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*Permanent Mission of the Arab Republic of Egypt
to the United Nations Office
of International Organisations
in Geneva*



البعثة الدائمة لجمهورية مصر العربية
لدى الأمم المتحدة
والمنظمات الدولية
في جنيف

URGENT & CONFIDENTIAL

CHAN. 2014-197

The Permanent Mission of the Arab Republic of Egypt to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR-Special Procedures Branch), and with reference to the press release jointly issued on June 30th 2014 by a number of Special Procedures Mandate Holders titled "UN Experts Outraged at Confirmation of 183 Death Sentences", it would be most appreciated to transmit the following to the Mandate Holders who associated themselves with the aforementioned press release:

- 1) It is deeply disappointing that a press release issued by human rights experts instigates the executive authority to violate the principles of separation of powers, independence of the judiciary, and rule of law. These constitutionally enshrined principles constitute core foundations for the process of democratic transition currently underway in Egypt. The Egyptian Government is under constitutional obligation to respect these principles, is committed towards upholding judicial independence and rule of law, and is expected to vigilantly intervene to prevent any attempt to interfere or influence the work of the Egyptian judicial authority, which is known historically for its deeply-rooted tradition of impartiality and independence.
- 2) In this connection, we register unequivocal rejection to any explicit or implicit questioning of the independence or integrity of the Egyptian judicial system, and we consider this as an illegitimate direct affront against the national sovereignty of a Member State and the integrity of its institutions. The Government of the Arab Republic of Egypt is also concerned that divergence in points of view concerning some cases is being used to pronounce absolute and unjustified value judgments in relation to the performance of the national institutions in the country.
- 3) While disregarding the vast and detailed material that has been conveyed concerning previous decisions to refer the case files of a number of defendants to the Grand Mufti, the Mandate Holders continue to insist on basing their arguments on imprecise and false information and lack of understanding of the Egyptian criminal law and criminal procedures code. This persistence on adopting positions based on flawed assumptions

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raises a lot of question marks concerning the purpose of this press release, bearing in mind that the Permanent Mission of the Arab Republic of Egypt to the United Nations and Other International Organizations in Geneva had officially requested a few days postponement of the issuance of the press release to enable furnishing further information. This request was declined.

- 4) The Permanent Mission of the Arab Republic of Egypt to the United Nations and Other International Organizations in Geneva seizes this opportunity to highlight that the defendants sentenced to death penalty in the aforementioned case were accused of murder, attempted murder, acts of violence and vandalism. It is noteworthy that the convicted persons can appeal this first-instance court.
- 5) The Government of the Arab Republic of Egypt reserves its right, in accordance with its respective obligations under international human rights law, to apply the death penalty, as a criminal justice tool, against the most serious crimes, while fully respecting the necessary safeguards that should surround death penalty sentences and application.
- 6) It was very difficult to understand the purpose of inserting a reference to another case concerning a number of journalists that were sentenced to 7 to 10 years of imprisonment in a press release tackling a court sentence to apply capital punishment. This adds to the reasons of our negative assessment of the press release and its value added.

Nevertheless, emanating from Egypt's commitment towards constructive dialogue, attached herewith are the following:

- a) A note verbale previously conveyed to the High Commissioner for Human Rights concerning the safeguards and guarantees surrounding the sentencing and application of death penalty in Egypt.
- b) A statement by the Office of the Public Prosecutor of the Arab Republic of Egypt concerning the case of the journalists affiliated to the Qatari Al-Jazeera Channel "The Marriott Cell".

The Permanent Mission of the Arab Republic of Egypt to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights (OHCHR-Special Procedures Branch), the assurances of its consideration.

Geneva

10 July 2014

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Unofficial Translation
Of the Statement Issued by the Office of the Public Prosecutor

Giza Criminal Court issues preventive verdict in the case of the correspondents of the
Qatari Al-Jazeera channel, known in the media as the "Marriott Cell"

