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Human Rights Council Working Group on Arbitrary Detention

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No. 17/2015 (Egypt)

Communication addressed to the Government on 13 January 2015

concerning a minor (whose name is known by the Working Group)

The Government of Egypt replied on 6 March 2015.

The State is a party to the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.*

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

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of

* Egypt acceded to the International Covenant on Civil and Political Rights on 14 January 1982 and the Convention on the Rights of the Child on 6 July 1990.



Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. A minor, whose name is known by the Working Group (hereinafter “the minor”) is an Egyptian national and usually resides in Al-Qalyubiyah Governorate, Egypt, where he attended secondary school and worked part-time in a fast-food restaurant.

4. On 18 May 2014, the minor was arrested by members of the Central Security Forces, a branch of the National Security Service. It is unknown whether a warrant had been produced for his arrest. The arrest occurred while he was leaving his part-time restaurant job in a neighbourhood. The source informs that other minors were arrested at the same time. According to information later conveyed by the public prosecutor to his lawyer, the minor was thereafter immediately brought to the Central Security facility of Banha, located in the capital of the Al-Qalyubiyah Governorate, where he remains detained.

5. According to the source, the minor has been detained incommunicado since the date of his arrest, without any visitation rights being granted to his family or his lawyer, despite their repeated requests. The minor’s family was only notified of his arrest by witnesses to it and has not received any formal notification of regarding his arrest and detention.

6. The source informs that the lawyer appointed by the family receives reports regarding the ongoing investigations and the charges held against his client from the public prosecutor, who routinely visits him for interrogations inside the Central Security facility. According to the lawyer, the minor is charged with “belonging to a terrorist group” and having “torn up a poster of Al-Sisi”.

7. At the time of submission, over eight months following his arrest, the minor has not appeared before a judge and no court hearings have been scheduled in his case.

8. The source informs that the minor’s father has filed several complaints and petitions with the Attorney General of Al-Qalyubiyah Governorate, requesting details regarding the arrest and detention of his son and challenging the lawfulness of his detention. The most recent petition bears the case file No. 20029. The minor’s father has also met with the Attorney General in person on several occasions. None of these steps have been effective.

9. The source conveys that the location of the minor’s detention is of grave concern to his family owing to internationally publicized reports of the ill-treatment and torture of detainees in such facilities. Furthermore, given the minor’s vulnerability, the source submits he is at even greater risk of abuse by the authorities and other detainees, being held

in incommunicado detention without the assistance of his lawyer or visitation by his family. The family fears that, given the length of the minor's detention and reports made by former detainees regarding the practices of officials in such facilities, there remains a risk that he may no longer be alive.

10. In the light of the above, the source submits that the deprivation of liberty of the minor may be considered arbitrary, falling under categories I and III. In its view, the fact that the minor is being detained incommunicado and without any legal basis contravenes his right to be free from arbitrary and unlawful detention, as guaranteed by article 9 of the Universal Declaration and article 9 of the Covenant. Furthermore, the lack of judicial oversight of his detention contravenes his right to a fair trial, including guarantees of due process, contrary to article 10 of the Universal Declaration and article 14 of the Covenant.

Response from the Government

11. In the communications addressed to the Government of Egypt on 13 January 2015, the Working Group transmitted a summary of the allegations made by the source. The Working Group stated that it would appreciate it if the Government could, in its reply, provide it with detailed information about the current situation of the minor and clarify the legal provisions justifying his continued detention. The Government of Egypt replied to the communication from the Working Group on 6 March 2015.

12. In its response to the Working Group, the Government informs that the minor was apprehended, together with others, in flagrante delicto and with their faces masked while committing the offence of setting off fireworks and destroying posters promoting the election of presidential candidates.

13. The Department of Public Prosecutions initiated an inquiry and, when questioned, the minor denied the accusations made against him.

14. The minor has been held in custody since 19 May 2014 pending investigation of the case, and his remand order is due to expire on 30 March 2015.

15. The case is still under consideration pending receipt of the technical assistance reports and the final results of the security inquiries into the facts of the case.

16. The minor is enjoying his right to receive visits from members of his family and his lawyer in accordance with the provisions of the relevant laws and regulations.

Comments from the source

17. On 1 April 2015, the source submitted its comments to the response from the Government of Egypt.

18. According to the source, the Government of Egypt failed to provide in its response sufficient elements to explain why the minor had been detained inside the Central Security camp in Banha, which is the detention centre for adults.

19. The source also informed that the minor had been detained for almost one year without being given any opportunity to see his family and he had not been brought before a judge, despite his particular vulnerability as a minor. According to his lawyer, no evidence had been produced to support the accusations against the minor, which he had continuously rejected.

20. On 19 May 2014, the minor reported to the public prosecutor that he had been beaten up at the time of arrest and showed the subsequent marks on his body. The public prosecutor refused the request of the minor to see a doctor. Furthermore, despite the minor's inability to identify the perpetrators of the torture as he was blindfolded at the time,

the prosecutor failed to comply with the national law, which requires that investigations be opened into all reports where there were clear marks of ill-treatment and torture.

21. According to the minor's lawyer, in the absence of evidence against his client, he should have been released pending investigation, in particular because "burning a poster of Al-Sisi" was allegedly punishable by a maximum of six months in prison and a fine, as set forth in article 361 of the Egyptian Criminal Code.

22. Regarding the charge of belonging to an "outlawed group", the minor testified that he had no connection whatsoever with a group and the authorities have not proved his affiliation to date.

