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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fourth session, 29 August–2 September 2022

Opinion No. 53/2022 concerning Haytham Fawzy Mohamden (Egypt)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/12.
2. In accordance with its methods of work,¹ on 27 April 2022 the Working Group transmitted to the Government of Egypt a communication concerning Haytham Fawzy Mohamden. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

a. Background

4. Haytham Fawzy Mohamden is an Egyptian national, born in 1982; he is a human rights lawyer and defender, political activist and labour rights activist. Prior to his detention, he lived in Tarkhan village, Saff administrative centre, Giza governorate.

5. The source explains that Mr. Mohamden has faced repeated harassment from the Egyptian authorities in relation to his work with human rights organizations in Egypt, including the El-Nadeem Centre for Rehabilitation of Victims of Violence and Torture, the Arabic Network for Human Rights Information, and the Egyptian Commission for Rights and Freedoms.

b. Arrest and detention

6. According to the source, Mr. Mohamden was first arrested in 2016, as a result of his protest against the 2016 boundary delimitation agreement between Egypt and Saudi Arabia. He was reportedly released under precautionary measures. The source explains that article 201 of the Egyptian Code of Criminal Procedure allows the Supreme State Security Prosecution or the Court to order a defendant's release on probation.

7. Reportedly, Mr. Mohamden was arrested a second time, in 2018, at home, as part of a case known to the media as the "Metro case". According to the source, Mr. Mohamden's arrest came amid crackdowns on protests against austerity measures introduced by the Government. He was reportedly brought before the Supreme State Security Prosecution and charged with calling for illegal protests and aiding a terrorist organization.

8. He was allegedly released on 30 October 2018 under precautionary measures requiring him to present himself to Saff police station twice a week. On 5 January 2019, the precautionary measures were mitigated, from two days to one day a week.

9. The source explains that, on 12 May 2019, someone from the police station called Mr. Mohamden claiming that they did not have any notification of the mitigation of the precautionary measures and that Mr. Mohamden should report to the police station immediately. Upon arrival at the Saff police station, he was allegedly arrested by police officers wearing formal clothes and national security agents wearing civilian clothes. The source notes that Mr. Mohamden was not shown an arrest warrant or given an explanation of the reasons for his arrest, and that he was denied access to a lawyer. Further, the source explains that Mr. Mohamden was blindfolded upon his arrest.

10. According to the source, a formal minute was recorded against Mr. Mohamden on 14 May 2019, accusing him of not abiding by the precautionary measures.

11. The source reports that, between 12 and 16 May 2019, Mr. Mohamden was forcibly disappeared at the hands of national security agents. Reportedly, no complaint was submitted on his behalf as his relatives thought that there had simply been a delay in delivering the mitigating decision to the police station.

12. The source explains that, on 16 May 2019, Mr. Mohamden was brought before the Supreme State Security Prosecution without his lawyer, who happened to see him by coincidence on the premises of the Prosecution. The Prosecution reportedly charged Mr. Mohamden with membership of a terrorist group, aiding a terrorist group, publishing false information for the purpose of disturbing the security and the stability of the country, and misusing social media. The source reports that the prosecution failed to provide sufficient evidence to support those accusations.

13. The source notes that Mr. Mohamden was questioned about his "suspected intention" to carry out advocacy and to protest or call for protests during the Africa Cup of Nations tournament held in Egypt. Despite Mr. Mohamden's denial of such accusations, the Prosecutor ordered his pretrial detention for 15 days.

14. The source contends that Egyptian authorities usually target influential activists such as Mr. Mohamden in times of instability or calls for protests so as to prevent all attempts at mobilization. The source argues that, in the case at hand, the Egyptian authorities falsely alleged that Mr. Mohamden had violated the conditions of his probation in order to summon him to the police station and detain him immediately until the State security authorities could prepare an investigative report for the case. The source stresses that the police report stating that Mr. Mohamden had violated his probation conditions was only presented to the Prosecution on 14 May 2019, even though Mr. Mohamden was arrested on 12 May 2019. The source adds that the Prosecution never interrogated Mr. Mohamden about the alleged violations of the conditions of his probation; he was only questioned in relation to the case he was charged under.

15. Mr. Mohamden was allegedly first allowed to see his family on 16 May 2019. Since that day, he has reportedly been detained at the Giza Central Prison and allowed one family visit a week.

16. According to the source, on 27 May 2019, Mr. Mohamden was brought before the Supreme State Security Prosecution in the presence of his lawyer. The prosecution reportedly extended his pretrial detention on that day, and subsequently on 13 June, 8 July, 28 July, 7 August, 24 August, 8 September, 24 September and 2 October 2019, each time for 15 days.

