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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its ninety-ninth session, 18–27 March 2024****Opinion No. 20/2024 concerning Mohamed Mahmoud Marghany Mahmoud Mubarak (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 51/8.
2. In accordance with its methods of work,<sup>1</sup> on 27 October 2023 the Working Group transmitted to the Government of Egypt a communication concerning Mohamed Mahmoud Marghany Mahmoud Mubarak. 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).

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\* Miriam Estrada Castillo did not participate in the discussion of the case.

<sup>1</sup> [A/HRC/36/38](#).



## 1. Submissions

### (a) Communication from the source

4. Mohamed Mahmoud Marghany Mahmoud Mubarak is a citizen of Egypt, born on 1 July 1998. At the time of his arrest, he was a high school student. His usual place of residence was in Minya Al-Qamh, Sharqia Governorate.

#### (i) Context

5. According to the source, over the past decade the practice of keeping individuals whose criminality cannot be substantiated detained indefinitely has become widespread. Allegedly, this practice circumvents the legal limit on pretrial detention, which is two years under article 143 of the Criminal Procedure Code. The source submits that this practice of so-called “case recycling” means, essentially, that the prosecution brings a new case, often using the same accusations, against a detainee who has just completed or is still in the process of serving his or her sentence in respect of another case.

6. In 2013, an exception was introduced to article 143 of the Criminal Procedure Code granting the Court of Cassation and the Court of Referral the power to extend detention without any limitations where the charges in a case carry a potential life sentence or death sentence and it is a retrial.

7. The source argues that Mr. Mubarak has been subjected to three different cases on the same charges, thus falling victim to this alleged practice of “case recycling”. Allegedly, Mr. Mubarak’s right to be free from arbitrary arrest and detention have been violated, as well as his fundamental right to education enshrined in international treaties and in article 49 of the country’s Constitution.

#### (ii) Arrest and detention

8. The source reports that on 20 June 2016, Mr. Mubarak was taking an exam at school when he was arrested by State security agents in civilian clothes, who did not present a warrant or any legal documentation. A member of Mr. Mubarak’s family had accompanied him to school, because Mr. Mubarak was concerned that he could be arrested, as had happened to classmates of his in the previous weeks.

9. The source alleges that Mr. Mubarak was subjected to enforced disappearance from the date of his arrest, 20 June 2016, until 11 July 2016. This period was not acknowledged by the authorities, as his arrest was recorded as having taken place on 11 July 2016, which reflects the date of his first appearance before the prosecution rather than the actual date of his alleged arrest and enforced disappearance.

10. In addition, the source reports that during Mr. Mubarak’s enforced disappearance, his family filed several complaints with the Attorney-General and the Minister of the Interior enquiring about his whereabouts but did not receive any response.

11. According to the source, Mr. Mubarak’s family was first able to visit him upon his reappearance in July 2016, in Minya Al-Qamh Detention Centre. It is reported that during Mr. Mubarak’s enforced disappearance, he was subjected to torture by means of beatings and electrocution, to make him confess to acts that he had not committed, and that he sustained bodily injuries and bruises as a result. Additionally, the source reports that despite informing the Chief Prosecutor about the incident of torture, Mr. Mubarak’s account was disregarded, and no investigation was ordered into his torture claims.

12. Following his arrest on 20 June 2016, Mr. Mubarak was held in pretrial detention from 2016 to 2019 in relation to case No. 2694 of 2016 on charges of “joining and participating in demonstrations”. During that time, he was reportedly transferred from Zagazig Detention Centre to Minya Al-Qamh Detention Centre, then Zagazig General Prison, then Al-Fayoum Prison.

13. The source reports that since the duration of Mr. Mubarak’s pretrial detention had exceeded the legal limit of two years allowed under the Criminal Procedure Code, he was acquitted in 2019. However, Mr. Mubarak was not released. In fact, while he was completing

the procedures for his release at the police station, he was forcibly disappeared for 35 days, from 4 April to 9 May 2019.

