finds that the deprivation of liberty of Mr. Farah lacked a legal basis and was thus arbitrary under category I.

Category II

55. Reportedly, Mr. Farah was among the few journalists who covered the protests of the region's poorest families who had taken to the streets of Garowe to protest against the soaring inflation rate. The source notes that protesters and journalists who reported on the protest were labelled by the Government as "anti-State". According to the source, Mr. Farah broadcast a live feed of the protest on Kilwe Media Inc. and his videos of the protest were widely shared.

56. The source also asserts, and the Government does not contest, that the deprivation of Mr. Farah's liberty resulted from the exercise of the rights or freedoms guaranteed by the Universal Declaration of Human Rights and the Covenant, in particular the right to freedom of opinion and expression, and was therefore arbitrary under category II. The source further submits, and the Government does not contest, that his detention was also based on his coverage of political protests in violation of his right to freedom of peaceful assembly and of association, guaranteed under article 20 of the Universal Declaration of Human Rights and articles 21 and 22 of the Covenant. Additionally, the source claims, and the Government does not deny, that Mr. Farah's detention was contrary to his right to freedom of movement under article 13 of the Universal Declaration of Human Rights and article 12 of the Covenant.

57. The Working Group recalls that detention purely for the peaceful exercise of rights protected by the Covenant may be arbitrary.¹⁹ The Working Group notes Human Rights Council resolution 24/5, in which the Council reminded States of "their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others".

58. The Working Group notes that article 19 (2) of the Covenant provides that: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." The right to freedom of expression includes the discussion of government policies, political debate, reporting on human rights, journalism and engaging in peaceful demonstrations or political activities, including for peace or democracy. It also protects the holding and expression of opinions, including those which are critical of, or not in line with, government policy.²⁰ The mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.²¹ The Government did not submit any evidence that Mr.

¹⁸ See article 1 (1) of the Declaration on the Protection of All Persons from Enforced Disappearance. See also, for example, opinions No. 82/2018, para. 28; No. 36/2019, para. 35; and No. 34/2020, para. 49. See also article 22 of the Arab Charter on Human Rights.

¹⁹ Human Rights Committee, general comment No. 35 (2014), paras. 17 and 53.

²⁰ See opinions No. 79/2017, para. 55, and No. 8/2019, para. 55.

²¹ Human Rights Committee, general comment No. 34 (2011), para. 38.

Farah's activism and media posts involved violence or inciting others to act in a violent manner.

59. Moreover, the Government chose not to contest the source's submission that the military court prosecutor stated, during the 11 January 2021 charge hearing, that Mr. Farah was "a bad critic against Puntland Government and that the only way the authorities can get revenge is to put [him] to the military court which will sentence him to death so that [he] will not criticize the State in the future" (see para. 27 above). The Working Group views this as clear further evidence that the proceedings against Mr. Farah were entirely punitive and a retribution against his peaceful exercise of his right to freedom of expression and opinion. The Working Group therefore finds that Mr. Farah was peacefully exercising his rights and that his conduct falls within the boundaries of the right to freedom of expression and opinion. Mr. Farah's conviction cannot be regarded as consistent with the rights enumerated in the Universal Declaration of Human Rights or the Covenant.

60. In making this finding, the Working Group recalls the principle enunciated by the Human Rights Council in resolution 12/16, in which it called on States to refrain from imposing restrictions that are not consistent with article 19 (3) of the Covenant.

61. Consequently, the Working Group considers that Mr. Farah's conduct fell within the right to freedom of opinion and expression protected under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant and that he was detained for exercising those rights. His detention was therefore arbitrary falling under category II.

62. In making this finding, the Working Group is also mindful of the numerous offences that Mr. Farah was charged with under the Somali Penal Code of 1964, including instigation of delinquency (art. 320); instigation to disobey the law (art. 321); publication or circulation of false, exaggerated or tendentious news capable of disturbing public order (art. 328); offence against the authorities by means of damaging posters (art. 271); and bringing the nation or the State into contempt (art. 219).

63. The Working Group considers that these offences are so vague and overly broad that they could, as in the present case, result in penalties being imposed on individuals who had merely exercised their rights under international law. The determination of what constitutes an offence under these provisions appears to be left entirely to the discretion of the authorities. As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision that the individual can access and understand the law, and regulate his or her conduct accordingly.²² In the present case, the application of vague and overly broad provisions adds weight to the Working Group's conclusion that Mr. Farah's deprivation of liberty falls within category II. Furthermore, the Working Group considers that, in some circumstances, laws may be so vague and overly broad that it is impossible to invoke a legal basis justifying the deprivation of liberty.

Category III

64. The source alleges that Mr. Farah's detention did not conform to international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments ratified by Somalia. The source submits that the violations of Mr. Farah's right to a fair trial were of such gravity as to give Mr. Farah's deprivation of liberty an arbitrary character under category III.

65. The Working Group notes the uncontested allegations that Mr. Farah was brought before a military court only on 11 January 2021. In relation to the jurisdiction of the military courts, the Working Group in its practice has consistently argued that the trial of civilians by military courts violates the Covenant and customary international law and that, under international law, military tribunals can only be competent to try military personnel for military offences.²³ Moreover, in the present case, the Government had the possibility to

²² See, for example, opinion No. 41/2017, paras. 98–101.

²³ See [A/HRC/27/48](#), paras. 67–70. See also opinions No. 44/2016, No. 30/2017, No. 28/2018, No. 32/2018 and No. 66/2019.

explain the involvement of a military court in the case of Mr. Farah, but it has failed to do so. The Working Group therefore finds a breach of article 14 (1) of the Covenant.