17. It is reported that, on 27 November 2019, the Cairo Criminal Court ordered Mr. Mohamden's release under precautionary measures but the Supreme State Security Prosecution appealed the Court's decision, and it was reversed during a hearing the next day. Reportedly, the Court extended Mr. Mohamden's pretrial detention for 45 days and he was transferred to Qanater el-Khayereya Men's Prison.

18. The source reports that, on 25 December 2019, the Cairo Criminal Court once again ordered the release of Mr. Mohamden. The following day, the Court reportedly reversed the release order following an appeal by the Supreme State Security Prosecution, and extended Mr. Mohamden's pretrial detention for 45 more days. His pretrial detention was extended again for 45 days on 19 February 2020.

19. On 24 March 2020, Mr. Mohamden's hearing was reportedly adjourned after the authorities of Qanater el-Khayereya Men's Prison failed to bring him to the courthouse, which the source argues violates article 77 of the Egyptian Prisons Law No. 396 of 1956.

20. According to the source, a hearing before the Giza Criminal Court was scheduled to be held on 3 May 2020 to decide on the pretrial detention of Mr. Mohamden. Reportedly, his lawyers, who were waiting for the hearing to begin, were told that the session had been postponed to 10 May 2020. However, on 10 May 2020, the lawyers allegedly discovered that the hearing had already taken place, on 7 May 2020, and that Mr. Mohamden's pretrial detention had been extended for 45 days, despite the absence of both Mr. Mohamden and his lawyers at the hearing.

21. The source explains that, between March and May 2020, a series of decisions were taken by the Government of Egypt to suspend the work of administrative State bodies and proceedings in most of the country's courts, with the aim of limiting the spread of the coronavirus disease (COVID-19). As a result, criminal courts automatically, and sometimes retroactively, extended the pretrial detentions of many detained human rights activists.

22. Mr. Mohamden's pretrial detention was reportedly renewed for 45 days on 15 June, 15 July, 15 September, 5 November and 17 December 2020, and 2 March 2021. The source underlines that the renewal decisions of 15 June and 15 July 2020 were taken in the absence of Mr. Mohamden but after hearing his lawyer's defence. The source notes that, in May 2021, Mr. Mohamden's detention would have exceeded the two-year maximum limit on pretrial detention set under Egyptian national law.

23. On 8 March 2021, after Mr. Mohamden had spent 20 months in detention, the Cairo Criminal Court reportedly ordered his release on probation. The source reports, however, that Mr. Mohamden was never released and, on 10 March 2021, he appeared before the Supreme State Security Prosecution in connection with another case, accused of joining a terrorist organization, which was similar to the charges brought against him in the previous case.

Reportedly, the hearing before the Supreme State Security Prosecution was conducted without the presence of Mr. Mohamden's lawyer.

24. Mr. Mohamden's detention in relation to the new case was reportedly further renewed for a period of 45 days on 9 June, 19 July and 1 December 2021, and 10 January and 16 February 2022. Reportedly, on 28 March 2022, the terrorism circuit of the Cairo Criminal Court further extended his detention for 45 days, without providing sufficient reasoning.

25. The source reports that, during Mr. Mohamden's hearing on 28 March 2022, he was placed in a tinted glass cage while the hearing took place in a recess room in which his lawyer was present. The source explains that the wire and tinted glass cage does not allow detainees to hear anything in the courtroom and gives very bad visibility of the surroundings of the cage. Defendants are reportedly unable to hear or see the judges or their lawyers, thereby denying them the possibility to speak to the court or report any updates to their lawyers. The source notes that the judge denied Mr. Mohamden's lawyer's request that his client be let out of the cage and brought to the recess room. In addition, after submitting his defence on Mr. Mohamden's behalf, his lawyer reportedly asked to meet with Mr. Mohamden to inform him of what had happened during the hearing. Allegedly, the Court also rejected that request.

26. According to the source, Mr. Mohamden is currently detained in Qanater el-Khayereya Men's Prison, which is known for its decaying and inhuman conditions, such as overcrowding, poor ventilation and lack of clean water.

27. The source reports that Mr. Mohamden has not been able to see his family in weeks. Following the outbreak of the COVID-19 pandemic, the Government reportedly decreased all family visits to one visit a month. During the last visit from his family, on 23 November 2021, Mr. Mohamden reportedly seemed to be suffering from severe depression. Allegedly, he asked his family not to visit him again so that they would be spared travelling long distances, enduring long waiting hours and undergoing extensive searches and inspections. He then began refusing all visits.

28. According to the source, Mr. Mohamden was never able to meet with his family privately. The source reports that visits with his family took place from behind a wire fence that barely allows family members to see the detainees. Reportedly, families are forced to yell loudly to be able to hear one another, and police officers are present and able to listen to the conversations. The source explains that, prior to the implementation of restrictions related to COVID-19 in August 2020, family visits took place in an open area inside the prison. The source notes that officers were able to observe the conversations.

c. Legal analysis

29. The source submits that Mr. Mohamden's detention is arbitrary under categories I, II, III and V as specified in the Working Group's methods of work.

i. Category I

30. The source first submits that, on 28 March 2022, the terrorism circuit of the Cairo Criminal Court extended Mr. Mohamden's pretrial detention without providing sufficient reasoning, in violation of article 136 of the Egyptian Code of Criminal Procedure. The source adds that Mr. Mohamden's pretrial detention in the case he was charged under in May 2019 would have exceeded the maximum legal limit in May 2021.