- The Public Prosecutor had referred 20 defendants, including four foreigners (an Australian citizen, a Dutch citizen, and two British citizens) to trial before a criminal court. The Egyptian defendants were charged with joining a terrorist group which aims to obstruct the law and prevent state institutions from carrying out their work, in addition to transgressing against the personal freedoms of citizens, harming national unity and the security of the society, and utilizing terrorist methods to achieve its goals. The foreign defendants were charged with participating with the Egyptian defendants in these crimes by scheming with them as well as assisting them by providing them with funds, information, and equipment, with full knowledge of the intentions of this group. The foreign defendants were also charged with possession of printouts and recordings which propagate for the intentions of the terrorist group, to be shown to others and presented before the public in Egypt and abroad, with the aim of giving the impression to foreign public opinion that Egypt is undergoing a civil war, in order to weaken the state and its standing, harm the national interests of the country, agitate public security, spread terror among the people, and damage public interests. The foreign defendants were also charged with possession of unlicensed communication, recording, broadcasting, and transmission equipment; investigations revealed that they had been utilizing two wings in a luxurious Cairo hotel as an advanced media center, to gather media materials, manipulate them, and produce fabricated scenes of events in Egypt and broadcast them via the Qatari Al Jazeera channel, in order to assist the terrorist Brotherhood group in achieving its aims.
- The criminal court looked into the case over several consecutive sessions and heard the arguments of the public prosecutor and the defense, as well as the testimony of witnesses from both sides. The criminal court then issued a verdict on the 23rd of June 2014, sentencing eleven of the defendants, including a Dutch citizen and two British citizens, with prison sentences of ten years each, while another seven defendants, including the Australian journalist, were handed seven year sentences. Another defendant received an additional three year prison sentence for the crime of possession of a round of ammunition. They were also fined five thousand Egyptian pounds, and the equipment and filmed footage that were found in their possession were confiscated. Two defendants were cleared of all charges.

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CHAN.2014.143

Urgent

The Permanent Mission of the Arab Republic of Egypt to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, and with reference to press release issued by the High Commissioner for Human Rights on April 29th 2014 entitled "Mass Imposition of Death Penalty in Egypt Outrageous";

The Permanent Mission of the Arab Republic of Egypt to the United Nations Office and International Organizations in Geneva reiterates its absolute rejection of any attempt to comment or intervene in the independent work of the judicial authority. Guided by the Egyptian Constitution, the Egyptian Government is bounded to fully respect the principles of independence of judiciary, rule of law, and separation of powers. The Government of Egypt expects all stakeholders, at the national level and abroad, to share its views on the necessity of respecting these constitutional principles, which represent indispensable elements for consolidating a stable and sustainable democracy.

Bearing in mind the aforementioned, the Permanent Mission of the Arab Republic of Egypt to the United Nations Office and other International Organizations in Geneva seizes this opportunity to highlight several remarks addressing the factual inaccuracies that were noticed in the abovementioned press release:

- Menya Criminal Court issued on the 28th of April 2014 a decision to refer the case file of 683 defendants to His Eminence the Grand Mufti of Egypt seeking his Shari'a-based opinion on the permissibility of the application of death penalty sentence on these defendants.
- The defendants in this case were accused of crimes including murder, attempted murder, acts of violence, and vandalism in the events that took place in the Governorate of Menya in August 2014.
- The decision to refer the defendants' papers to His Eminence the Grand Mufti, seeking his advisory opinion ahead of the pronouncement of the verdict, in accordance with Article 381

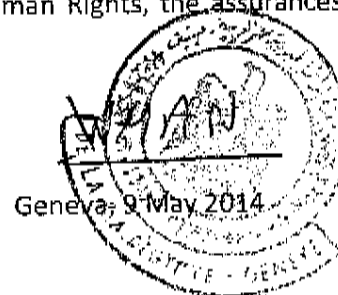
of the Criminal Procedures Code, does not constitute a verdict, and does not necessarily imply that a verdict will be issued sentencing all the defendants to death.