14. The source submits that upon his reappearance, Mr. Mubarak found himself added to a new case: case No. 694 of 2019, on the same charges of “joining and participating in demonstrations” as case No. 2694 of 2016 in which he had just been acquitted.

15. Reportedly, on 11 May 2019, Mr. Mubarak was sentenced to a year in prison and a penalty of 50,000 Egyptian pounds by the Supreme State Security Court, and his family filed an appeal against the verdict which resulted in the prosecution adding another year to the sentence and the monetary penalty being maintained.

16. Upon completing his sentence on 9 May 2022, instead of being released, Mr. Mubarak was reportedly brought before the Zagazig prosecution service pending another case: case No. 3076 of 2022, on charges of “possessing leaflets”.

17. The source notes that Mr. Mubarak is currently awaiting trial at the Tenth of Ramadan Detention Centre, where he shares a small poorly ventilated room with 10 other detainees and is banned from going outside to exercise. The source notes that at least until June 2023, Mr. Mubarak’s family has been able to visit him once a month for a period of 15 minutes and that their last reported visit took place on 8 June 2023.

18. The source notes that although Mr. Mubarak has a lawyer, the investigation sessions are currently being held online, and his lawyer has been unable to attend, thereby depriving him of legal representation.

19. The source adds that in 2018, Mr. Mubarak underwent solitary confinement while he was in Zagazig General Prison, as punishment for having taken part in a hunger strike to protest against degrading treatment and poor detention conditions. He was then allegedly transferred to Al-Fayoum Prison.

(iii) *Legal analysis*

20. The source argues that the arrest and detention of Mr. Mubarak are arbitrary under categories I and III of the working methods of the Working Group.

a. Category I

Arrest and detention

21. The source argues that the arrest of Mr. Mubarak is arbitrary under category I as there was no legal basis or justification for the deprivation of his liberty. In this regard, the source recalls that the State security agents responsible for his arrest failed to provide an arrest warrant or any legal documentation.

22. The source further recalls that arbitrary arrests are prohibited under article 9 of the Universal Declaration of Human Rights, given that they violate the right to liberty safeguarded by article 3 thereof. The source notes general comment No. 35 (2014) on liberty and security of person, of the Human Rights Committee,<sup>2</sup> in which it is stated that any person arrested is to be informed, at the time of arrest, of the reasons for the arrest, and that this requirement applies broadly to the reasons for any deprivation of liberty.

23. The source notes that principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment clearly states that anyone who is arrested is to be informed at the time of the arrest of the reason for the arrest and is to be informed promptly of any charges against them. The source adds that article 14 (3) of the Arab Charter on Human Rights, ratified by Egypt on 22 March 1945, emphasizes that anyone arrested should be informed of the reasons behind the arrest and the charges under which the arrest is made, and that article 6 of the African Charter on Human and Peoples’ Rights, ratified by Egypt on 21 October 1986, reaffirms that every individual must have the right to liberty and security of their person, and that no one may be deprived of their freedom except for

<sup>2</sup> See para. 24.

reasons and conditions previously laid down by law. In particular, the source recalls that no one may be arbitrarily arrested or detained.

24. It is argued that Mr. Mubarak's arrest also constitutes a violation of article 9 of the Covenant, which guarantees the right to liberty and security of person and to be free from arbitrary arrest or detention.

25. The source asserts that Mr. Mubarak was subjected to arbitrary arrest, as the authorities responsible did not present an arrest warrant and failed to invoke a legal basis to justify his arrest. The source adds that Mr. Mubarak's detention is arbitrary on the grounds of lack of evidence.

26. The source argues that Mr. Mubarak's right to liberty and security of person was further violated through his repeated enforced disappearance: for 21 days from 20 June to 11 July 2016 and then for 35 days from 4 April until 9 May 2019.

27. The source concludes that Mr. Mubarak's right to liberty has been violated through arbitrary arrest, as it was conducted without an arrest warrant or any legal explanation.