31. In addition, the source argues that the arrest and detention of Mr. Mohamden lack legal basis on the grounds that he was arrested without a warrant and he was subjected to enforced disappearance.

32. The source recalls that the right to be presented with an arrest warrant is 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, article 9 (1) of the International Covenant on Civil and Political Rights, article 6 of the African Charter on Human and Peoples' Rights, article 14 (1) of the Arab Charter on Human Rights and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any

Form of Detention or Imprisonment.² The source adds that article 54 of the Egyptian Constitution of 2014 also requires an arrest warrant prior to carrying out an arrest.

33. The source submits that Mr. Mohamden was arrested without being shown any arrest warrant and without being told the reasons for his arrest. The source claims that, as such, there was no basis for Mr. Mohamden's arrest.

34. According to the source, enforced disappearance is arbitrary per se and there can be no valid legal basis for such disappearances, under any circumstances. The source contends that enforced disappearance places the detainee outside the protection of the law and deprives the detainee of his or her right to challenge the legality of the detention, in violation of articles 6 and 8 of the Universal Declaration of Human Rights and articles 2 (3) and 9 (4) of the Covenant.³

35. The source recalls that article 17 (1) and (2) (c) of the International Convention for the Protection of All Persons from Enforced Disappearance require that people deprived of their liberty only be held in places of detention that are officially recognized and that States ensure that no one is held in secret detention. The source adds that enforced disappearance violates the law in itself as it exposes the victim to violations of other rights. In this regard, the source submits that during the three days that Mr. Mohamden was subject to enforced disappearance, he was placed outside the protection of the law.

36. The source concludes that, as a result of the lack of warrant for his arrest and his enforced disappearance, Mr. Mohamden's arrest and detention are arbitrary under category I.

ii. Categories II and V

37. The source argues that Mr. Mohamden was arrested in violation of article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.

38. The source recalls that article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant explicitly stipulate that all people are entitled to equality before the law and to equal protection of the law. According to the source's submissions, article 7 of the Universal Declaration of Human Rights guarantees that all individuals are equal before the law and are entitled without any discrimination to equal protection of the law, including against any discrimination and any incitement to such discrimination. The source explains that article 26 of the Covenant adds that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

39. The source submits that, while not all differential treatment may be considered discriminatory, the repeated arrest of an individual because of his or her political opinions is discriminatory.⁴ The source argues that Mr. Mohamden was arrested twice before his arrest on 12 May 2019 and released under precautionary measures. The source explains that Mr. Mohamden was arrested for a third time, on 12 May 2019, despite not having committed a crime.

40. The source also states that Mr. Mohamden is a leading member of the Revolutionary Socialists in Egypt and co-founder of the Revolution Path Front, a youth-led coalition launched on 24 September 2013. According to the source, Mr. Mohamden has worked in various organizations and his activism and professional work have been focused on promoting the rights of Egyptian workers, in particular the right to establish independent and worker-led trade unions. The source explains that Mr. Mohamden was famous for leading peaceful protests and supporting labour movements. The source notes that various European entities have called for the release of individuals, including Mr. Mohamden, detained for their peaceful human rights work.

² The source refers to opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

³ The source refers to opinion No. 82/2018.

⁴ The source cites African Commission on Human and Peoples' Rights, *Aminu v. Nigeria* Communication No. 205/97, 11 May 2000.

41. The source submits that Mr. Mohamden was detained due to his political activism and because of his work as a human rights defender, in violation of article 7 of the Universal Declaration of Human Rights and article 26 of Covenant. Therefore, the source concludes that Mr. Mohamden's detention is arbitrary under categories II and V.

iii. Category III

42. The source contends that the deprivation of liberty of Mr. Mohamden is arbitrary under category III insofar as the use of special courts violated his right to be brought before an ordinary judge and his right to counsel during questioning was violated.

43. The source notes that, while fair trial rights apply in all courts, including special or specialized courts and military courts, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has called upon States to avoid using special or specialized courts in terrorism cases.⁵

44. The source recalls that principle 5 of the Basic Principles on the Independence of the Judiciary and sections A (4) (e) and L (c) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa provide that special courts may not be created to displace the jurisdiction of ordinary courts. In other words, special courts should not examine offences that fall within the jurisdiction of ordinary courts. The source adds that the Commission on Human Rights, in its resolution 2005/30, stated that when special courts do exist, they must be independent and impartial and must respect fair trial standards.