- Sentences that might be issued at a latter stage in this case are not final or definitive. The Public Prosecutor, in respect to rule of law and consolidation of justice, takes the necessary measures to pursue an appeal before the court of cassation. In accordance with Article 46 of the Law no. 57/1959, the Public Prosecutor, provided that the sentences were issued in presence of defendants, is compelled, irrespective of the intention of the other parties to the case to cassation and regardless of the point of view of the Public Prosecutor on the contestability of the verdict, to appeal the sentences before the Court of Cassation accompanied with an opinion on the sentences.
- Article 395 of the Criminal Procedures Code stipulates that sentences of conviction issued in absentia have an effect of deterring nature, and that they are annulled immediately after the arrest of the defendant or appearing voluntarily before justice. These defendants are to be subject to a re-trial, and the verdict to be issued by the new trial is also subject to appeal.
- It is noteworthy that the aforementioned procedures were applied in relation to a previous decision issued concerning another case by Menya Criminal Court on the 24th of March 2014 to refer the case files of 529 defendants to His Eminence the Grand Mufti. On April 28th 2014, the Court issued a verdict sentencing only 37 defendants to death, while 492 were sentenced to life-imprisonment. The death sentences were immediately appealed before the Court of Cassation by the Public Prosecutor.
- The provisions of the new Egyptian Constitution provide for all the guarantees and safeguards that might be relevant in this regard, including: "Rule of law and independence and impartiality of the Judiciary as fundamental safeguards for rights and freedoms" (Article 94), as well as "Due process and right to fair trial" (Articles 95, 96, 97, and 98).
- While maintaining its sovereign right to apply the death penalty sentence, as an instrument of criminal justice, as allowed for by Article 6 of the International Convention of Civil and Political Rights (ICCPR), which Egypt ratified on January 14th, 1982, the Government of the Arab Republic of Egypt is committed to utmost respect to the safeguards prescribed by ICCPR in relation to the application of death penalty (Articles 6 {2-4-5} and 14).
- In line with the serious and irreversible nature of death penalty, and in accordance with Egypt's respective obligations under International Human Rights Law, the Egyptian law ensures surrounding the application of this sentence by numerous safeguards providing for the protection of human dignity as well as highest standards of fair trial, including:

- a) Application of death penalty is restricted to the most serious crimes, and defendants sentenced to it enjoy the maximum level of protection safeguards provided by law.
- b) Article 381 of Criminal Procedure Code necessitates that the verdict to apply a death penalty sentence is taken unanimously by the competent court.
- c) Seeking the opinion of His Eminence the Grand Mufti prior to issuing the verdict.
- d) Committing the Public Prosecutor to appeal the sentence before the Court of Cassation, and ensuring a re-trial for those sentenced in absentia, if they were arrested or appeared before justice.
- e) Sentences, once final and definitive, have to be immediately presented to the President of the Republic (Article 470 of the Criminal Procedure Code), and anyone sentenced to death shall have the right to seek pardon or amnesty or commutation of the sentence.
- f) The Impermissibility of applying death penalty on persons below 18 years of age at the time of committing the crime (Article 111 of the Child Rights Law no. 12/1996 amended by the Law no. 126/2008), as well as on pregnant mothers until 2 months after delivery.
- g) Articles 470 to 477 of Criminal Procedure Code and Articles 65 to 72 of the Law on Prisons provide for utmost guarantees to ensure that the dignity, humanity, and religious feeling of the sentenced person are respected.

Annexed to this Note Verbale is a memorandum explaining in further details the guarantees surrounding the application of death penalty sentence under the national constitutional and legal framework, as well as vis-à-vis Egypt's obligations under International Human Rights Law.

The Permanent Mission of the Arab Republic of Egypt avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights, the assurances of its utmost consideration.



Office of the High Commissioner for Human Rights

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Second: Articles in the Egyptian Constitution for 2014 pertinent to the Rule of law:

Article (94):

Rule of law shall be the basis of governance in the State. The State shall be subject to the Law; independence of the Judiciary, its immunity and impartiality shall constitute fundamental guarantees for the protection of rights and freedoms.

Article (95):

Penalty shall be personal. Any criminal offence or penalty shall be determined only on the basis of law. A penalty shall be imposed only by virtue of a verdict and punishment shall be only for acts committed subsequent to the effective date of the law.

Article (96):

The defendant shall be presumed innocent until proved guilty in a fair legal trial that ensures self-defense guarantees. The law shall govern contestations against criminal offence verdicts. The State shall provide protection for victims, witnesses, defendants and whistleblowers, when appropriate, in accordance with law.

Article (97):

The right to litigate shall be protected and guaranteed for all. The State shall be committed to consider proximity of court sites and to speed up decision on cases examined. No administrative action or decision shall be immune against judicial control. Each person shall stand trial only before his natural judge. Exceptional courts shall be banned.

Article (98):

The right to defense on one's own behalf or by proxy shall be guaranteed. Independence of attorneys and the protection of their rights shall guarantee the right to defense. The law shall ensure for

those who cannot afford it means and ways of having recourse to courts and defending their rights.

