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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session, 30 November-4 December 2015

Opinion No. 53/2015 concerning two minors whose names are known by the Working Group (Egypt)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.
2. In accordance with its methods of work (A/HRC/30/69), on 11 June 2015 the Working Group transmitted a communication to the Government of Egypt concerning two minors (whose names are known by the Working Group). The Government replied to the communication on 3 July 2015. 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 sentence or despite an amnesty law applicable to him) (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 International Covenant on Civil and Political Rights (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);



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

(e) When the deprivation of liberty constitutes a violation of international law 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).

Submissions

Communication from the source

4. The first minor, whose name is known by the Working Group, was born on 6 December 1998. He is a first-grade student in secondary school. According to the source, on the night of 22 February 2014, several officers of the security forces, the police and the homeland security stormed and searched the apartment in which the first minor lives and arrested him without showing a warrant. The first minor was blindfolded, handcuffed and forced into a military vehicle, which took him to Ataka police station in Suez where he was reportedly subjected to torture and ill-treatment by officers, who beat and kicked his arms and legs.

5. The source reports that, during the next three days, in order to make him confess to crimes he had not committed, the first minor was subjected to further torture and ill-treatment. The officers electrocuted him on the chest, the back and the genitals, eventually burning him and causing severe abrasions.

6. The source adds that, on 23 February 2014, while still being detained and tortured at Ataka police station, the first minor was charged by the Public Prosecutor with affiliation to the Muslim Brotherhood; taking part in illegal demonstrations and arson. Given the need for further investigations, his detention was renewed for 15 days.

7. The first minor was detained in the Ataka detention centre and has not been brought before a judge. No evidence has been presented by the Public Prosecutor to justify his continued detention. The first minor is held in a cell with adult detainees, continuously subjected to torture and ill-treatment by the prison personnel and other inmates, and denied access to medical care. In addition, he suffers from generally bad detention conditions.

8. The second minor, whose name is known by the Working Group, is a brother of the first minor; he was born on 20 April 2001 and is a second-grade student. The source reports that, on 3 January 2015 the second minor was arrested, without an arrest warrant, by homeland security officers in the apartment in which he lives. The second minor was taken to Ataka police station and charged by the Public Prosecutor with affiliation to the Muslim Brotherhood, incitement to riot and participation in illegal demonstrations.

9. Following his indictment, police officers allegedly tortured the second minor during two consecutive days, with electrocution on his entire body, and beatings with truncheons. Since the date of his arrest, his detention has been renewed every 15 days. He is held in a prison cell together with adult detainees. Despite having numerous contusions on his body, he has been denied access to medical care.

10. To this date, the second minor has not been brought before a judge and no evidence has been presented by the Public Prosecutor to justify his continued detention.

11. On the basis of the foregoing, the source submits that the detention of both minors is arbitrary since they were arrested without an arrest warrant, they have not been brought before a judge and no evidence has been presented by the Public Prosecutor to justify their

continued detention. Furthermore, both individuals have been subjected to acts of torture and ill-treatment.

12. The source therefore claims that the arrest and detention of the minors fall under categories II and III. In addition, the second minor's case also falls under category I of the categories applicable to the consideration of the cases submitted to the Working Group.

13. In the light of the above, the source argues that neither minor has been guaranteed the international norms of due process and guarantees to a fair trial, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Egypt acceded on 14 January 1982.

14. The source also submits that, according to article 126 of the Child Law of 2008, a child under 15 years of age cannot, in principle, be imprisoned in Egypt. Only under exceptional circumstances and after authorization from the Public Prosecutor can a child under 15 years of age be held in preventive detention, for a period not exceeding one week. The second minor, who is 14 years old, has been held in detention since 3 January 2015 without being brought before a judge.

15. The source further argues that the detention of these two minors is in contravention of articles 19 and 20 of the Universal Declaration of Human Rights; the Convention on the Rights of the Child; articles 2, 15 and 16 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment; and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights, on rights to freedom of opinion, expression and assembly.

Response from the Government

16. In its response of 3 July 2015 the Government provided the following information.

17. The first minor (17 years old, a student) was arrested on 22 February 2014 pursuant to an arrest warrant issued by the Public Prosecutor's Office on account of his membership in the Muslim Brotherhood terrorist organization and his participation in a number of criminal acts, including blocking streets and setting fire to police vehicles.

18. He was referred to the Public Prosecutor's Office, which decided to keep him in detention for a period of 15 days. The detention order was renewed within the legally specified deadlines. He was placed in the juvenile detention wing of the Ataka police department and separated from adult detainees. There is no evidence that he was subjected to torture or ill-treatment.

19. The second minor (14 years old, a student and brother of the above-mentioned detainee) was arrested on 2 March 2015 pursuant to an arrest warrant issued by the Public Prosecutor's Office for the offence of setting fire, as an act of revenge for the arrest of his brother the first minor, to a vehicle belonging to the secretary of the Public Prosecutor's Office.

20. He was referred to the Public Prosecutor's Office, which decided to commit him to a care facility in the Governorate of Suez. That order was renewed within the specified legal deadlines. On 13 May 2015, the Suez Court of Plenary Jurisdiction ordered his release. There is no evidence that he was subjected to torture or ill-treatment during his detention. In addition, the Working Group received the following information from the Office of the Prosecutor General concerning the first minor.

21. The accused, the first minor and others, participated in a gathering of more than five people for the purpose of preventing and disrupting the implementation of the law and regulations, and hindering law enforcement officers in the performance of their duties,

using violence and threats, thereby disturbing the peace. They gathered in Al-Geish Street, Al-Nimsa Street and Al-Khodr Square, disrupting the traffic and refusing to disperse when ordered to do so by law enforcement officers.

