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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. 4/2022 concerning Mohammad Ghassan Ahmad Mansour (Israel)**

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,<sup>1</sup> on 28 December 2021 the Working Group transmitted to the Government of Israel a communication concerning Mohammad Ghassan Ahmad Mansour. 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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<sup>1</sup> A/HRC/36/38.

## Submissions

### *Communication from the source*

4. Mohammad Ghassan Ahmad Mansour, born in November 2003, is a Palestinian student in his final year of secondary school. He is the holder of an identification card issued by the Palestinian authorities and he usually resides in the occupied West Bank city of Jenin.

#### a. Context

5. According to the source, international human rights law applies in the Occupied Palestinian Territory, including the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights.<sup>2</sup>

6. The source notes that these human rights treaties generally provide that in all actions involving or impacting children, the best interests of the child shall be the primary consideration and children should only be detained as a measure of last resort and for the shortest appropriate period of time. All persons shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal, and torture and ill-treatment are absolutely prohibited without exception. The source adds that international law contains non-discrimination and equality protections and guarantees that prohibit States from discriminating on the basis of race or nationality in the exercise and implementation of penal jurisdiction.

7. The source submits that despite the fact that Israel has ratified most of the core international human rights treaties and, as a result, has bound itself to act in accordance with those treaties, the Israeli authorities persistently disregard and fail to comply with international law.

8. The source notes that Israel ratified the Convention on the Rights of the Child in 1991, obligating itself to implement the full range of rights and protections included in the Convention. During its initial review of Israel in 2002, the Committee on the Rights of the Child expressed serious concern regarding “allegations and complaints of inhuman or degrading practices and of torture and ill-treatment of Palestinian children” during arrest, interrogation and detention.<sup>3</sup> The source adds that in July 2013, over a decade later, the Committee on the Rights of the Child again reviewed Israeli compliance with the Convention and found that the situation was even worse. The Committee found that Palestinian children arrested by Israeli forces were “systematically subject to degrading treatment, and often to acts of torture” and that Israel had “fully disregarded” previous recommendations to comply with international law.<sup>4</sup>

#### b. Arrest and detention

9. According to the source, on 9 April 2021 at around 2 a.m., Mr. Mansour was arrested at his home in the West Bank city of Jenin by Israeli military forces. The source reports that Mr. Mansour experienced physical violence at the hands of the Israeli forces. As Mr. Mansour was leaving his bedroom, a soldier allegedly intercepted him and hit him on the head with a rifle without saying a word or asking him who he was. The source adds that the soldier knocked Mr. Mansour to the floor and took his identification card and mobile telephone. He was then surrounded by masked and heavily armed soldiers. While Mr. Mansour was lying on the floor, a soldier reportedly twisted his hands behind his back in a painful manner and tied them with two plastic cords. The two cords were also tied to each other. According to the source, the authorities never told Mr. Mansour or his family why he had been arrested, and they did not show an arrest warrant. The source notes that while no reason was provided at the time of Mr. Mansour’s arrest, Israeli military prosecutors have

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<sup>2</sup> The source refers to the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, paras. 101 and 109–113.

<sup>3</sup> [CRC/C/15/Add.195](#), para. 36.

<sup>4</sup> [CRC/C/ISR/CO/2-4](#), para. 73.

stated that they have a “secret file” on Mr. Mansour which justifies his administrative detention.

10. The source reports that the military forces took Mr. Mansour downstairs and out of the house. One of the soldiers reportedly grabbed him by the neck from the back and pressed him down, while another was kicking him. The source notes that there were a number of military jeeps at the entrance to the house on the street. A soldier allegedly pushed Mr. Mansour hard from the back into a military jeep and kept him lying on the metal floor. They also blindfolded him and did not say where they would take him. They did not give him the chance to say goodbye to his family or even to talk to them. The soldiers stayed in the house for a few minutes. According to the source, Mr. Mansour felt that he was being kidnapped.

11. The source reports that the military jeep drove for about half an hour and then stopped at the Israeli-controlled Al-Jalame military checkpoint. Mr. Mansour was taken out of the jeep and surrounded by soldiers. He was then examined by a military doctor who asked him general questions about his health while he was tied and blindfolded. He asked for water and they brought him some, but they did not let him use the bathroom. The source adds that Mr. Mansour remained at the checkpoint for about an hour surrounded by soldiers.