Violation of the right to be free from repeated and prolonged arbitrary detention through the practice of "recycling of cases"

28. According to the source, Mr. Mubarak's prolonged detention is arbitrary and an example of the authorities repeatedly detaining individuals who have been acquitted of charges or have served their sentences. The source recalls that Mr. Mubarak was subjected to three different cases (case No. 2694 of 2016, case No. 694 of 2019 and case No. 3076 of 2022) under the same charge of "joining protests and distributing leaflets".

29. The source argues that every new case is a renewed version of the same old case and that the authorities aim to keep Mr. Mubarak in detention indefinitely. The source further argues that the punishment carried out against Mr. Mubarak is not a one-time occurrence but rather an offence carried out repeatedly by the authorities against young adults and their rights to liberty and to education.

#### Enforced disappearance

30. The source submits that Mr. Mubarak was subjected to enforced disappearance twice, for the first time from 20 June to 11 July 2016 and for the second time from 4 April to 9 May 2019. Allegedly, the first time, Mr. Mubarak was forcibly disappeared from school. The second time, he was forcibly disappeared from inside the police station while he was completing the procedures for his release.

31. The source alleges that the Government did not respond to the enquiries from Mr. Mubarak's family relating to his fate and whereabouts; he was placed outside of the protection of the law, satisfying the criteria for enforced disappearance.

32. In addition, the source argues that the locations of Mr. Mubarak's detentions during his enforced disappearance have not been disclosed by Egyptian authorities.

33. According to the source, the period of Mr. Mubarak's alleged first enforced disappearance was not acknowledged by the authorities, as his arrest was recorded as having taken place on 11 July 2016, which reflects the date of his first appearance before the prosecution rather than the actual start date of his enforced disappearance from 20 June to 11 July 2016.

34. The source recalls that the right of persons not to undergo enforced disappearance is considered one of the fundamental customary non-derogable rights, even in a state of emergency. According to the International Convention for the Protection of All Persons from Enforced Disappearance, persons deprived of liberty must be held only in an officially recognized place of detention. States are obliged to ensure that no one is held in detention secretly and must provide the detainee's family and lawyer with accurate information on the detention.

## b. Category III

35. The source argues that Mr. Mubarak's detention is arbitrary under category III as he has been denied the right to due process.

Violation of the right to a fair trial by a competent, independent and impartial tribunal

36. The source submits that confessions obtained under torture were accepted by the prosecution as legal grounds for keeping Mr. Mubarak in pretrial detention for years, which casts doubt upon the possibility of a fair trial administered by an independent, impartial and neutral court.

37. The source recalls that the independence, impartiality and neutrality of courts constitute the fundamental pillars for the delivery of fair trials. In line with article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the inadmissibility of evidence obtained under torture is comprehensive under the right to a fair trial, in regard to the right against self-incrimination and to the unreliability of statements obtained by torture.

Violation of the right to access an effective legal counsel

38. Moreover, the source argues that Mr. Mubarak is currently deprived of legal counsel, as his lawyer has been unable to attend online investigation sessions.

39. Reportedly, in late 2021, a decision was issued by the Minister of Justice (decision No. 8901 of 2021) enabling judges to hold hearings for the remote renewal and resumption of pretrial detentions using modern technologies. The source reports that this decision came into effect in January 2022 and has created a new threat to the fundamental human right of accessing effective legal counsel. The source affirms that this constitutes a grave obstruction of justice.

40. The source explains that when sessions take place online, the attendance of legal counsel often becomes complicated. According to the testimony of numerous lawyers who have attended remote detention renewal sessions, judges have ended video meetings abruptly, terminating entire series of hearings, and renewed all detentions without reviewing the detention in all remaining cases. It is further alleged that judges have often not allowed the lawyers or detainees sufficient time to speak and have muted and silenced detainees when they have attempted to complain about detention conditions.

41. The source recalls that according to principle 2 of the Basic Principles on the Role of Lawyers, a detainee should have access to an effective counsel – defined as 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 source adds that the effectiveness of the legal counsel is fundamentally related to the principle of equality of arms, as enshrined in article 11 of the Universal Declaration of Human Rights, and which draws on the right of detainees to be given the time and facilities necessary to prepare and present their defence with the counsel for when the trial takes place.