22. The following offences were committed during the gathering, in accordance with its aims and with the knowledge of the participants:

- They used force and threats of violence to terrorize citizens, causing them bodily harm, endangering their lives and safety, and damaging their property. Some of the assailants were carrying explosive materials (flares and fireworks) and offensive weapons (stones and Molotov cocktails)
- They held a demonstration without obtaining prior authorization
- They gathered together and chanted slogans calling for the toppling of State institutions and criticizing the armed forces and the police; they used the spoken and written word to foment violations of the Constitution and the law, to disrupt the functioning of State institutions, to attack the personal freedom of citizens, and to undermine national unity and social harmony
- They acquired, both directly and through intermediaries, explosive materials (13 flares) without authorization
- They acquired, both directly and through intermediaries, printed materials showing the “four finger” emblem, which were ready for distribution and included proclamations liable to disrupt law and order and to undermine public interests.

23. They were charged under the following laws: arts. 1, 2 (1), 3 and 3 bis (1) of Law No. 10 of 1914; arts. 1, 4, 5, 7, 17-20 and 22 of Law No. 107 of 2013; arts. 30, 83 bis (3), 102 bis (1) and (3), 102 (a), 375 bis and 375 bis (1) of the Criminal Code; paras. 69, 75 and 77 of Decree No. 2225 of 2007 of the Minister of the Interior concerning substances considered to be explosives; and arts. 2, 95, 111 (1), (2), 122 (2) of Law No. 12 of 1996 concerning children, as amended by Law No. 126 of 2008.

24. The first minor was remanded in custody and referred for trial before the criminal court.

Further comments from the source

25. The source points out that the Government’s reply does not address the multiple concerns raised by the source regarding the lawfulness of the detention of both minors.

26. The source reiterates that, contrary to the Government’s information, the first minor is still being detained with adults, in particularly harsh conditions. In fact, there are no rooms in Ataka police station that are segregated from adults, in violation of article 10 (2) (b) of the International Covenant on Civil and Political Rights and of the Egyptian Child Law. The first minor has never been examined by a doctor since he was admitted to the police station, impeding the possibility to prove the acts of torture to which he is reported to have been subjected. He is still detained in the police station while his case has been referred to a criminal court that postponed his trial.

27. Regarding the second minor, the source reports that he was not detained inside a juvenile centre, but inside Ataka police station, with adults. Like his brother, he was refused the right to see a doctor and has not been able to prove the torture to which he was subjected. A court ordered his release on 13 May but he was only freed on 15 May, following two days of incommunicado detention by homeland security officers during which he was again subjected to ill-treatment.

28. The source reiterates his request that the Egyptian authorities release the first minor and that his psychological and physical state be guaranteed in the meantime.

29. The source recalls that the lawyer for the second minor made a written submission to the court claiming that it was irrational to attribute terrorist charges and facts to a child like the second minor. However, the judge did not take that into account, even if the second minor was released pending trial.

30. The source also maintains the authorities should open investigations into the torture and ill-treatment of both minors and, should they be confirmed, prosecute the perpetrators.

Discussion

31. In paragraph 13 of its opinion No. 57/2011 (Egypt), the Working Group recalled that, with respect to the detention of minors, article 37 (b) of the Convention on the Rights of the Child, to which Egypt is a party, states that the arrest, detention or imprisonment of a child should be in conformity with the law and should be used only as a measure of last resort and for the shortest appropriate period of time. Article 37 (d) also states that every child deprived of his or her liberty should have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

32. The Government did not challenge the fact that, in violation of those requirements, the two minors were detained without any access to legal and other appropriate assistance, without the possibility to challenge the lawfulness of their detention before a judge. In fact, since their arrest and throughout the pretrial proceedings, they have never been brought before a judicial authority. These violations also constitute grave breaches of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

33. Moreover, in violation of the Egyptian Child Law, according to which a child under 15 years of age can be held in preventive detention for a period not exceeding one week, the second minor, who was 14 years old, was held in detention for several months.

34. The Working Group also refers to the interpretation provided by the Committee on the Rights of the Child that, as part of a comprehensive policy for juvenile justice, States parties should develop and implement a wide range of measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care, as provided for in article 40 (4) of the Convention on the Rights of the Child.¹ These requirements have been ignored in the case under consideration.

35. Furthermore, the Government failed to provide any information on whether an independent and impartial investigation was conducted into the specific allegations of torture and ill-treatment. Instead, the Government merely contends that there is no evidence that they were subjected to torture or ill-treatment during their detention.

36. The Working Group also concurs with the Human Rights Committee that the pretrial detention of juveniles should be avoided to the fullest extent possible.²

¹ Committee on the Rights of the Child, general comment No. 10 (2007) on children's rights in juvenile justice, para. 23.

² General comment No. 35 (2014) on liberty and security of person, para. 38.

37. The Working Group considers that in this case the non-observance of the international norms on the rights to a fair trial, liberty and security, provided for in article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, is of such gravity as to give the deprivation of liberty of both minors an arbitrary character.

38. The deprivation of liberty of both minors thus falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

Disposition

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

The deprivation of liberty of the first and second minors is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights and article 37 of the Convention on the Rights of the Child; it falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

40. Consequent upon the opinion rendered, the Working Group requests the Government to take the steps necessary to remedy the situation of both minors and bring it into conformity with the standards and principles enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

41. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to release the first minor (given the fact that the second minor has been released awaiting trial) and accord them both an enforceable right to compensation in accordance with article 9 (5) of the International Covenant on Civil and Political Rights.

42. In accordance with article 33 (a) of its methods of work, the Working Group considers it appropriate to refer the allegations of torture and other ill-treatment to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and to the Special Rapporteur on the promotion and protection of human rights while countering terrorism, for appropriate action.

[Adopted on 4 December 2015]