12. After that, the soldiers reportedly put Mr. Mansour back in the military jeep and took him to the Jewish-only Mevo Dotan settlement. The source notes that he arrived at around 5 a.m. and they let him sit on the ground in a yard until around 2 p.m. They kept him tied and blindfolded, and he was given water and food. The source adds that one of Mr. Mansour’s acquaintances was there too. Mr. Mansour later saw that acquaintance in the Huwwara detention centre.

13. At around 2 p.m., Mr. Mansour was reportedly transferred to the Israeli-run Huwwara interrogation and detention centre near the occupied West Bank city of Nablus, where he arrived at around 6 p.m. A soldier searched him naked and detained him in a room along with his acquaintance. He allegedly spent 15 days in detention at the Huwwara detention centre in degrading and inhumane conditions. He was reportedly badly treated by the soldiers and the food was bad. There was no toilet inside the room, so the detainees had to go outside to use the toilet. Mr. Mansour did not take any showers during the 15 days.

14. On the second day of his arrest and during his detention in the Huwwara detention centre, Mr. Mansour was reportedly taken for interrogation to the Salem interrogation and detention centre. When Mr. Mansour arrived, he was taken to a room where an Arab interrogator removed his handcuffs but kept his feet shackled. He then interrogated Mr. Mansour for about two hours. He informed him of his rights, such as his right to remain silent. He also allowed him to speak with a lawyer for legal advice. The source reports that the interrogator accused Mr. Mansour of possessing a weapon, shooting and conspiring to carry out a shooting attack. However, Mr. Mansour never confessed. The interrogator reportedly tried in various ways to persuade him to confess, but he refused. The interrogator wrote his statement in Arabic and Mr. Mansour signed it after reading it.

15. Five days later, Mr. Mansour was reportedly interrogated again by the same individual in Salem. He made the same accusations, in addition to Mr. Mansour allegedly being in charge of an Islamic jihad military cell. Mr. Mansour denied this allegation and told the interrogator to show him his evidence or confront him with those who had made the allegations against him. “Do not tell me how to do my job”, the interrogator reportedly said. According to the source, it seemed that the interrogator had secret information which he did not want to disclose. He took Mr. Mansour’s fingerprints and a DNA sample from his saliva.

16. While at the Huwwara detention centre, Mr. Mansour reportedly appeared on a video link before the Salem military court and his detention was extended on at least five different occasions. No indictment was filed against him. On or around 24 April 2021, after 15 days in detention, Mr. Mansour was reportedly transferred to Megiddo prison, located inside Israel north of the occupied West Bank. The detention was based on a six-month administrative detention order that was issued and accepted by the Israeli military authorities at the Ofer military court on 25 April 2021.

17. In connection with this transfer, Mr. Mansour was reportedly handcuffed, his feet were shackled and he was put into a vehicle that was similar to a closed cell. About two hours

later, he arrived at Megiddo prison and was taken to the clinic where they tested him for coronavirus disease (COVID-19). He was also searched naked and put in quarantine in section 10 for three days, after which he was transferred to juvenile section No. 3, where he is currently detained with other children of his age.

18. According to the source, the administrative detention order was upheld on appeal by the Israeli Military Court of Appeals in August 2021. The source adds that Mr. Mansour was expected to be released on 25 October 2021, but a new administrative detention order was issued against him on 7 October 2021 for an additional four-month period. His current administrative detention order is set to expire on 7 February 2022.

19. Neither Mr. Mansour nor his lawyer has been provided with access to any evidence against him. Mr. Mansour's detention is reportedly based on "secret information" that has not been provided to him or his lawyer.

20. In terms of domestic remedies, Mr. Mansour reportedly appealed the administrative detention order issued against him in the Israeli military court. The original six-month administrative detention order was upheld, and he remains in Israeli custody. Given the lack of access to an independent and impartial tribunal, no additional domestic measures have been taken by Mr. Mansour or his legal counsel.

21. The source underlines the potential risk of harm and the specific context of Mr. Mansour's detention. The source notes that due to his status as a minor, the continued detention of Mr. Mansour presents a serious threat to his health, including his physical and psychological integrity.

c. Legal analysis

22. The source submits that Mr. Mansour's arrest and detention violate the fundamental guarantees enshrined in international law, falling under categories III and V.

i. Category III

23. The source submits that in depriving Mr. Mansour of his liberty, the Israeli authorities have violated basic and fundamental due process rights and protections relating to the right to a fair trial that amounts to arbitrary detention.