Discussion

23. According to its revised methods of work, the Working Group considers that it is in a position to render an opinion on the case on the basis of the submissions that have been made.

24. Both the source and the Government have provided few details in terms of precise information about the criminal proceedings upon which the Working Group can base its opinion. The main issues in the present case relate to the competence of the prosecutor to render a decision on deprivation of liberty pending trial, and to compliance of the treatment and detention in the Central Security camp in Banha as applied to the minor with the pertinent international human rights norms.

25. The Working Group notes that, according to the source, the minor is a secondary school pupil and was 16 years old when he was detained on 18 May 2014. Since then, he has been detained in the Central Security camp in Banha, which is the detention centre for adults. He is held in incommunicado detention without access to a lawyer. In its response, the Government did not refute this information. The Working Group considers that the irregular detention for such a long period in a security agency facility is a grave violation of the requirements related to any form of pretrial detention.

26. The Working Group expresses its grave concern that no further details have been provided regarding compliance of the minor's treatment and detention with applicable international human rights standards, in particular, with the principle that the deprivation of liberty of a child shall be used only as a measure of last resort and for the shortest appropriate period of time, as set forth in article 37(b) of the Convention on the Rights of the Child, ratified by Egypt on 6 July 1990, and affirmed by sections 1 and 2 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in its resolution 45/113 of 14 December 1990 and by sections 13(1), 18(2) and 19(1) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, adopted by the Assembly in its resolution 40/33 of 29 November 1985.

27. The minor has been held in detention for almost one year and has never been brought before the judicial authority that could verify the legality of his arrest and detention by the State security agents. In its general comment No. 35, on article 9, the Human Rights Committee reaffirmed that paragraph 3 of that article requires, firstly, that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. That requirement applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it. The requirement applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity. The right is intended to bring the detention of a person in a criminal investigation or prosecution under judicial control. It is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with.

Accordingly, a public prosecutor cannot be considered as an officer exercising judicial power under paragraph 3.¹

28. The Working Group shares the views of the Human Rights Committee that, while the exact meaning of “promptly” may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances. An especially strict standard of promptness, such as 24 hours, should apply in the case of juveniles. The individual must be brought to appear physically before the judge or other officer authorized by law to exercise judicial power. The physical presence of detainees at the hearing gives the opportunity for inquiry into the treatment that they received in custody and facilitates immediate transfer to a remand detention centre if continued detention is ordered. It thus serves as a safeguard for the right to security of person and the prohibition against torture and cruel, inhuman or degrading treatment. In the hearing that ensues, and in subsequent hearings at which the judge assesses the legality or necessity of the detention, the individual is entitled to legal assistance, which should in principle be by counsel of choice.²

29. Despite the Government’s submission that the minor is enjoying his right to receive visits from members of his family and his lawyer in accordance with the provisions of the relevant laws and regulations, the Working Group notes that no details have been provided to substantiate this statement, in particular, when exactly the first visit of the parents and lawyer were allowed, or whether the visits are allowed to take place on a regular basis and their modality. In this context, the Working Group accepts the submission of the source that the minor had been detained for almost one year without having any possibility to see his family.

30. The Working Group considers that holding a minor in incommunicado since the date of his arrest for almost a year, without any rights to visit being granted to his family or his lawyer, despite their repeated requests, is generally to be regarded as a violation of article 7 and 9 of the Covenant.³ Furthermore, the refusal of the prosecutor to provide medical assistance to the minor and initiate effective investigation, after the minor reported on 19 May 2014 that he had been beaten up at the time of arrest and showed the subsequent marks on his body, amounts to violation of article 2 in conjunction with article 7 of the Covenant.⁴

31. The Working Group considers that the Government failed to demonstrate that it has safeguarded either the due process rights and guarantees of the minor, or his right to fair trial, in compliance with articles 9 and 10 of the Universal Declaration and 9 and 14 of the Covenant, which is binding on Egypt by virtue of its ratification. This is furthermore in violation of section 14 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. This case falls under category I and III.

32. The Working Group expresses its grave concern by the present case, which, when considered together with the previously adopted opinions related to Egypt, indicates systemic and widespread arbitrary detentions of young individuals. The Working Group also considers that the violations of the fundamental right to be free from arbitrary

¹ See CCPR/C/GC/35, para. 32.

² *Ibid.*, paras. 33 and 34.

³ See CCPR/C/GC/35, para. 56, and communications No. 1782/2008, *Aboufaied v. Libya*, Views adopted on 21 March 2012, paras. 7.4 and 7.6; and No. 440/1990, *El-Megreisi v. Libyan Arab Jamahiriya*, Views adopted on 23 March 1994, para. 5.4.

⁴ See CCPR/C/GC/31, para. 18.

deprivation of liberty, which cannot be derogated from, will render subsequent convictions unsafe.

33. The Working Group reports the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Disposition

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

The deprivation of liberty of the minor is arbitrary and in contravention of articles 9 and 10 of the Universal Declaration and 9 and 14 of the Covenant. It falls into category III.

35. The Working Group requests the Government of Egypt to take the necessary steps to remedy the situation of the minor and bring it into conformity with the standards and principles in the Universal Declaration and the Covenant.

36. The Working Group further requests the Government of Egypt to release the minor immediately and provide him with an enforceable right to reparation in accordance with article 9, paragraph 5 of the Covenant.

[Adopted on 28 April 2015]