45. The source explains that the reason for the exceptional character of special courts means that fair trial rights are more likely to be violated before special courts. In this regard, the source notes that human rights bodies have raised concerns about procedures before special courts that are inconsistent with fair trial rights, including the right to a trial before an independent and impartial court and the right to appeal to a higher tribunal.⁶

46. Further, the source refers to a case submitted to the Human Rights Committee in which the trial was not public and the accused was never given access to the case file or the charges against him and not given the opportunity to be represented by a counsel of his choice. The Committee found that the trial before the special court had violated fair trial rights.⁷

47. The source contends that there was no need to bring Mr. Mohamden before the State Security judiciary and that this special judicial department examined a case that fell within the jurisdiction of the ordinary courts. The source argues that the State Security judiciary did not have jurisdiction to hear Mr. Mohamden's case from its inception.

48. The source recalls that the Human Rights Committee, in its general comment No. 32 (2007), provides that everyone arrested or detained, whether or not on a criminal charge, and everyone facing a criminal charge, has the right to the assistance of legal counsel. The source notes that, although the right to the assistance of a lawyer during detention, questioning and the preliminary investigation is not expressly set out in the Covenant, the Human Rights Committee has clarified that it is required for the meaningful exercise of the right to a fair trial.⁸ The source contends that, as such, the provisions on the right to counsel under the Covenant apply to the pretrial phase.

49. The source submits that all suspects and accused, whether detained or not, should have access to and the assistance of counsel from the very start of a criminal investigation. Accordingly, individuals arrested or detained should have access to a lawyer as soon as they are deprived of their liberty, including during questioning by the police and investigating

⁵ A/63/223, para. 45 (b).

⁶ Ibid., paras. 24 and 27; and A/HRC/13/37/Add.2, paras. 32–35.

⁷ *Aboussedra v. Libyan Arab Jamahiriya* (CCPR/C/100/D/1751/2008), para. 7.8.

⁸ CCPR/C/79/Add.75, para. 27; CCPR/C/NLD/CO/4, para. 11; and African Commission on Human and Peoples' Rights, *Liesbeth Zegveld and Mussie Ephrem v. Eritrea*, Communication No. 250/02, 20 November 2003.

judge, even if they exercise their right to remain silent.⁹ The source argues that the right to legal counsel during the pretrial phase includes the right to access a lawyer, the right to have time to consult the lawyer in confidence and the right to have the lawyer present and available for consultation during questioning.

50. The source notes that Mr. Mohamden was prevented from accessing legal counsel in detention and during his first interrogation session, during which he was formally charged. Reportedly, Mr. Mohamden was only able to speak to his lawyer nearly 15 days following his arrest, at his second interrogation session.

51. In addition, the source argues that placing Mr. Mohamden in a tinted glass cage during his hearing before the terrorism circuit of the Cairo Criminal Court prevented him from hearing or seeing the judges or his lawyer and denied him the ability to speak to the court or report any updates to his lawyer. The source submits that, as a result, Mr. Mohamden's rights to a fair judicial review and to access legal counsel were violated.

52. For these reasons, the source concludes that Mr. Mohamden's detention is arbitrary under category III.

Response from the Government

53. On 27 April 2022 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 27 June 2022, detailed information about the current situation of Mr. Mohamden 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 the physical and mental integrity of Mr. Mohamden.

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

Discussion

55. 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.

56. In determining whether Mr. Mohamden'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.¹⁰ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

57. The source has argued that Mr. Mohamden's detention is arbitrary and falls under categories I, II, III and V. The Working Group shall examine these in turn.

⁹ Human Rights Council resolution 13/19, para. 6; [CCPR/C/79/Add.75](#), para. 27; [CCPR/C/JOR/CO/4](#), para. 9; [CAT/C/CR/31/3](#), paras. 6 (h) and 7 (c); [CCPR/C/JPN/CO/5](#), para. 18; [CCPR/C/NLD/CO/4](#), para. 11; [CAT/OP/MDV/1](#), paras. 105–107; Council of Europe, 12th general report on the activities of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2002) 15), paras. 40–41; European Court of Human Rights, *Dayanan v. Turkey*, Application No. 7377/03, Final Judgment, 13 October 2009, paras. 30–33; European Court of Human Rights, *Simons v. Belgium*, Application No. 71407/10, Decision, 28 August 2012, para. 31; European Court of Human Rights, *Türkan v. Turkey*, Application No. 33086/04, Final Judgment, 18 December 2008, para. 42; European Court of Human Rights, *Salduz v. Turkey*, Application No. 36391/02, Grand Chamber Judgment, 27 November 2008, paras. 54–55; and European Court of Human Rights, *John Murray v. United Kingdom*, Application No. 18731/91, Grand Chamber Judgment, 8 February 1996, para. 66.