24. According to the source, children deprived of their liberty have the right to be informed of the reasons for their arrest. Articles 9 (2) and 14 (3) (a) of the Covenant and article 40 (2) (b) (ii) of the Convention on the Rights of the Child expressly guarantee that children deprived of their liberty be informed of the reasons for their arrest and promptly informed of the charges against them.

25. The source reports that on 9 April 2021, at around 2 a.m., the Israeli forces arrested Mr. Mansour at his home in Jenin. No warrant or other decision by a public authority was shown to Mr. Mansour or his parents and the Israeli authorities provided no reason for his detention at the time of his arrest.

26. The source adds that since his arrest on 9 April 2021, the Israeli authorities have not charged Mr. Mansour with a crime and have not informed him of the nature and cause of his detention in sufficient detail to allow him to challenge it. This amounts to a violation of his right to be informed of the reasons for his arrest.

27. The source notes that children deprived of their liberty have the right to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law.<sup>5</sup> That protects a child's right to effectively challenge the legality of any continued deprivation of liberty.

28. The source emphasizes that when administrative detention is used in situations not in contemplation of prosecution on a criminal charge, the practice "presents severe risks of

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<sup>5</sup> See Article 9 (3) and 9 (4) of the Covenant and article 40 (2) (b) (iii) of the Convention on the Rights of the Child.

arbitrary deprivation of liberty”.<sup>6</sup> Thus, administrative detention must not last longer than absolutely necessary.<sup>7</sup> The detention must end as soon as an individual alleged to have posed a real threat to State security no longer poses such a threat. The longer administrative detention lasts, the greater the onus on the detaining authority to prove that the reasons for the internment remain valid.<sup>8</sup> There must also be prompt and regular review by an impartial and independent court or tribunal.<sup>9</sup>

29. The source submits that the Israeli military authorities have not filed formal charges against Mr. Mansour. At the time of the submission by the source, Mr. Mansour had spent several months in detention without charge or trial. The source adds that Mr. Mansour and his lawyer are unable to effectively challenge the legality of his detention because the Israeli military authorities have denied them access to the “secret information” relied upon by the Israeli military court judges to issue and confirm the two administrative detention orders against him to date.

30. According to the source, the longer the Israeli authorities detain Mr. Mansour, the greater the onus on them to establish that the reasons for the internment remain valid and that he remains a “present, direct and imperative threat”.<sup>10</sup> However, despite the fact that the burden of proof that Mr. Mansour posed and continues to pose a threat in order to justify his detention without charge lies with Israel, the Israeli military authorities have not provided sufficient detailed evidence to establish that Mr. Mansour either previously posed or currently poses a real and imperative threat to State security.

31. The source also submits that the failure to provide access to the detailed “secret information” relied on by the State to justify the deprivation of liberty prevents any effective challenge concerning the legality of Mr. Mansour’s continued detention and results in a violation of his right to have the matter determined without delay.

32. The source notes that aside from the denial of fundamental due process rights, it is doubtful whether the use of military courts to try civilians – particularly minors – can ever satisfy the requirements under international human rights law of the right to a fair trial before an independent and impartial tribunal. Article 14 (1) of the Covenant and articles 37 (d) and 40 of the Convention on the Rights of the Child, as well as international humanitarian law, guarantee persons deprived of their liberty the right to challenge their detention and to be tried by a competent, independent and impartial tribunal. Furthermore, the Committee on the Rights of the Child has declared that “the conduct of criminal proceedings against children within the military justice system should be avoided”.<sup>11</sup>

33. With reference to other cases considered by the Working Group,<sup>12</sup> the source notes that Mr. Mansour’s administrative detention orders have been approved by Israeli military court judges who are active duty or reserve officers in the Israeli military, who are subject to military discipline and dependent on their superiors for promotion.

34. The source submits that the non-observance by Israel of the international norms relating to the right to a fair trial and the documented bias of its military court system demonstrate that Mr. Mansour’s detention is arbitrary under category III.