42. Additionally, the source recalls principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which provides that communications of the detained or imprisoned person with the outside world, and in particular their family or counsel, must not be denied for more than a matter of days. The source adds that general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, of the Human Rights Committee,<sup>3</sup> provides that a detainee has the right to have prompt access to legal counsel. This means that a lawyer is granted the right to have private communication and meetings with the detainee and to attend all the investigations without interference or restrictions.

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<sup>3</sup> See para. 34.

43. According to the source, since Mr. Mubarak's arrest in 2016, his lawyer has not been able to visit him once in detention, which constitutes a grave violation to the right of unrestricted legal counsel and to have private communication and meetings with the detainee.

Violation of the right to education enshrined in international treaties and the Constitution

44. The source recalls article 49 of the Constitution, which guarantees the right to education for every citizen and makes education compulsory through high school or other educational institutions or their equivalent. In this regard, the source argues that Mr. Mubarak's right to education has been breached during his arbitrary arrest and detention.

Violation of the right to be free from torture as well as cruel and inhuman treatment

45. The source submits that during Mr. Mubarak's enforced disappearance, he was subjected to torture through beatings and electrocution by State security agents to obtain a confession to crimes he did not commit. The source submits that this constitutes a violation of article 7 of the Covenant and a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

46. The source recalls that the prohibition of torture and other ill-treatment or punishment is absolute and that this applies in all circumstances and may never be restricted, including in times of war or in a state of emergency. Furthermore, no exceptional circumstances, including threats of terrorism or other violent crime, may be invoked to justify torture or ill-treatment; such prohibition applies irrespective of the offence allegedly committed by the accused person.

**(b) Response from the Government**

47. On 27 October 2023 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 26 December 2023, detailed information about the current situation of Mr. Mubarak and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Egypt under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Egypt to ensure Mr. Mubarak's physical and mental integrity.

48. The Working Group regrets that the Government did not submit a reply within the established time frame, nor did it seek an extension in accordance with paragraph 16 of the Working Group's methods of work.

**2. Discussion**

49. 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.

50. In determining whether Mr. Mubarak's detention is 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.<sup>4</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

51. The Working Group notes that although Mr. Mubarak is no longer a minor at the time of the adoption of the present opinion, he was under 18 years of age at the time of his arrest and detention, and his submissions will be considered in the light of the obligations of Egypt under international human rights law, including the Convention on the Rights of the Child.

52. The source has argued that the detention of Mr. Mubarak is arbitrary and falls under categories I and III. The Working Group will proceed to examine these in turn.

<sup>4</sup> [A/HRC/19/57](#), para. 68.

**(a) Category I***Arrest and detention*

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

54. Pursuant to article 9 (1) of the Covenant, no one is to be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. Article 9 (2) of the Covenant provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for his or her arrest and is to be promptly informed of any charges against him or her. Similarly, under article 40 (2) (b) (ii) of the Convention on the Rights of the Child, States are to guarantee that children alleged to have or accused of having infringed the penal law are informed of the reasons for their arrest and are promptly informed of the charges against them. These rights are reinforced by article 9 of the Universal Declaration of Human Rights.

55. The Working Group has previously stated that, for deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.<sup>5</sup> This is typically done through an arrest warrant or arrest order (or equivalent document).<sup>6</sup> The reasons for the arrest must be provided immediately upon arrest and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.<sup>7</sup>

56. The source argues that the security agents responsible for Mr. Mubarak's arrest failed to provide an arrest warrant or any legal documentation and failed to invoke a legal basis to justify his arrest. In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source. The Working Group thus considers that the authorities' failure to inform Mr. Mubarak of the reasons for his arrest, at the time of his arrest, was contrary to article 40 (2) (b) (ii) of the Convention on the Rights of the Child, articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (2) of the Covenant and principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and therefore renders his arrest devoid of any legal basis.