¹⁰ [A/HRC/19/57](#), para. 68.

Category I

58. The source has argued that Mr. Mohamden was arrested and detained three times, in 2016, 2018 and 2019. While the first two of those detentions appear to have been of short duration, the last of them, which started on 12 May 2019, is ongoing. The source has also argued that Mr. Mohamden was released following the arrests in 2016 and 2018 on precautionary measures, the latest of which required regular reporting to the police. Those allegations were put to the Government, which chose not to contest any of them.

59. The source has further argued that, on 12 May 2019, Mr. Mohamden was summoned to a police station on the basis that he had allegedly failed to comply with the frequency of reporting imposed upon him by the court that had ordered his precautionary release. Once there, he was arrested, without a warrant, blindfolded, provided no reasons for his arrest, denied access to a lawyer and in fact disappeared until 16 May 2019, when he was brought before the Supreme State Security Prosecution. He was then charged with membership of a terrorist group, abetting a terrorist group, publishing false information for the purpose of disturbing the security and stability of the country and misusing social media. Once again, all those allegations were put to the Government, which chose not to contest any of them.

60. The Working Group recalls that a detention is considered arbitrary under category I if it lacks legal basis. As it has previously stated, for a deprivation of liberty 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.¹¹ Indeed, the international law on deprivation of liberty 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 deprivation under articles 3 and 9, respectively, of the Universal Declaration of Human Rights, article 9 of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.¹² Any form of detention or imprisonment should be ordered by, or be subjected 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, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

61. In the present case, Mr. Mohamden was summoned to the police station on 12 May 2019 and arrested there. It is also clear from the charges that were levied against him some four days later that the reason for that arrest was not his alleged failure to comply with the frequency of reporting imposed upon him by the court that had ordered his precautionary release previously. In these circumstances, and noting the lack of response from the Government, the Working Group concludes that Mr. Mohamden's rights under article 9 (1) of the Covenant were violated.

62. Moreover, Mr. Mohamden was not provided with any reasons for his arrest and in fact was not aware of charges against him until he appeared before the Supreme State Security Prosecution on 16 May 2019, that is, four days after his arrest. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is not only informed of the reasons for the arrest but is also promptly informed of any charges against him or her. The right to be promptly informed of charges concerns notice of criminal charges and, as the Human Rights Committee has noted in its general comment No. 35 (2014), this right applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment.¹³

63. The Working Group notes that, not only was Mr. Mohamden arrested without a warrant, he was also not informed of the reasons for his arrest and did not learn of the charges against him until some four days after the arrest. The Working Group therefore concludes that there has been a breach of article 9 (2) of the Covenant.

¹¹ See, for example, opinions No. 46/2017, No. 66/2017, No. 75/2017, No. 93/2017, No. 35/2018, No. 79/2018, No. 89/2020 and No. 72/2021.

¹² Opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

¹³ Para. 29.

64. Furthermore, the Working Group notes that it took four days before Mr. Mohamden was brought before a judicial authority for a review of his detention. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to be brought promptly before a judge to exercise judicial power. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge or other officer authorized by law following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.¹⁴ The Working Group finds that Mr. Mohamden was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant. The Working Group recalls that the prosecutorial body cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.¹⁵ As a result, the Working Group finds that the authorities failed to establish the legal basis of his detention in accordance with the provisions of the Covenant.

65. Moreover, to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9 (4) of the Covenant. The Working Group recalls that, according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.¹⁶ This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty¹⁷ and to all situations of deprivation of liberty, including not only detention for purposes of criminal proceedings but also situations of detention under administrative and other fields of law, including military detention, security detention and detention under counter-terrorism measures. Moreover, it also applies irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.¹⁸

66. The right to take proceedings before a court in order that that court may decide upon the lawfulness of detention must be afforded without delay, as specified in article 9 (4) of the Covenant. As specified by the Human Rights Committee in its general comment No. 35 (2014), the adjudication of the case should take place as expeditiously as possible.¹⁹ In the present case, while Mr. Mohamden appeared before the prosecution some four days after his arrest, it was not until 27 November 2019 that he was first presented before a judicial authority, an allegation not contested by the Government. The Working Group therefore finds a breach of article 9 (4) of the Covenant.

67. Furthermore, the Working Group takes note of the allegation by the source that, following his arrest on 12 May 2019 by national security agents, Mr. Mohamden’s whereabouts remained unknown until he appeared before the prosecution some four days later. Although this very serious allegation was presented to the Government, it failed to address it. The Working Group therefore finds that Mr. Mohamden was subjected to *de facto* enforced disappearance following his arrest on 12 May 2019, until he appeared before the prosecution four days later, 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.²⁰

68. Further, upon his arrest, Mr. Mohamden was denied legal assistance, which is essential to preserve the legality of detention. The Working Group notes that, in order to

¹⁴ General comment No. 35 (2014), paras. 32–33.