## ii. Category V

35. The source asserts that while Israeli military law gives military courts the authority to try any person located inside the occupied territory as long as they are 12 years of age or older, Jewish settlers who reside within the bounds of the West Bank in violation of

<sup>6</sup> Human Rights Committee, general comment No. 35 (2014), para. 15.

<sup>7</sup> *Ibid.*

<sup>8</sup> The source refers to International Committee of the Red Cross (ICRC), “Internment in armed conflict: basic rules and challenges”, p. 9 (November 2014); opinion No. 24/2016, para. 18; and Human Rights Committee, general comment No. 35 (2014), para. 15.

<sup>9</sup> General comment No. 35 (2014), para. 15.

<sup>10</sup> The source refers to general comment No. 35 (2014), para. 15, and also to ICRC, “Internment in armed conflict: basic rules and challenges”, p. 9, and opinion No. 24/2016, para. 18.

<sup>11</sup> [CRC/C/OPAC/USA/CO/1](#), para. 30 (g).

<sup>12</sup> The source refers to opinions No. 3/2012, No. 58/2012 and No. 24/2016.

international law are subject to the Israeli civilian legal framework. Accordingly, Israel operates two separate and unequal legal systems in the same territory. No Israeli child comes into contact with the Israeli military court system.

36. The source notes that several treaty bodies have expressed concern about the discriminatory arrests and detention of Palestinian children. In 2012, the Committee on the Elimination of Racial Discrimination urged Israel “to end its current practice of administrative detention, which is discriminatory and constitutes arbitrary detention”.<sup>13</sup> The source also notes that the concluding observations of the Human Rights Committee and the Committee against Torture regarding recent reviews of Israel express particular concern about the continued practice of using administrative detention of Palestinians on the basis of secret information.<sup>14</sup> The source further notes that the Working Group has previously echoed the concerns of the United Nations Children’s Fund and the Committee on the Rights of the Child with regard to the widespread detention of Palestinian children and the practice of prosecuting them in an Israeli military court system.<sup>15</sup>

37. The source submits that the detention of Mr. Mansour fits a pattern and practice by the Israeli authorities of using administrative detention of Palestinian children on the basis of their Palestinian identity to punish them, rather than prevent an imminent threat where there is not enough evidence to charge and prosecute the child in the Israeli military courts.

38. As a result, the source argues that Mr. Mansour’s detention by the Israeli authorities amounts to arbitrary detention under category V because his detention constitutes a violation of international law for reasons of discrimination based on national, ethnic and social origin.

39. The source concludes that the arrest and detention of Mr. Mansour pursuant to an administrative detention order issued by the Israeli military authorities is an egregious violation of his fundamental rights.

#### *Response from the Government*

40. On 28 December 2021, the Working Group transmitted the allegations to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 28 February 2022 about the situation of Mr. Mansour. The Working Group also requested the Government to clarify the legal provisions justifying his continued detention, as well as its compatibility with the country’s obligations under international human rights law. The Working Group also called upon the Government to ensure the physical and mental integrity of Mr. Mansour.

41. The Working Group regrets that it did not receive a response from the Government to its communication, nor did the Government request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group’s methods of work.

42. The Working Group notes with concern the silence of the Government in not availing itself of the opportunity to respond to the allegations made in the present case and in other communications.<sup>16</sup> The Government has not provided a substantive response to the Working Group since 2007.<sup>17</sup> The Working Group urges the Government to engage constructively with it on all allegations relating to the arbitrary deprivation of liberty.

<sup>13</sup> CERD/C/ISR/CO/14-16, para. 27.

<sup>14</sup> CCPR/C/ISR/CO/4, para. 10, and CAT/C/ISR/CO/5, para. 28.

<sup>15</sup> The source refers to opinion No. 24/2016, paras. 23–24.

<sup>16</sup> See opinions No. 36/1992, No. 17/1993, No. 18/1993, No. 26/1993, No. 16/1996, No. 17/1996, No. 18/1996, No. 24/1996, No. 8/1998, No. 9/1998, No. 10/1998, No. 11/1998, No. 4/1999, No. 16/2000, No. 17/2000, No. 18/2000, No. 31/2000, No. 23/2001, No. 5/2010, No. 9/2010, No. 3/2012, No. 20/2012, No. 58/2012, No. 43/2014, No. 13/2016, No. 15/2016, No. 24/2016, No. 3/2017, No. 31/2017, No. 44/2017, No. 86/2017, No. 34/2018, No. 73/2018, No. 84/2019, No. 12/2020, No. 8/2021, No. 60/2021 and No. 61/2021. The Government submitted responses to the Working Group’s communications in relation to opinions No. 16/1994, No. 24/2003, No. 3/2004 and No. 26/2007.