57. The Working Group notes the source's allegations, unrebutted by the Government, that Mr. Mubarak was forcibly disappeared on two different occasions. The first time, Mr. Mubarak was forcibly disappeared from the moment of his arrest on 20 June 2016 until 11 July 2016. Allegedly, this period was not acknowledged by the authorities, as Mr. Mubarak's arrest was recorded as having taken place on 11 July 2016, when he first appeared before the prosecution. The second time, Mr. Mubarak was forcibly disappeared from 4 April to 9 May 2019, from inside the police station while he was completing the procedures for his release. Moreover, it is alleged that the Government did not respond to the enquiries from Mr. Mubarak's family relating to his fate and whereabouts.

58. The Working Group recalls that deprivation of liberty that entails 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 circumstances. It is also inherently arbitrary, as it places the person outside the protection of the law, in violation of article 16 of the Covenant and article 6 of the Universal Declaration of Human Rights. In fact, the Working Group has consistently asserted that holding persons at secret, undisclosed locations and in circumstances not revealed to the person's family violates their right to contest the legality of their detention before a court or tribunal under article 9 (3)<sup>8</sup> and (4) of the Covenant.<sup>9</sup>

<sup>5</sup> Opinions No. 9/2019, para. 29; No. 46/2019, para. 51; and No. 59/2019, para. 46.

<sup>6</sup> Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39. In cases of arrests made in flagrante delicto, the opportunity to obtain a warrant will typically not be available.

<sup>7</sup> Human Rights Committee, general comment No. 35 (2014), para. 25; and opinions No. 30/2017, paras. 58 and 59; and No. 85/2021, para. 69.

<sup>8</sup> Human Rights Committee, general comment No. 35 (2014), para. 35.

<sup>9</sup> See opinions No. 45/2017, No. 46/2017, No. 35/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

Judicial oversight of any detention is a central safeguard for personal liberty and is critical in ensuring that the detention has a legitimate basis.

59. In this context, the Working Group considers that Mr. Mubarak was subjected to enforced disappearance following his arrest on 20 June 2016 until 11 July 2016, and then a second time from 4 April to 9 May 2019, in breach of article 9 (1) of the Covenant. Enforced disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention.<sup>10</sup>

60. In addition, the Working Group finds that Mr. Mubarak was not able to challenge the legality of his detention before a court, in violation of article 9 (3) and (4) of the Covenant, and that he was placed outside the protection of the law, in violation of article 16 of the Covenant and article 6 of the Universal Declaration of Human Rights. Consequently, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was violated.

61. The Working Group further observes the source's allegations that Mr. Mubarak was held in pretrial detention for three years, from the moment of his arrest on 20 June 2016 until 2019, in relation to case No. 2694 on charges of "joining and participating in demonstrations". In addition, the source submits that upon completing his sentence on 9 May 2022, Mr. Mubarak was brought before the prosecution pending case No. 3076 of 2022 on charges of "possessing leaflets", for which he is currently awaiting trial at the Tenth of Ramadan Detention Centre. The Government has chosen not to contest these allegations.

62. 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.<sup>11</sup> In other words, liberty is acknowledged under article 9 (3) of the Covenant as the core consideration, with detention merely as an exception.<sup>12</sup> Detention pending trial must therefore 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.<sup>13</sup> Considering that the Government has not contested the source's allegations or provided any information indicating that Mr. Mubarak's detention is based on an individualized determination that it is reasonable and necessary, the Working Group finds a violation of article 9 (3) of the Covenant.

63. The Working Group notes that despite being acquitted in case No. 2694, and having completed his sentence relating to case No. 694, he remained in detention and similar charges were later brought against him. The Working Group has already expressed its concern over the so-called rotation practice, whereby release is ordered but never effected and new charges are brought against the person concerned.<sup>14</sup>

64. Considering the above circumstances, the Working Group concludes that the Government failed to establish a legal basis for Mr. Mubarak's arrest and detention. Thus, his detention is arbitrary under category I.