¹⁵ Opinions No. 14/2015, para. 28; No. 5/2020, para. 72; No. 6/2020, para. 47; and No. 41/2020, para. 60. See also Human Rights Committee, general comment No. 35 (2014), para. 32; and [A/HRC/45/16/Add.1](#), para. 35.

¹⁶ [A/HRC/30/37](#), paras. 2–3.

¹⁷ *Ibid.*, para. 11.

¹⁸ 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, para. 47 (a)–(b).

¹⁹ Para. 47.

²⁰ See opinions No. 5/2020, No. 6/2020, No. 11/2020, No. 13/2020, No. 77/2020, No. 38/2021 and No. 45/2021. See also Human Rights Committee, general comment No. 35 (2014), para. 17.

ensure an effective exercise of the right to challenge the legality of detention, the detained persons should have access, from the moment of arrest, to legal assistance of their own choosing, as stipulated in principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court. All persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay.²¹ This was denied to Mr. Mohamden, who first appeared before the prosecution on 16 May 2019 without his lawyer, which further seriously adversely affected his ability to effectively exercise his right to challenge the legality of his detention, denying him his rights under article 9 (4) of the Covenant.

69. Moreover, upon his appearance before the Supreme State Security Prosecution on 16 May 2019, Mr. Mohamden was remanded in custody; he remains in pretrial detention today. Although his pretrial detention appears to have been periodically reviewed by first the Prosecution and then the Cairo Criminal Court, it is not contested by the Government that the reasons for his continued pretrial detention, which now has lasted over three years, have never been articulated by the authorities.

70. The Working Group recalls that it is a well-established norm of international law that pretrial detention should be the exception and not the rule, and that it should be ordered for as short a time as possible.²² Article 9 (3) of the Covenant provides that it shall not be the general rule that persons awaiting trial are detained, but release may be subject to guarantees to appear for trial or at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception, in the interests of justice.²³

71. In order to give effect to this principle, pretrial detention must 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.²⁴ The courts must examine whether alternatives to detention, such as bail, would render custodial measures unnecessary.²⁵ According to the source, Mr. Mohamden's continued pretrial detention was never substantiated, by the Supreme State Security Prosecution or by the court. Moreover, on at least one occasion, the review of his continued pretrial detention took place in the absence of both Mr. Mohamden and his lawyer (see paras. 20–22 above). In the absence of any explanation by the Government, the Working Group cannot accept that Mr. Mohamden's pretrial detention was properly constituted in accordance with article 9 (3) of the Covenant.

72. Finally, the Working Group notes the uncontested allegation that, on 8 March 2021, the Cairo Criminal Court ordered Mr. Mohamden's release on probation, but he was not released and, instead, another case with very similar charges was brought against him two days later (see para. 23 above) and a new period of pretrial detention was ordered, in the absence of Mr. Mohamden's lawyer. These allegations were also put to the Government, which chose not to address them.

73. The Working Group considers that the release of Mr. Mohamden on probation was ordered by a judicial authority and, yet, he remained detained, in defiance of that judicial order, and new charges were brought against him within two days. Such practice of repeat pretrial detention on charges that are very similar to previous ones is akin to "revolving door" pretrial detention, which is entirely incompatible with article 9 (3) of the Covenant. The

²¹ A/HRC/45/16, paras. 51–52; and 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, paras. 12–15 and 67–71. See also the Basic Principles on the Role of Lawyers, paras. 16–22.

²² Opinions No. 28/2014, para. 43; No. 49/2014, para. 23; No. 57/2014, para. 26; No. 1/2020, para. 53; and No. 8/2020, para. 54. See also Human Rights Committee, general comment No. 35 (2014), para. 38; and A/HRC/19/57, paras. 48–58.

²³ A/HRC/19/57, para. 54.

²⁴ Human Rights Committee, general comment No. 35 (2014), para. 38.

²⁵ Ibid; opinion No. 83/2019, para. 68; and 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, paras. 85–86.

Working Group thus considers that the rights of Mr. Mohamden were not only further violated under article 9 (3) of the Covenant, but that they were also violated under article 9 (1) of the Covenant, insofar as the judicial order of release on probation was not complied with.

74. Finally, the Working Group notes that, on at least two occasions, hearings on the continuous pretrial detention of Mr. Mohamden took place in his absence (see paras. 20 and 22 above) although at some (but not all) of those, his lawyer was present. Noting the absence of any explanation on behalf of the Government, the Working Group considers that Mr. Mohamden's rights under article 9 (3) of the Covenant were thus further violated. In this regard, the Working Group also recalls that public health emergencies, such as the COVID-19 pandemic, can never be used to justify the denial of fair trial rights.²⁶

75. Noting all the above, the Working Group concludes that the arrest of Mr. Mohamden and his subsequent detention are arbitrary as they lack legal basis and therefore fall under category I.