<sup>17</sup> In relation to opinion No. 86/2017, the Government requested and received an extension of time in which to respond to the Working Group’s communication but did not submit a substantive response.

## Discussion

43. 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.

44. In determining whether Mr. Mansour'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 presented a prima facie case of breach of the 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>18</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

45. The source argues that the arrest and detention of Mr. Mansour is arbitrary under categories III and V. While the Working Group examines each case on its merits, it notes that the allegations in the present case are similar to those examined in opinions adopted in recent years concerning Israel.<sup>19</sup>

### *Category I*

46. While the source has not argued that the detention of Mr. Mansour is arbitrary under category I, the Working Group notes the source's allegation that Mr. Mansour, a 17-year-old boy at the time, was arrested at his home in Jenin at around 2 a.m. on 9 April 2021. Neither Mr. Mansour nor his parents were provided with an arrest warrant or notified of the reasons for his arrest. The Government had the opportunity to explain the circumstances of Mr. Mansour's arrest and its legal basis, but has chosen not to do so.

47. As the Working Group has previously stated, for detention to have a legal basis, it is not sufficient that there is a law that authorizes the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.<sup>20</sup> International human rights law includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary detention under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.<sup>21</sup> Any form of detention or imprisonment should be ordered by, or be subject to the effective control of, a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, independence and impartiality, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

48. In the present case, Mr. Mansour was arrested without an arrest warrant. In addition, the authorities failed to explain the reasons for his arrest. The Working Group concludes that the arrest and detention of Mr. Mansour violated article 9 (1) and (2) of the Covenant. This was also a violation of article 37 (b) of the Convention on the Rights of the Child, which provides that no child shall be deprived of liberty unlawfully or arbitrarily and that the arrest, detention or imprisonment of a child shall be in conformity with the law.

49. Furthermore, the Working Group notes the uncontested allegations that since his arrest on 9 April 2021, the Israeli military authorities have not charged Mr. Mansour with a crime and have not informed him of the nature and cause of his detention. The Working Group considers that there has been a further violation of the right to be promptly informed of the charges under article 9 (2) of the Covenant and to be informed promptly and directly of the charges under article 40 (2) (b) (ii) of the Convention on the Rights of the Child.

50. In addition, neither Mr. Mansour nor his lawyer have been provided with access to any evidence against him. Mr. Mansour's detention is reportedly based on "secret information" relied upon by the Israeli military court judges to issue and confirm the two administrative detention orders against him to date. It appears from the accusations made against Mr. Mansour during his interrogation that he may be suspected of possessing a weapon, shooting and conspiring to carry out a shooting attack, as well as being in charge of

<sup>18</sup> [A/HRC/19/57](#), para. 68.

<sup>19</sup> See, for example, opinions No. 73/2018, No. 12/2020 and No. 60/2021.

<sup>20</sup> See opinions No. 46/2017, No. 66/2017, No. 75/2017, No. 93/2017, No. 35/2018 and No. 79/2018.

<sup>21</sup> Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

an Islamic jihad military cell, but this has not been confirmed through an indictment. The Government has not submitted any information to rebut these allegations.

51. As the Human Rights Committee has stated, disclosure to the detainee of at least the essence of the evidence on which the decision is taken to issue an administrative detention order is necessary to ensure that the requirements of article 9 of the Covenant are met.<sup>22</sup> The Working Group finds that Mr. Mansour has been held in administrative detention for nearly a year since his arrest on 9 April 2021 without the ability to effectively challenge the lawfulness of his detention,<sup>23</sup> contrary to article 9 (4) of the Covenant and article 37 (d) of the Convention on the Rights of the Child. It is essential for detained children to have prompt and effective access to an independent and child-sensitive process to determine the legal basis of their detention and to receive appropriate and accessible remedies without delay.<sup>24</sup> Without such access, Mr. Mansour's detention is arbitrary and he has been denied an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant.