**(b) Category III**

65. The Working Group will now consider the allegations put forward by the source in relation to the violations of Mr. Mubarak's rights to due process and a fair trial under category III. The source contends that the arrest and detention of Mr. Mubarak were characterized by non-observance of the international norms relating to the right to a fair trial.

66. According to the source, since Mr. Mubarak's arrest on 20 June 2016, his lawyer has not been able to visit him once in detention, which constitutes a grave violation to the right of unrestricted legal counsel and to have private communication and meetings with the

<sup>10</sup> 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.

<sup>11</sup> [A/HRC/19/57](#), paras. 48–58.

<sup>12</sup> *Ibid.*, para. 54.

<sup>13</sup> Human Rights Committee, general comment No. 35 (2014), para. 38.

<sup>14</sup> Opinions No. 34/2022, para. 87; No. 53/2022, para. 73; No. 60/2022, para. 74; and No. 20/2023, para. 75.



detainee. Moreover, the source argues that Mr. Mubarak is currently deprived of legal counsel, as his lawyer has been unable to attend online investigation sessions.

67. The Working Group recalls that all persons deprived of their liberty are to have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after their apprehension, and that such access is to be provided without delay.<sup>15</sup> The right to legal assistance is an essential element of the right to fair trial, as it serves to ensure that the principle of equality of arms is duly observed.<sup>16</sup> The Working Group further recalls that access to counsel is a right enshrined in article 14 (3) of the Covenant and principles 11 (2), 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and reinforced by article 11 of the Universal Declaration of Human Rights. Article 14 (3) (b) of the Covenant sets out the right to have adequate time and facilities for the preparation of one's defence and to communicate with counsel of one's own choosing.

68. Where a minor is detained, States must ensure that the child is guaranteed legal or other appropriate assistance from the outset of the proceedings, in the preparation and presentation of the defence, and until all appeals and/or reviews are exhausted.<sup>17</sup> The Working Group recalls Mr. Mubarak's rights under article 37 (d) and article 40 (2) (b) (ii) of the Convention on the Rights of the Child to prompt access to legal assistance and to legal assistance in the preparation of their defence. States should ensure that a child is guaranteed legal or other appropriate assistance from the outset of the proceedings, in the preparation and presentation of the defence and until all appeals and/or reviews are exhausted.<sup>18</sup>

69. Given the source's uncontested submission that Mr. Mubarak's lawyer has not been able to visit him once since his detention, and that his lawyer is not able to attend online investigation sessions, the Working Group finds that his right to legal assistance and to have adequate time and facilities for the preparation of his defence was violated.

70. The Working Group takes note of the source's allegations that during Mr. Mubarak's enforced disappearance, he was subjected to torture through beatings and electrocution by State security agents to obtain a confession to crimes he did not commit, and that he sustained bodily injuries and bruises as a result. Moreover, according to the source, despite Mr. Mubarak informing the head of the prosecution about the incident of torture, his account was disregarded, and no investigation into his claims of torture was ordered. The Government did not contest these allegations, despite having been given the opportunity to do so.

71. Given that Mr. Mubarak was a minor at the time of arrest, the Working Group recalls his rights under article 37 (a) and (c) of the Convention on the Rights of the Child and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>19</sup> The use of physical or psychological force on a child is a serious abuse of power lacking in necessity and proportionality.<sup>20</sup> The prohibition against the use of self-incriminating confessions is amplified when the victim is a child.<sup>21</sup> In addition, the Working Group recalls that 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.<sup>22</sup> In addition, the Working Group notes its findings above that Mr. Mubarak was denied access to legal assistance following his arrest,

<sup>15</sup> 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, principle 9 and guideline 8; Human Rights Committee, general comment No. 35 (2014), para. 35; [A/HRC/45/16](#), paras. 50–55; and [A/HRC/48/55](#), para. 56. See also [A/HRC/27/47](#), para. 13.

<sup>16</sup> See, for example, opinion No. 35/2019.

<sup>17</sup> Committee on the Rights of the Child, general comment No. 24 (2019), para. 90.