Article (99):

Any attack on the personal freedom or privacy of citizens or other public rights and freedoms guaranteed by the Constitution and Law shall be deemed a crime, the criminal or civil action arising in connection with it shall not be dropped by prescription. The injured party may directly institute a criminal action.

The State shall guarantee a fair compensation for the party subject of unlawful attack. As prescribed by law, the National Council for Human Rights may report to the Public Prosecution on any violation of these rights and may intervene in the civil action on the side of the injured party upon request.

Third: International Death Penalty Standards

Article (6) of the International Covenant on Civil and Political Rights adopted by the General Assembly resolution issued on 16 December 1966 and ratified by Egypt on 14/1/1982, cites that:

1- Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2- In countries which have not abolished the death penalty, the sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

4- Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5- Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age, and shall not be carried out on pregnant women.

Therefore, the International Human Rights Law traditionally acknowledges the States' right to carry out the sentence of death as a penalty imposed for the most serious crimes (felonies) upon a final judgment rendered in a fair legal trial by an independent competent court. The Human Rights Committee explains that at the time Article (6) of the Covenant has approved the sentence of death, it obligated states parties to apply subject restrictions for its execution, which can be summarized as follows:

- The imposition of the sentence of death should be limited to the most serious crimes;
- It is mandated that the sentence of death is imposed in accordance with the law in force at the time of the commission of the crime in observance of the principle of legality in terms of offences and penalties.
- Steering clear of any prohibited reasons involving discrimination solely on the ground of race, color, sex, language, religion or social origin (Article 2/1 of the Covenant). Everyone shall be entitled to minimum judicial guarantees as articulated in the Covenant, primarily the principle of full equality.
- The admissibility of carrying out the penalty only upon a final judgment rendered by a competent court. In other words, the sentence of death shall be passed after trials that have fulfilled fair justice requirements provided for in Article (14) of the Covenant.

- Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age, and shall not be carried out on pregnant women.
- Anyone sentenced to death shall have the right to seek pardon or amnesty or commutation of the sentence.
- The inadmissibility of carrying out the sentence of death in a manner that is cruel or degrading to human dignity in contravention with Article (7) of the Covenant.¹

Therefore, anyone sentenced to death in the absence of respect for these guarantees; his right to life shall be deemed violated.

Fourth: Death Penalty Procedures and Guarantees in the Egyptian Law:

Mindful of the serious literature of capital punishment and its impossible reversion if carried out based on a sentence by default, the law was set to align this penalty with procedures which in fact are guarantees ensuring fair impartial trial for the defendant facing it during which he shall be fully entitled to defend himself:

- The Egyptian legislator has taken good care to preclude the sentence of death except for the most serious crimes i.e. criminal offences or felonies. This was aimed to grant the defendant guarantees for a fair trial before the Criminal Court with its

¹ Considered as a breach of the provisions cited in Article 7 of the Covenant is the execution by gas for its irrelevance with the criterion of causing "the least degree possible of bodily or mental pain and involves inhuman cruel treatment."

proceedings set forth in Articles 366 and 379 of the Penal Code. Further, the above are considered to be the maximum guarantees provided for in the Egyptian legislation to ensure that the defendant stands a fair trial during which he is fully entitled to employ any and all means of self-defense.

- It is mandatory to reach a consensus by all judges of the court regarding the sentence of death- in pursuance of Article 381 of the Penal Code - notwithstanding the general rule in the rendering of judgments that gives preference to the majority rather than unanimity of the judges' opinions. This is justifiable in the sense that the legislator was keen on escorting the sentence of death with a procedural warrant ascertaining the rendering of the judgment on the grounds of full unswerving faith in the perpetrator's commission of the crime as well as integration of the evidences of the case and the validity of its proceedings. If the above mentioned was not to the entire satisfaction of any of the judges, the sentence of death will be invalidated.
- Seeking the prior counsel of His Eminence the Grand Mufti with respect to the admissibility from the Islamic point of view of rendering the sentence of death. Article 381 of the Penal Code in the last part of its second paragraph has stipulates: "The Court shall have before rendering the judgment to take the opinion of the Grand Mufti of the Republic first and to send him the case file. If the Grand Mufti's opinion was not communicated to the Court within the following ten days of his receipt of the said file, the Court shall rule in the case. The Court shall exclusively be committed to send the case file to the Grand Mufti and to wait for 10 days for him to give his opinion. If the court happens to issue a sentence of death without sending the file or before the Grand Mufti imparts his opinion in ten days time after receipt of the file,

the ruling shall be revoked. The court shall not otherwise be committed to wait for the Grand Mufti's opinion for more than the ten (10) days assigned for his reply and thus it shall not be bound by his opinion. This procedure serves to reassure the indicted defendant that the sentence of death is not at variance but rather is in agreement with the Islamic Law (Shari' a).