52. It is also essential that the review of the lawfulness of detention be carried out by an independent and impartial authority.<sup>25</sup> In the case of detained children, this is a requirement of article 37 (d) of the Convention on the Rights of the Child. According to the source, Mr. Mansour appeared before the Salem military court in Israel, where his detention was extended on at least five different occasions, rather than by a court specifically equipped to deal with juveniles within the civilian legal system. His administrative detention order was also upheld on appeal by the Israeli Military Court of Appeals in August 2021. In previous cases concerning Israel, the Working Group has emphasized that military courts and tribunals are not independent or impartial because they are composed of military personnel who are subject to military discipline and dependent on their superiors for promotion.<sup>26</sup> The Working Group has also set out minimum guarantees pertaining to military justice, including that military tribunals should only be competent to try military personnel for military offences, and not civilians.<sup>27</sup>

53. Furthermore, Mr. Mansour has been subjected to two administrative detention orders to date and was placed in administrative detention following his arrest on 9 April 2021 without charge or trial. Security detention (also known as administrative detention or internment) not in contemplation of prosecution on a criminal charge presents severe risks of arbitrary deprivation of liberty. Such detention would normally amount to arbitrary detention, as other effective measures of addressing the threat, including the criminal justice system, would be available. Administrative detention must therefore be exceptional. As the Human Rights Committee pointed out in its general comment No. 35 (2014): "If, under the most exceptional circumstances, a present, direct and imperative threat is invoked to justify the detention of persons considered to present such a threat, the burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of the detention. States parties also need to show that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that they fully respect the guarantees provided for by article 9 in all cases."<sup>28</sup>

54. In the present case, the Government has failed to provide any information or evidence to demonstrate that Mr. Mansour posed a present, direct and imperative threat to State

<sup>22</sup> Human Rights Committee, general comment No. 35 (2014), para. 15; and opinions No. 73/2018, para. 49, and No. 12/2020, para. 26.

<sup>23</sup> The Working Group has made similar findings involving Israel when detention was based on evidence not made available to the detainee. See opinions No. 44/2017, No. 86/2017, No. 34/2018, No. 73/2018 and No. 12/2020.

<sup>24</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 18 and guideline 18.

<sup>25</sup> Ibid, guideline 4, para. 55; Committee on the Rights of the Child, general comment No. 24 (2019), para. 96. See also ICRC, "Internment in armed conflict: basic rules and challenges", p. 9.

<sup>26</sup> See opinions No. 3/2012, No. 58/2012, No. 24/2016, No. 73/2018, No. 12/2020 and No. 60/2021.

<sup>27</sup> [A/HRC/27/48](#), para. 69.

<sup>28</sup> Para. 15. See also [A/HRC/38/15](#), paras. 118.77–118.83 (in which States expressed concern during the most recent universal periodic review of Israel about the practice of administrative detention).

security and how this threat has persisted during his ongoing detention for nearly a year. In these circumstances, the Working Group concludes that the Government has not demonstrated that Mr. Mansour poses a threat to security and his detention therefore lacks legal basis.

55. For these reasons, the Working Group concludes that the arrest and detention of Mr. Mansour lacks legal basis and is arbitrary under category I. The detention of a child must only be a measure of last resort applied for the shortest appropriate period of time.<sup>29</sup>

### *Category III*

56. The source alleges that the Government violated Mr. Mansour's right to a fair trial. The Working Group notes that this is a case of administrative detention, which does not involve charges or trial within the criminal justice system, and that the fair trial guarantees in article 14 of the Covenant would not normally apply. However, as the Human Rights Committee stated in its general comment No. 32 (2008), the nature of the sanction must be considered, regardless of its classification under domestic law, in determining whether the fair trial guarantees in article 14 apply in each case: "Criminal charges relate in principle to acts declared to be punishable under domestic criminal law. The notion may also extend to acts that are criminal in nature with sanctions that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity."<sup>30</sup>

57. The Working Group has adopted this reasoning in its jurisprudence, noting that the provisions of article 14 of the Covenant on the right to a fair trial are applicable where the sanctions imposed, because of their purpose, character or severity, must be regarded as penal, even if, under national law, the detention is qualified as administrative.<sup>31</sup> Without such an enquiry into the nature of the sanction imposed, States could effectively circumvent their obligations under the Covenant simply by characterizing their detention regime as administrative under domestic law. That is particularly significant in the context of administrative detention orders imposed in Israel, which appear to be used as a substitute for criminal proceedings, rather than to prevent an imminent threat, when there is not enough evidence to charge and prosecute an individual.<sup>32</sup>

