

TIME RECEIVED

February 5, 2015 9:36:54 AM GMT+01:

REMOTE_CSID
41 22 7384415

DURATION
194

PAGES
14

STATUS
Received

05/02/2015 10:28

41-22-7384415

MISSION EGYPTE

PAGE 01/14

*Permanent Mission of the Arab Republic of Egypt
to the United Nations Office, World Trade
Organization & Other International Organizations
in Geneva*



البعثة الدائمة لجمهورية مصر العربية
لدى الأمم المتحدة ومنظمة التجارة العالمية
والمنظمات الدولية الأخرى
في جنيف

URGENT

CHAN. 2015. 015

The Permanent Mission of the Arab Republic of Egypt to the United Nations Office, World Trade Organization, and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (Special Procedures Branch), and pursuant to the Note Verbale CHAN.2015.013 on January 27th 2015 regarding the reply and comments of the Government of the Arab Republic of Egypt on the Joint Urgent Appeal dated December 23rd 2014 concerning "Alleged recommendation of death sentences against 188 individuals in Egypt, following unfair trials on charges related to an attack on the Kerdasa Police Station in the Giza Governorate" (Ref: UA EGY 14/2014), has the honor to attach herewith the additional information furnished by the Government of the Arab Republic of Egypt in relation to the allegations included in the aforementioned Joint Urgent Appeal, and looks forward that the enclosed information be brought to the attention of the mandate-holders who presented the aforementioned joint communication, and be duly reflected in the relevant communications report to be submitted to the Human Rights Council.

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

Geneva, 3rd February 2015



**Office of the High Commissioner for Human Rights (Special Procedures Branch)
Palais des Nations, CH-1211, Geneva 10
Fax: +41-22 917 9006**

PERMANENT MISSION OF THE ARAB REPUBLIC OF EGYPT
TO THE UNITED NATIONS & OTHER INTERNATIONAL ORGANIZATIONS
49 AVENUE BLANC, 1202 - GENEVE
TEL: +41-22-731.6530 FAX: +41-22-738.4415
mission.egypt@ties.itu.int

(Translated from Arabic)

Memorandum on the appeal made by mandate holders concerning judicial proceedings in the case of the Kirdasa massacre

According to a letter received from the Ministry of Foreign Affairs, the mandate holders' appeal states that, on 2 December 2014, an Egyptian criminal court recommended the death penalty for 188 persons, including 34 in absentia, on charges of having attacked the Kirdasa police station, killing 11 police officers and two civilians. The appeal further states that the court failed to follow judicial standards in pronouncing mass death sentences which are viewed as a form of collective punishment and which fall short of international human rights standards and laws.

The appeal also states that Mrs. [REDACTED], though not involved in any of the acts relating to the attack on the Kirdasa police station, had been arrested in order to force her sons to hand themselves in to the authorities, but was not released even after their arrest. According to the appeal, she was subjected to torture, beatings and electric shocks and one of her sons was tortured and sexually assaulted in front of her in order to make them confess to the charges against them. The torture was said to have taken place at times in the presence of a representative of the State Prosecution Office.

We have deemed it appropriate to respond to the mandate holders' allegations, as contained in the letter from the Ministry of Foreign Affairs, in the following manner:

Firstly, the legal and procedural safeguards concerning the death penalty under Egyptian law will be explained, making it clear that this penalty is applied only in respect of the most serious crimes and on the basis of convincing evidence. Persons sentenced to death enjoy certain safeguards and have the right of appeal. **Secondly**, the facts concerning the so-called "Kirdasa massacre", as well as the legal procedures followed, will be set forth. **Thirdly**, we will respond to the allegation that Mrs. [REDACTED] and her sons were subjected to torture.

A. Legal safeguards concerning the death penalty

The death penalty under Egyptian law:

In view of the nature and irreversibility of the death penalty, Egyptian law contains a number of substantive safeguards regarding the circumstances in which this penalty can be applied, procedural safeguards regarding sentencing and other safeguards regarding its enforcement. All these points will be dealt with below.

1. The legislative context of the death penalty:

Egyptian law prescribes the death penalty for a particular category of very serious offences the gravity of which is deemed to warrant the imposition of that penalty on their perpetrators. These offences, which are specified in the Criminal Code, include: offences whereby an external agent harms the security of the State (arts. 77 et seq.); offences whereby an internal agent harms the security of the State (arts. 89 et seq.); offences under the section on explosives (art. 102, paras. (b) and (c)); disruption of communications (art. 168); murder with premeditation or by lying in wait (art. 230); murder by poison (art. 233); complicity to murder (art. 235); deliberate arson leading to a person's death (art. 257); abduction by ruse, and rape, of a woman (art. 290); bearing false witness as a result of which a person is executed (art. 295). Other offences punishable by the death penalty can be found in article 26 of the Arms and Munitions Act No. 394 of 1954, which prescribes penalties for the possession of arms with intent to undermine public security, the system of

HRC/NONE/2015/18

GE.15-02587 (E) 200415 200415

1502587

Please recycle



governance or constitutional principles, and in articles 33, 34, 34 bis, 40 and 41 of the Narcotic Drugs Act No. 182 of 1960.