Category II

76. The source has argued that the detention of Mr. Mohamden is arbitrary under category II as it is based solely on his political activism. The Working Group notes that, while the Government was provided with the opportunity to explain the reasons for Mr. Mohamden's arrest, it chose not to do so.

77. The Working Group recalls that detention as a result of the peaceful exercise of rights protected by the Covenant may be arbitrary. In this regard, the Working Group also recalls Human Rights Council resolution 24/5, in which the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others. This echoes the principle enunciated by the Council in its resolution 12/16, in which it called upon States to refrain from imposing restrictions not consistent with article 19 (3), including on discussion of government policies and political debate, reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy, and expression of opinion and dissent, religion or belief.

78. The Working Group reiterates that it applies a heightened standard of review in cases in which freedom of expression and opinion is restricted or where human rights defenders are involved.²⁷ Mr. Mohamden's role as a social activist and human rights defender requires the Working Group to undertake this kind of strict scrutiny.²⁸ In the present case, Mr. Mohamden was questioned about his alleged intention to carry out advocacy and to protest or call for protests during the African Cup of Nations held in Egypt (see para. 13 above) and he was subsequently charged with membership of a terrorist group, abetting a terrorist group, publishing false information for the purpose of disturbing the security and the stability of the country and misusing social media (see para. 12 above). Even if Mr. Mohamden did intend to protest during the African Cup of Nations, the Working Group cannot see how this amounts to the crimes he was subsequently charged with as this would in fact fall under his

²⁶ Deliberation No. 11 (A/HRC/45/16, annex II), paras. 20–21.

²⁷ Opinions No. 64/2011, para. 20; No. 54/2012, para. 29; No. 62/2012, para. 39; No. 41/2017, para. 95; and No. 57/2017, para. 46. Domestic authorities and international supervisory bodies should apply the heightened standard of review of government action, especially when there are claims of a pattern of harassment (opinion No. 39/2012, para. 45). See also the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 9 (3).

²⁸ Human rights defenders, in particular, have the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through those and other appropriate means, to draw public attention to such matters (Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 6 (c)). Human rights defenders also have the right to investigate and gather information regarding human rights violations and report on them (opinion No. 8/2009, para. 18).

right to freedom of expression and association. In other words, the Working Group has been provided with no explanation of what activities of Mr. Mohamden could possibly justify the charges that have been brought against him. There also is no suggestion that any of his activities have been anything but peaceful or that he has ever incited others to violence.

79. In the light of this, the Working Group concludes that the arrest and subsequent detention of Mr. Mohamden are based solely on his peaceful exercise of freedoms of opinion and expression and association as protected by articles 19 and 22 of the Covenant and articles 19 and 20 of the Universal Declaration of Human Rights. His detention is therefore arbitrary and falls under category II.

Category III

80. Given its finding that the deprivation of liberty of Mr. Mohamden is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Mohamden should take place. However, Mr. Mohamden has been in pretrial detention for over three years and the proceedings against him are ongoing. The source has submitted that there were severe violations of the fair trial rights of Mr. Mohamden, rendering his detention arbitrary under category III of the Working Group.

81. The source has submitted, and the Government has chosen not to contest, that Mr. Mohamden was initially denied access to his lawyer and that at least some of his pretrial detention hearings were conducted in the absence of his lawyer.

82. The Working Group reiterates that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and that such access must be provided without delay.²⁹ The right to legal assistance is an essential element of the right to a fair trial as it serves to ensure that the principle of equality of arms is duly observed.³⁰ In the present case, there were very serious interference with this right in respect of Mr. Mohamden and the Working Group therefore finds a breach of article 14 (3) (d) of the Covenant.

83. The source has argued that Mr. Mohamden's fair trial rights were also violated as, instead of appearing before an ordinary judge, he was presented before a special court, a State security court. Although this submission was put to the Government, it chose not to address it.

84. Regarding trial by special courts, the Working Group notes that special courts may not be created to displace the jurisdiction of ordinary courts.³¹ They should not examine offences that fall within the jurisdiction of ordinary courts. In addition, when special courts exist, they must be independent and impartial and respect fair trial standards.³² All courts, whether regular or special, must be competent, independent and impartial.³³ The Human Rights Committee, in its general comment No. 13 (1984), raised concerns about the nature of military or special courts, stating that quite often the reason for the establishment of such courts was to enable exceptional procedures to be applied that did not comply with normal standards of justice.

85. The Working Group agrees that special courts should not examine offences that fall within the jurisdiction of ordinary courts. However, the source has not specified which of Mr. Mohamden's fair trial rights were thus violated and how. The source has merely stated that the "exceptional character of special courts means that fair trial rights are more likely to be violated before special courts". While the Working Group notes such a possibility, in the

²⁹ A/HRC/45/16, paras. 51–52; and 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, paras. 12–15 and 67–71. See also the Basic Principles on the Role of Lawyers, paras. 16–22.