58. In its jurisprudence, the Working Group has found that in cases involving excessive length of detention, the individual is to enjoy the same guarantees as in criminal cases, including those under article 14 of the Covenant, even if the detention is qualified as administrative under national law.<sup>33</sup> In the present case, Mr. Mansour, a child of 17 years of age at the time of his arrest, has been held in administrative detention in prison for nearly a year without being charged, in conditions similar to those imposed on individuals serving a criminal sentence. His detention must be regarded as penal in nature, and the Working Group will consider whether his detention meets the requirements of article 14 of the Covenant and other relevant provisions.

59. Mr. Mansour, a student in his final year of secondary school, appeared before Salem military court during his initial detention at the Huwwara detention centre. The Ofer military court imposed an administrative detention order upon him on 25 April 2021 and the Israeli Military Court of Appeals upheld his administrative detention on appeal in August 2021. According to the source, Mr. Mansour's administrative detention orders have been approved by Israeli military court judges who are active duty or reserve officers in the Israeli military. The Government has not addressed any of these allegations.

60. As noted earlier, the Working Group does not consider that Israeli military courts meet the standard of an independent and impartial tribunal for the purposes of considering matters involving civilians. Moreover, the Working Group has consistently stated its view that

<sup>29</sup> Committee on the Rights of the Child, general comment No. 24 (2019), para. 85.

<sup>30</sup> Para. 15. See also *Perterer v. Austria* (CCPR/C/81/D/1015/2001), para. 9.2.

<sup>31</sup> See opinions No. 3/2012, No. 20/2012, No. 45/2012, No. 58/2012, No. 43/2014, No. 31/2017, No. 73/2018, No. 12/2020 and No. 60/2021. See also [A/HRC/37/42](#), para. 17, and deliberation No. 9, paras. 68–69.

<sup>32</sup> [A/HRC/37/42](#), para. 21.

<sup>33</sup> See opinions No. 31/2017, No. 73/2018, No. 12/2020 and No. 49/2020

civilians must never be brought before military courts, and that to do so violates the Covenant and customary international law.<sup>34</sup> Accordingly, the Working Group finds that Mr. Mansour was deprived of the right to have his matter determined in a fair hearing by a competent, independent and impartial tribunal under article 14 (1) of the Covenant and article 40 (2) (b) (iii) of the Convention on the Rights of the Child.

61. Finally, the source submits that Mr. Mansour's detention is based on secret information to which neither he nor his lawyer was given access. The Working Group recalls that every individual deprived of liberty has the right to access material related to their detention, including information that may assist the detainee in arguing that the detention is not lawful or that the reasons for the detention no longer apply.<sup>35</sup> However, that right is not absolute and the disclosure of information may be restricted if it is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, and if the State has demonstrated that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.<sup>36</sup> The Government has not provided an explanation of the nature of the secret evidence against Mr. Mansour, nor any justification as to why he could not be provided with access to it. The failure to provide full access to the evidence has violated Mr. Mansour's right to a fair trial and the equality of arms under articles 14 (1), 14 (3) (b) and (e) of the Covenant<sup>37</sup> and article 40 (2) (b) (iii) and (iv) of the Convention on the Rights of the Child.

62. Apart from these violations of the right to a fair trial, the Working Group considers that Mr. Mansour's detention under two consecutive administrative detention orders violates the obligations of Israel under the Convention on the Rights of the Child. According to article 3 of the Convention, the best interests of the child must be the primary consideration in all actions concerning children. Furthermore, according to article 37 (b) of the Convention, children must only be deprived of their liberty as a last resort and for the shortest appropriate period of time.<sup>38</sup> These obligations were completely disregarded in Mr. Mansour's case.

63. The Working Group finds that these fair trial violations are of such gravity as to give Mr. Mansour's arrest and detention an arbitrary character under category III.

#### *Category V*

64. In its jurisprudence, the Working Group has noted a pattern by the Israeli authorities of using administrative detention to detain Palestinians on an indefinite basis without charge or trial.<sup>39</sup> In the absence of an explanation from the Government, the Working Group concludes that Mr. Mansour, who is Palestinian, was detained on a discriminatory basis, namely his national, ethnic and social origin. The Working Group considers that he was also detained on the basis of his gender, as there is a clear pattern of targeting young males for detention.<sup>40</sup> In these circumstances, the Working Group finds that the Government has violated articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and that Mr. Mansour's detention is arbitrary under category V.