<sup>18</sup> *Ibid.*, para. 49; and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), rule 15.

<sup>19</sup> Opinions No. 41/2015, para. 42; and No. 2/2021, para. 74.

<sup>20</sup> Opinion No. 3/2017, para. 30.

<sup>21</sup> Opinion No. 27/2014, paras. 27–30.

<sup>22</sup> Opinions No. 73/2019, para. 91; No. 59/2019, para. 70; No. 32/2019, para. 43; No. 52/2018, para. 79 (i); No. 34/2015, para. 28; and No. 43/2012, para. 51.

and stresses that confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.<sup>23</sup>

72. The Working Group recalls the right to be presumed innocent under article 40 (2) (b) (i) and the right not to be compelled to confess guilt under article 40 (2) (b) (iv) of the Convention on the Rights of the Child, as well as under article 14 (2) and (3) (g) of the Covenant. In the absence of a response from the Government, the Working Group finds a violation of article 40 (2) (b) (i) and (iv) of the Convention on the Rights of the Child and of article 14 (2) and (3) (g) of the Covenant.

73. Consequently, the Working Group finds that the violations of the right to a fair trial and due process are of such gravity as to give Mr. Mubarak's deprivation of liberty an arbitrary character that falls within category III.

### (c) Concluding remarks

74. The Working Group observes the source's allegations that Mr. Mubarak was arrested while taking an exam at school, and that his right to education has been breached during his arrest and detention. The Government has chosen not to contest these allegations. The Working Group is obliged to remind the Government that the right to education is enshrined in article 26 of the Universal Declaration of Human Rights, article 18 of the Covenant, articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights and article 49 of the Constitution of Egypt. The Working Group calls on the Government to take measures to reverse or otherwise redress any prejudice that Mr. Mubarak has experienced in this regard.

75. The Working Group notes that the present opinion is only one of many opinions in recent years in which it has found the Government to be in violation of its international human rights obligations.<sup>24</sup> The Working Group is concerned that this indicates a systemic problem with arbitrary detention in Egypt, including through the unlawful practice of rotation, whereby release is ordered but never effected and new charges are brought against the person concerned, which, if it continues, may amount to a serious violation of international law. The duty to comply with international human rights standards rests with all State organs, officers and agents as well as with all other natural and legal persons. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.

## 3. Disposition

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

The deprivation of liberty of Mohamed Mahmoud Marghany Mahmoud Mubarak, 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.

77. The Working Group requests the Government of Egypt to take the steps necessary to remedy the situation of Mr. Mubarak 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.

78. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Mubarak immediately and accord him

<sup>23</sup> A/HRC/45/16, para. 53. See also opinions No. 73/2019, para. 91; No. 59/2019, para. 70; No. 14/2019, para. 71; and No. 1/2014, para. 22; and E/CN.4/2003/68, para. 26 (e).

<sup>24</sup> See, for example, opinions No. 6/2016, No. 7/2016, No. 41/2016, No. 42/2016, No. 54/2016, No. 60/2016, No. 30/2017, No. 78/2017, No. 83/2017, No. 26/2018, No. 27/2018, No. 47/2018, No. 63/2018, No. 82/2018, No. 87/2018, No. 21/2019, No. 29/2019, No. 41/2019, No. 42/2019, No. 65/2019, No. 77/2019, No. 6/2020, No. 80/2020, No. 45/2021, No. 79/2021, No. 83/2021, No. 23/2022, No. 34/2022, No. 53/2022 and No. 60/2022.

an enforceable right to compensation and other reparations, in accordance with international law.

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

80. 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, for appropriate action.

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

#### 4. Follow-up procedure

82. 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 Mr. Mubarak has been released, and if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Mubarak;
- (c) Whether an investigation has been conducted into the violation of Mr. Mubarak'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.

83. 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.

84. 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 of any failure to take action.

85. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>25</sup>

*[Adopted on 22 March 2024]*

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<sup>25</sup> Human Rights Council resolution 51/8, paras. 3 and 7.