2. Procedural safeguards regarding death sentences:

In addition to the normal procedural safeguards in criminal trials, the law makes provision for special safeguards in cases involving the death penalty.

Firstly, the law departs from the norm whereby court judgements are delivered by a majority decision and clearly states that death sentences must be delivered by a *unanimous* decision. Article 381, paragraph 2, of the Code of Criminal Procedure stipulates that “a criminal court can impose a death sentence only by unanimous decision of its bench”. This is obviously intended to provide the highest possible degree of certitude when pronouncing death sentences within the context of human justice which, by its very nature, is fallible.

Article 381, paragraph 2, of the Code of Criminal Procedure further stipulates that: “Before pronouncing such a sentence, the court must seek the opinion of the Mufti of the Republic and send the case file to him. If his opinion has not reached the court within ten days after the file is sent to him, the court shall rule on the case.” Under paragraph 3 of the same article: “If the office of Mufti is vacant or if he is absent or impeded in any way, the Minister of Justice shall assign a substitute for him.” The court is obliged to seek the Mufti’s opinion and await his response only for the prescribed period; failure to abide by this requirement per se invalidates the sentence imposed. The court is not obliged to await the Mufti’s opinion for longer than the prescribed period or to follow that opinion or refer thereto in the court’s sentence; this in no way affects the validity of the sentence. The purpose of this procedure is to give persons sentenced to death, as well as the general public, an assurance that the sentence imposed is in accordance with the provisions of the Islamic sharia.

Finally, in order to provide an additional assurance of a higher level of judicial scrutiny of death sentences, article 46 of Act No. 57 of 1959, concerning the circumstances and procedures for lodging an appeal in cassation, stipulates that: “The State Prosecution Office shall refer a death sentence pronounced in the presence of the defendant to the Court of Cassation, accompanied by its own opinion on the sentence, within the period specified in article 34 hereof.” The aim of this measure is to provide an additional means to ensure that death sentences have been pronounced in accordance with the law, even if the convicted person does not appeal the sentence or if the State Prosecution Office does not find any legal grounds for an appeal. The period specified is 60 days from the date of pronouncement of the sentence. However, the obligation of the State Prosecution Office to lodge an appeal is not extinguished on the expiration of that deadline as the intention of legislature in imposing the deadline was solely to urge the State Prosecution Office to express its opinion. The Court of Cassation will examine the case even if it is presented after the expiration of that deadline or if the State Prosecution Office has failed to present a memorandum giving its opinion on the sentence.

II. The facts of the case forming the subject of the allegations, and the legal measures taken in connection therewith

It emerged from investigations conducted by the State Prosecution Office that, on 12 August 2013, 21 of the accused persons, all of whom belonged to extremist religious groups, met at the house of the accused [REDACTED], who was a member of the Muslim Brotherhood as well as being a candidate of the Freedom and Justice Party who was elected to the previous parliament (People’s Assembly). They agreed with him on the escalatory measures that they intended to take if the sit-ins at Rabaa Al-Adawiya and Al-Nahda Squares were dispersed, the imminent possibility of which was being mooted in the media. During that meeting, the leaders assigned roles to themselves

and to other persons present and decided who would participate directly or assist in the planned action and who would provide material support.

On 14 August 2013, once the operation to disperse the sit-ins had been launched, they began to carry out the roles assigned to them. Some of them brought weapons which had previously been supplied by supporters of terrorism for that purpose while others used loudspeakers to encourage the inhabitants of the towns of Kirdasa and Nahya to gather in the mosques and streets and move towards Kirdasa police station, to which end cars and other means of transport were provided. They also blocked all the town's entry and exit points to prevent the arrival of security reinforcements or the escape of the police officers.

Some groups then began throwing stones, bottles, burning car tyres and Molotov cocktails at the police station, at which shotguns and automatic weapons were also subsequently fired. The police officers in the station at the time responded by launching tear gas canisters and firing shots into the air. The armed attackers then fired RPGs at an armoured police vehicle in front of the station and at the perimeter wall of the station itself, killing two police recruits and spreading panic among the other recruits who abandoned their posts and sought refuge inside the station building. Its defences thus weakened, the attackers were able to break into the station and surround and disarm the police officers who surrendered, having been promised that they would be allowed to leave in safety.