65. The Working Group refers the present case to the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, for appropriate action.

<sup>34</sup> [A/HRC/27/48](#), paras. 66–71, See also opinions No. 44/2016, No. 30/2017, No. 28/2018, No. 32/2018 and No. 66/2019

<sup>35</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 12 and guidelines 11 and 13.

<sup>36</sup> *Ibid.*, guideline 13, paras. 80–81.

<sup>37</sup> Opinions No. 50/2014, para. 77; No. 89/2017, para. 56; No. 18/2018, para. 53; and No. 78/2018, paras. 78–79.

<sup>38</sup> [CCPR/C/ISR/CO/4](#), para. 19; [CAT/C/ISR/CO/5](#), paras. 28–29; and [CRC/C/ISR/CO/2-4](#), para. 74.

<sup>39</sup> See opinions No. 24/2016, No. 31/2017, No. 44/2017, No. 86/2017, No. 34/2018, No. 73/2018, No. 12/2020 and No. 60/2021. See also [A/HRC/38/15](#), paras. 118.159, 118.162, 118.164–165 and 119.4.

<sup>40</sup> See opinions No. 12/2020 and No. 60/2021.

*Concluding remarks*

66. The Working Group wishes to express its concern regarding the manner in which Mr. Mansour was allegedly treated during his arrest and initial detention. According to the source, Mr. Mansour was arrested in the middle of the night, hit on the head with a rifle and knocked to the floor, and his hands were tied painfully behind his back. He was allegedly grabbed from behind, kicked and blindfolded. He was transferred to Huwwara detention centre, where he was searched naked and then spent 15 days in detention in degrading and inhumane conditions, including without taking showers. In that regard, the Working Group is obliged to remind Israel that all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person in accordance with article 10 of the Covenant and article 37 (c) of the Convention on the Rights of the Child. Mr. Mansour was a minor at the time of his arrest, and his detention for nearly a year places him at risk of severe health problems. The Working Group calls for his immediate release.

67. The present case is one of several cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty in Israel. The Working Group notes that many of the cases involving administrative detention in Israel and the Occupied Palestinian Territory follow a familiar pattern of arrest without warrant, failure to provide reasons for the arrest, indefinite detention through consecutive administrative detention orders without charges or trial (often based on secret evidence and often under military jurisdiction) and with limited or no avenue of judicial recourse to review the lawfulness of the detention.<sup>41</sup> 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.<sup>42</sup>

**Disposition**

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

The deprivation of liberty of Mohammad Ghassan Ahmad Mansour, being in contravention of articles 2, 3, 7, 8, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 2 (1) and (3), 9, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

69. The Working Group requests the Government of Israel to take the steps necessary to remedy the situation of Mr. Mansour 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.

70. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Mansour immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.<sup>43</sup> In the current context of the COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Mansour.

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

72. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, for appropriate action.

<sup>41</sup> See opinions No. 36/1992, No. 17/1993, No. 18/1993, No. 16/1994, No. 16/1996, No. 17/1996, No. 18/1996, No. 24/1996, No. 8/1998, No. 9/1998, No. 10/1998, No. 11/1998, No. 16/2000, No. 17/2000, No. 23/2001, No. 3/2004, No. 26/2007, No. 5/2010, No. 9/2010, No. 3/2012, No. 20/2012, No. 58/2012, No. 43/2014, No. 24/2016, No. 31/2017, No. 44/2017, No. 86/2017, No. 34/2018, No. 73/2018, No. 12/2020, No. 60/2021 and No. 61/2021, .

<sup>42</sup> Opinion No. 47/2012, para. 22.

<sup>43</sup> See [A/HRC/45/16](#), annex I.

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

**Follow-up procedure**

74. 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. Mansour has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Mansour;
- (c) Whether an investigation has been conducted into the violation of Mr. Mansour'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 Israel with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

75. 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.

76. 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.

77. 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>44</sup>

*[Adopted on 30 March 2022]*

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<sup>44</sup> Human Rights Council resolution 42/22, paras. 3 and 7.