- Presenting the case of the defendant sentenced to death to the Court of Cassation. Article 46 of Law no 57/1959 on cases and procedures of appeal before the Court of Cassation stipulates that "If the defendant was tried and sentenced to death in his presence, the Public Prosecution shall have to present the case, supported with its opinion vis-à-vis the sentence, to the Court of Cassation on the date specified in Article 34. By so doing, the legislator intends to put forward to the Court of Cassation all the sentences of death rendered in the presence of the defendants without depending on whether or not these verdicts will be subject to² appeal by parties to the criminal action with a view to verify consistency of these verdicts with law. The Public Prosecution shall abide by the above-mentioned even if the verdict, from its point of view, was not contestable.

2- Article 111 of Child Law no 12/1996 modified by Law no 126/2008 stipulates that:

"The defendant who is fully below eighteen years of age at the time of the commission of the crime shall not be subject to sentence of death, or life imprisonment or rigorous imprisonment".

Without prejudice to Article (17) of the Penal Code, if a child who is over 15 years of age commits a crime whose penalty is either sentence of death or life imprisonment or rigorous imprisonment, he shall be sentenced to prison, and if the crime is penalized by imprisonment, he shall be jailed for a period not less than 3 months.

The Court may commute the prison penalty to the measure set forth in item (8) of Article (101) of this Law.

If the child who is over fifteen years of age commits a misdemeanor for which imprisonment is a penalty, the Court may instead apply to him one of the measures cited in items 5, 6 or 8 of Article 101 of this Law.

3- As a justification of this procedure, it can be said that against the background of the serious penalty, the indicted may be given a last chance by submitting the verdict to the President of the Republic who is authorized either to grant pardon or to commute the sentence as he may deem fit.

- The inadmissibility of sentencing to death the defendant who is below eighteen (18) years of age at the time of the commission of the crime in application of Article 111 of the Child Law no 12/1996, modified by Law no 126/2008.²
- Once the sentence of death was final, the case file shall be referred forthwith to the President of the Republic and the sentence shall be carried out if the defendant was not pardoned or the penalty commuted in 14 days time (Article 470 of the Penal Code).³

To this end, the Egyptian legislator was concerned with developing stringent controls for the carrying out of the sentence of death. These controls were provided for in Articles 470 – 477 of the Penal Code and Articles 65 -72 of the Prison Law, in which it has been observed that the execution process does not involve torture and that the religious feelings of the indicted should be attended to and his human dignity respected as follows:

- Supervision of the Public Prosecution over the carrying out of the sentence upon a written request from the Prosecutor-General to the Head of the Prison Service. It is to be mentioned in the request that the sentence was presented to the President of the Republic in accordance with Article 470 of the Penal Code and that no pardon was issued and that the sentence was not commuted (Article 65 of the Prison Law). The process should take place with the attendance of a deputy of the Prosecutor-General, the Prison Governor, Representative of the Prison Service, the Prison Doctor and another doctor delegated by the Public Prosecution. No one

else other than those mentioned above shall be permitted to attend except by a special permission from the Prosecution.

The lawyer of the indicted should be allowed to be present if he so requests and if the indicted is willing to express himself, the Prosecutor is to include his statements in a proces-verbal.

- The sentence of death should not be carried out on official holidays or respective religious occasions for the indicted (Article 475 of Penal Code, Article 67 of the Prison Law).
- Relatives of the person sentenced to death may see him on the day of execution but away from the site assigned for the process (Article 472/1 Penal). If the religion of the indicted dictates his pre-death confession or the performance of other religious rituals, facilities should be made to arrange his meeting with a clergyman (Article 472/2 Penal).
- The sentence of death on a pregnant woman shall stay of execution until 2 months after delivery (Article 476 of Penal Code, Article 68 of the Prison Law).