However, the attackers broke their promise and the groups that had seized the unarmed officers began attacking them using fists, knives, sticks and cudgels. Finally, the debilitated officers were taken to a motorcycle repair shop in front of the Salamat al-Sha'ir Mosque near the police station. There the crowd took turns in attacking the officers while keeping them surrounded in order to prevent them from escaping. At that point, their leader, the accused [REDACTED], arrived and fired a volley of shots at the policemen, killing some and injuring others.

Immediately prior to that, a number of other officers had attempted to escape from the station in the direction of Al-Siyahi Street but the accused persons managed to overpower them and the following victims were killed: [REDACTED], auxiliary police officer [REDACTED] and [REDACTED]. Another victim, Colonel [REDACTED], the deputy police chief, suffered a violent attack during which he was severely beaten and the veins of his left hand were severed. He was taken in a truck belonging to the accused [REDACTED], to the town of Nahya where the accused persons, revelling in what they had done, paraded him around before taking him to the house of a person who had died in the disturbances in one of the squares with the intention of killing the officer in revenge. However he died before they could do so and his body was abandoned in the town.

A total of 14 officers and other police ranks, as well as two civilians, lost their lives as a result of these events while others were injured. Inquiries conducted by the criminal investigation department and the national security forces on 19 August 2013, 7 September 2013 and 16 September 2013 led to the identification of a number of suspects, some belonging to extremist religious groups and others being common criminals, against whom the State Prosecution Office issued arrest warrants.

On 19 September 2013, police units supported by the armed forces moved into Kirdasa and Nahya in order to execute those arrest warrants. A number of suspects were arrested while others resisted arrest as a result of which a police recruit was injured. The arrests then continued until a total of 241 persons had been detained; a further 92 suspects managed to escape, making a total of 333.

The State Prosecution Office began the investigation proceedings and interrogated the suspects after informing them of the charges against them and the relevant penalties and telling them that the State Prosecution Office was investigating those charges both in its

own headquarters and, when suspects could not be brought to headquarters for security reasons, in police stations. The State Prosecution Office also heard the testimony of 104 witnesses for the prosecution whose statements were fully entered in the investigation records.

The State Prosecution Office decided to exclude 145 suspects from the list of those to be referred for trial; of those, 98 were released because of insufficient evidence. A total of 188 suspects were finally charged and referred for trial and, on 12 February 2014, their case files were transmitted to the Cairo Court of Appeal so that it could schedule a substantive hearing of the case. It was decided that the case would be heard by the fifth division of the Giza Criminal Court, which held its first hearing on 27 March 2014. The trial entailed around 25 hearings during which all the defence petitions were considered and entered in the record of the proceedings. Thirty-one witnesses were called to testify and, with the permission of the court, were cross-examined by the defence lawyers. In response to a request made by the defence, the court also ruled that some of the defendants should undergo a medical examination to determine their state of physical and mental health. Video evidence was also viewed and examined. On 13 October 2014, the court heard the closing submission and requests of the State Prosecutor. The closing submissions of the defence were heard over a number of consecutive sittings and, on 2 December 2014, the court decided to refer the case file to His Eminence the Mufti of the Republic to seek his legal opinion on whether there were elements in the case that justified the death penalty under sharia law. The trial was adjourned until 24 January 2015 for sentencing.

In this connection, it is noteworthy that the court's decision to refer the case file to the Mufti of the Republic does not in itself in any way imply that a death sentence will be pronounced; it is a mandatory procedure that the court must follow before imposing a sentence of death, even on a single defendant.

Having set forth the facts of the case and the legal measures taken, the following points can be made:

- The State Prosecution Office questioned a number of suspects in connection with criminal acts, taking no account of their religious beliefs, gender or ideology, and, after gathering oral and forensic evidence against them, charged them with criminal offences and referred the case to the competent court;
- The State Prosecution Office was obliged to ensure that a lawyer for the suspects was present during their interrogation, pursuant to article 124 of the Egyptian Code of Criminal Procedure which stipulates that, in cases involving felonies or misdemeanours which carry a mandatory penalty of imprisonment, the investigator may not interrogate a suspect or confront him with other suspects or witnesses without inviting his defence lawyer to attend. If the suspect does not have a lawyer, or if his lawyer fails to attend after having been invited to do so, the investigator must appoint a lawyer *ex officio*;
- The proceedings were conducted in accordance with international fair trial standards;
- The case was heard by a regular court and not by a court of limited jurisdiction or a special court. Moreover, the sentence to be imposed on the convicted persons will not be definitive but open to appeal pursuant to the legal and constitutional principle whereby the administration of justice in the Arab Republic of Egypt is a two-level process. In fact, convicted persons may appeal against their sentence before the Court of Cassation pursuant to article 381 of the Egyptian Code of Criminal Procedure and article 30 of the Act concerning the circumstances and procedures for lodging an appeal in cassation;

- The decision issued on 2 December 2014 was not a judgement on the merits and did not sentence any of the 188 defendants to death. It was merely a request for a legal opinion from the Mufti of the Republic concerning the facts set forth in the case file, pursuant to article 381 of the Code of Criminal Procedure;
- The State Prosecution Office is legally bound to submit death sentences to the Court of Cassation, pursuant to article 46 of the Act concerning the circumstances and procedures for lodging an appeal in cassation, even if the convicted party has not lodged an appeal.