66. In making this finding, the Working Group is particularly mindful of the uncontested submission by the source that no civilian court would accept the case against Mr. Farah due to the lack of evidence against him (see para. 26 above). Equally, the Government has chosen not to address the allegations about the conduct of the military court in sentencing Mr. Farah in the absence of any evidence against him (see paras. 17–18 above). The Working Group considers that these are further factors clearly supporting its finding of a violation of article 14 (1) of the Covenant.

67. Moreover, the source has argued, and the Government has chosen not to address the allegations, that Mr. Farah was subjected to acts of torture and cruel, inhuman and degrading treatment. Upon his arrest, he was reportedly blindfolded, handcuffed and shackled, and forced to sit on a verandah in the cold until the next day. He was subsequently held incommunicado and was reportedly beaten with sticks and tortured at the hands of the military officers holding him. Additionally, he was allegedly punched several times, electrocuted, slapped by officers of the Puntland Intelligence Agency and beaten with the butts of their AK-47s. The source explains that, during the interrogations, the officers would shout at Mr. Farah, threaten to kill him and ask him to reveal who he was working for.

68. The Working Group recalls that torture or ill-treatment of detainees is not only a grave violation of human rights, but it also seriously undermines the fundamental principle of a fair trial as it can compromise the ability to defend oneself, especially in light of the right not to be compelled to testify against oneself or to confess guilt, as guaranteed by article 14 (3) (g) of the Covenant,²⁴ as well as the right to be presumed innocent under article 11 of the Universal Declaration of Human Rights and article 14 (2) of the Covenant. A forced confession taints the entire proceedings, regardless of whether other evidence was available to support the verdict.²⁵ The Working Group therefore finds a breach of article 14 (2) and (3) of the Covenant. The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

69. In the Working Group's view, the Government failed to respect many of Mr. Farah's rights. It especially notes the denial of Mr. Farah's right to legal assistance. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by a counsel of their choice at any time during their detention, including immediately after their apprehension, and such access shall be provided without delay.²⁶ In the circumstances of the present case, the Working Group finds that Mr. Farah was denied access to legal assistance following his arrest, in violation of his right to adequate time and facilities for the preparation of his defence and his right to communicate with counsel under article 14 (3) (b) of the Covenant. As the Working Group has stated in principle 9 and guideline 8 of the Basic Principles and Guidelines, persons deprived of their liberty have the right to legal assistance by a 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; and access to legal counsel should not be unlawfully or unreasonably restricted.²⁷

70. 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 Mr. Farah's deprivation of liberty an arbitrary character that falls within category III.

Category V

71. As regards category V, the source contends that Mr. Farah was targeted because he belongs to the Warsageli clan, a reportedly marginalized community in the Sanag region

²⁴ Opinions No. 22/2019, para. 78; No. 26/2019, para. 104; and No. 56/2019, para. 88.

²⁵ See opinion No. 34/2015, para. 28.

²⁶ A/HRC/45/16, paras. 51–53. See also the Basic Principles and Guidelines, principle 9 and guideline 8.

²⁷ Basic Principles and Guidelines, principle 9 and guideline 8. See also Human Rights Committee, general comment No. 32 (2007), para. 34.

whose members are continuously discriminated against in Puntland and who do not enjoy the same rights as the main clans. The source notes that lawmakers from the Sanag region who criticized the President were removed from the parliament and were labelled as “anti-State” agents. The source further points out that women and girls, particularly those from marginalized communities, are allegedly targeted and sexually assaulted.

72. With regard to Mr. Farah’s profession, the source submits that Mr. Farah was targeted because he is a journalist, one of the few to report on the protests of 26 December 2020, and because his videos of the protests were shared widely. The source alleges that the Government of Puntland was unhappy with the demonstrators and labelled protesters and reporting journalists as “anti-State”. The source contends that the state of freedom of expression has considerably deteriorated in Puntland, which was the second largest jailer of journalists after Somaliland in 2019. Allegedly, the authorities in Puntland continue to intimidate, harass and attack journalists to this day.

73. Mr. Farah’s criticism of the Government and his persecution may be understood against the backdrop of the pervasive discrimination and persecution faced by the Bantu Somali ethnic minorities. The Working Group recalls that under article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Somalia on 26 August 1975, it is incumbent upon the Government to assure to everyone within its jurisdiction effective protection and remedies against acts of discrimination and to eliminate all barriers faced by ethnic minorities.

74. The Working Group finds that Mr. Farah was deprived of his liberty on the grounds of discrimination based on ethno-religious origin and political opinion, that is to say, owing to his status as a journalist reporting on people demonstrating against the Government and on the basis of his political or other opinion in seeking to hold the authorities to account. His deprivation of liberty violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and was arbitrary under category V. In making this finding, the Working Group recalls its findings set out above under category II, especially the statements of the prosecutor during the 11 January 2021 hearing, and its findings under category III, especially regarding the conduct of the military court in sentencing Mr. Farah without any evidence.

Disposition

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

The deprivation of liberty of Kilwe Adan Farah, being in contravention of articles 2, 3, 7, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

76. The Working Group requests the Government of Somalia to take the steps necessary to remedy the situation of Mr. Farah 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.

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

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

79. 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 and the Working Group on Enforced or Involuntary Disappearances, for appropriate action.

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

Follow-up procedure

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

82. 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.

83. 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.

84. 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.²⁸

[Adopted on 1 April 2022]

²⁸ See Human Rights Council resolution 42/22, paras. 3 and 7.