³⁰ See, for example, opinion No. 35/2019.

³¹ Principle 5 of the Basic Principles on the Independence of the Judiciary; and sections A (4) (e) and L (c) of Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa. See also opinion No. 79/2021.

³² Commission on Human Rights, resolution 2005/30.

³³ Universal Declaration of Human Rights, art. 10; and International Covenant on Civil and Political Rights, art. 14.

present case the source has not identified the specific violations that have thus occurred. The Working Group is therefore unable to make a finding on the issue.

86. Further, the source has submitted that, during a hearing on 28 March 2022, Mr. Mohamden was placed in a tinted glass cage, preventing him from properly hearing the proceedings and allowing only poor visibility into the courtroom. In the absence of any explanation from the Government for this, the Working Group considers that such arrangements prevented Mr. Mohamden from fully participating in the hearing as he was unable to properly hear the proceedings or confer with his lawyer. The Working Group considers that this violated the principle of equality of arms and finds a breach of article 14 (1) of the Covenant.

87. Finally, the Working Group notes that Mr. Mohamden has spent well over three years in pretrial detention and there is no indication as to when his trial might commence. The Working Group recalls that everyone has the right to be tried without undue delay as required by article 14 (3) (c) of the Covenant.

88. The Working Group recalls that the right of the accused to be tried without undue delay, provided for by article 14 (3) (c) of the Covenant, is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice. However, what is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the administrative and judicial authorities.³⁴ In the present case, the Working Group has been presented with no reasons justifying such a delay and in fact considers the obligation arising from 14 (3) (c) of the Covenant particularly onerous in the present case, given the findings under category II (see above) and category V (see below). It therefore finds a violation of this provision.

89. Noting all the above, the Working Group concludes that the detention of Mr. Mohamden is arbitrary and falls under category III.

Category V

90. Finally, the source has submitted, and the Government does not contest, that the arrest and subsequent detention of Mr. Mohamden are based on discrimination on the basis of his political opinions and status as a human rights defender.

91. Indeed, the Working Group has already established that the present arrest and detention are a direct result of the peaceful exercise of his rights (see paras 76–79 above). The Government also does not contest that Mr. Mohamden previously faced repeated harassment from the Egyptian authorities in relation to his work with human rights organizations in Egypt, including the El-Nadeem Centre for Rehabilitation of Victims of Violence and Torture, the Arabic Network for Human Rights Information, and the Egyptian Commission for Rights and Freedoms. In fact, he was previously arrested in 2016 and 2018, both times in connection with expressing views and protesting the actions of authorities. It appears that the present arrest and detention are the latest in such a series of arrests clearly related to his activities as a human rights defender.

92. According to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and to draw public attention to the observance of human rights.³⁵ The source has demonstrated that Mr. Mohamden was detained for the exercise of his rights under this Declaration as well as for his political opinions. The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the

³⁴ Human Rights Committee, general comment No. 32 (2007), para. 35.

³⁵ Articles 1 and 6 (c). See also General Assembly resolution 74/146, para. 12.

law and equal protection of the law under articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 and 26 of the Covenant.³⁶

93. The Working Group therefore concludes that the arrest and subsequent detention of Mr. Mohamden falls under category V. The Working Group refers the case to the Special Rapporteur on the situation of human rights defenders, for appropriate action.

Concluding remarks

94. The Working Group is seriously concerned about the uncontested allegations regarding the health and well-being of Mr. Mohamden as well as the very limited family contact he is allowed to have. The Working Group feels obliged to remind the Government that, in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect to the inherent dignity of the human person and that denial of medical assistance constitutes a violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), in particular rules 24, 25, 27 and 30 thereof, as well as principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The denial of family contact may also amount to a violation of principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group refers the case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

95. The Working Group notes that the present opinion is only one of many opinions in recent years in which the Working Group finds the Government to be in violation of its international human rights obligations.³⁷ The Working Group is concerned that this indicates a systemic problem with arbitrary detention in Egypt, 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 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.

Disposition

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

The deprivation of liberty of Haytham Fawzy Mohamden, being in contravention of articles 2, 3, 7, 9, 10, 19 and 20 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19, 22 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

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

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

99. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr.

³⁶ See, for example, opinions No. 26/2017, No. 46/2018, No. 14/2020, No. 80/2020 and No. 21/2021.

³⁷ 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, 83/2021, No. 23/2022 and No. 34/2022.

Mohamden and to take appropriate measures against those responsible for the violation of his rights.

100. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

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

Follow-up procedure

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

103. 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.

104. 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.

105. 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.³⁸

[Adopted on 1 September 2022]

³⁸ Human Rights Council resolution 42/22, paras. 3 and 7.