III. Response of the State Prosecution Office to the allegations concerning [REDACTED]

[REDACTED] was interrogated on 19 September 2013 after being informed of the charges against her and the relevant penalties and after being told that the State Prosecution Office was investigating those charges. She was then confronted with the evidence against her and the witness statements which, corroborated by the investigations, showed that, during the events of 14 August 2014, she had used her shoe to attack the victim, the Kirdasa police chief.¹ No visible signs of physical torture were found by the State Prosecution Office at that time, nor did she herself report such torture during her interrogation. In fact, the investigator asked her whether she had sustained any injuries and she replied that she had not. According to the case file, of all the suspects then present she was the only one who admitted to committing the offence and being present at the place of the incident. The other 81 suspects were interrogated and, without being subjected to any coercion, denied all the charges. This fact was entered in the record of the investigation. If any of the suspects showed signs of physical injury, that fact was likewise entered in the record of the investigation and the suspect was questioned as a victim. During proceedings before the State Prosecution Office for the extension of her remand in custody, [REDACTED] denied the charges against her and claimed that the confession she had made during her interrogation had been extracted under pressure from the criminal investigation officer. This allegation was entered in the record of the proceedings for the extension of her remand in custody.

Her son, [REDACTED], was interrogated on the same day and denied all the charges against him. He was later cleared of the charges due to lack of evidence and released.

[REDACTED], another son of [REDACTED], was arrested on 6 October 2013. He too was interrogated and denied all the charges against him.

The State Prosecution Office therefore believes that the allegations contained in the mandate holders' appeal are a misleading fabrication from which the international community should remain aloof. This is amply demonstrated by the information set forth above concerning the facts of this case and the legal measures taken to ensure that the defendants received a fair trial in accordance with international human rights standards.

Moreover, closer scrutiny reveals that the contents of the allegations are limited to reports gathered from the news media because the information that they contain is contrary to the facts.

For example, the allegations refer to acts of torture committed against the accused in the presence of a representative of the State Prosecution Office. This is unimaginable, especially as, under Egyptian law, a defence lawyer must be present during interrogations and failure to abide by that requirement invalidates the interrogation. According to article

¹ An act which, under the Egyptian Criminal Code, constitutes the offence of assault against a public official while he is carrying out his duties.

125 of the Code of Criminal Procedure, a lawyer must be present during the interrogation of anyone accused of a felony or misdemeanour punishable by a mandatory prison sentence. Moreover, if a suspect does not already have a lawyer of his own, the investigating authority has an obligation to appoint a lawyer ex officio to accompany him at every stage of the investigation. Furthermore the State Prosecution Office is part of the Egyptian judiciary and, as such, is an impartial and independent body which both investigates and files charges. It oversees all stages of the investigation, including the interrogation of suspects, the questioning of witnesses and the gathering of evidence in order to uncover the truth, irrespective of whether that means acquitting or convicting the accused. Accordingly, there is no truth to the allegation that the suspects were subjected to torture. In fact, the State Prosecution Office has no interest in extracting confessions during interrogations since its only objective is to ensure justice and discover the truth.

The allegation that the court recommended the death penalty for the defendants is based on nothing more than the request made by the court for the Mufti of the Republic to express his legal opinion on the charges against them. Since no sentence has yet been pronounced, the mandate holders' appeal was made before all domestic remedies had been exhausted. As has already been made clear, the sentence had not yet been imposed and, at all events, that it would be open to appeal by the convicted persons within 60 days from the date on which the substantiating grounds for the sentence are made known.

The number of victims in the Kirdasa case amounted to 14 police officers and other ranks and two civilians and not, as stated in the mandate holders' allegations, 11 police officers and two citizens. This is a further indication of the lack of precise information in the appeal, which was clearly based on inaccurate media reports.

In light of the foregoing, we believe that the mandate holders should take account of the information provided by the Egyptian authorities and not place their reliance on the inaccurate reports and information contained in the allegations forming the subject of the appeal. This will give them a fuller and more accurate picture, from the factual and legal standpoints, of the issues raised in those allegations.