

(Translated from Arabic)

Response to the joint urgent appeal from the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of human rights while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning the imposition of the death penalty on a number of terrorists prosecuted in terrorist cases

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I. Detention safeguards in Egypt and their compatibility with international norms

The Egyptian Constitution requires the safeguards for persons deprived of their liberty to be respected, in accordance with article 9 of the International Covenant on Civil and Political Rights. It also requires that they be brought before independent judicial authorities. The legislature has not provided for any exceptions to these guarantees save under counter-terrorism or emergency legislation. To that end, article 54 stipulates that: “Personal freedom is a natural right that is safeguarded and cannot be infringed upon. Aside from cases of flagrante delicto, no persons may be apprehended, searched, arrested or have their freedom restricted save on the basis of a reasoned judicial warrant necessitated by an investigation. All persons whose freedoms have been restricted shall be immediately informed of the grounds therefor, notified of their rights in writing, allowed to contact their family and lawyer forthwith, and brought before the investigating authority within 24 hours of the time at which their freedom was restricted. Questioning of persons may only begin once their lawyer is present. If they have no lawyer, a lawyer shall be appointed. Persons with disabilities shall be provided with all necessary assistance, in line with the procedures laid down by law. Persons whose freedom has been restricted and other persons are entitled to have recourse to the judiciary. A judgment must be handed down within a week of such recourse; otherwise the petitioner shall be immediately released.”

Article 55 of the Constitution stipulates that: “Persons who are arrested or detained or who have their freedom restricted shall be treated in a manner that preserves their dignity. They may not be subjected to torture, intimidation or coercion, or to any physical or mental abuse, and they shall be confined or detained only in places designated for the purpose and which comply with humanitarian and health standards. The State shall undertake to provide appropriate facilities for persons with disabilities. Any violation of the aforementioned provisions constitutes an offence and the perpetrator shall be liable to punishment in accordance with the law. Accused persons have the right to remain silent. Any statement shown to have been made by a detainee under any of the conditions described above, or the threat of such, shall be considered null and void.”

Article 56 stipulates that: “A prison is a place designed to promote reform and rehabilitation. Prisons and detention facilities shall be subject to judicial oversight. Actions that undermine human dignity or endanger a person’s health are prohibited. The law shall regulate the procedures for promoting the reform and rehabilitation of convicted persons, and for facilitating a decent life once they are released.”



In this context, national legislation provides for all the guarantees for persons deprived of their liberty enshrined in international treaties and the Egyptian Constitution and is consistent with such standards. The Public Prosecution Office is an impartial and independent branch of the judiciary that is entrusted with effective law enforcement, investigation of charges, launching of criminal proceedings, oversight of the enforcement of judgments and inspection of prisons. It is fully aware of the importance of human rights and of the international obligations of the Arab Republic of Egypt pursuant to the binding international treaties that it has ratified, and its moral obligations stemming from treaties for which the ratification procedures have not yet been completed or from relevant United Nations declarations, rules and guiding principles. These are the key means of access to justice and the key safeguards of personal and general rights and freedoms.

Article 40 of the Code of Criminal Procedure stipulates that: “No person may be arrested or incarcerated except pursuant to a warrant issued by the legally competent authorities. All persons shall be treated with dignity and may not be physically or morally abused.”

Article 41 stipulates that: “No person may be incarcerated except in prisons designated for the purpose and no prison warden may admit a person to a prison except pursuant to a warrant signed by the competent authority. No person shall be incarcerated for any period of time exceeding that specified in the warrant.”

Article 42 authorizes members of the Public Prosecution Office and judges to inspect prisons in accordance with their fields of competence. It stipulates that: “Any member of the Public Prosecution Office and any chief justice and vice-president of a court of first instance or a court of appeal may visit public and central prisons located within their areas of jurisdiction and ensure that no person is unlawfully detained. They may inspect the records of the prison and the warrants of arrest and incarceration and may take copies thereof. They may also communicate with any detainee and listen to any relevant complaints. Prison governors and personnel shall assist the persons concerned in obtaining any information they request.”

In addition, the legislature has provided for oversight of law enforcement officers by the judiciary in articles 85 and 86 of Prison Regulatory Act No. 396 of 1956. The Prosecutor General and his deputies in their areas of jurisdiction and representatives of the judiciary, that is to say presidents of appeal courts and courts of first instance and investigating judges, may enter prisons in their areas of jurisdiction at any time. The President of the Court of Cassation and his Deputy may also visit all prisons to ascertain that nobody has been unlawfully detained and to examine the prison records and arrest and detention warrants. Representatives of the judiciary may communicate with detainees and listen to their complaints, and the prison authorities are required to assist the representatives of the judiciary in obtaining any information they request. In light of the aforementioned rights granted by the legislature to the judiciary, there are no grounds for alleging that the situation of detainees has deteriorated and that their living and health-care conditions are inadequate, since the law requires the judiciary to take whatever steps it deems to be appropriate to ensure that all forms of detention are in line with legal requirements.

Articles 5 and 6 of the same Act stipulate that: “No person shall be incarcerated save on the basis of a written warrant signed by the legally competent authorities, and no person shall remain in prison beyond the period specified in the warrant. The prison director, his deputy or the official designated for the purpose shall, before admitting any person to prison, receive a copy of the detention warrant after having signed the original attesting its receipt, return the original to the person who brought the prisoner and keep a copy signed by the person who issued the incarceration order.”

Pursuant to article 39 of the same Act, persons deprived of their liberty may contact and meet with their lawyers in private, having first obtained permission from the competent judicial authorities. The legislature has also taken steps to educate persons deprived of their liberty and has instructed the Minister of the Interior to cooperate with the Minister of Education in developing a curriculum for men and women, in accordance with articles 28 and 29 of the aforementioned Act. Other legislative measures to promote the education of persons deprived of their liberty include creating prison libraries with books on religious,

scientific and ethical subjects and allowing persons deprived of their liberty to order books, newspapers and magazines, pursuant to article 30 of the Act. In addition, article 31 requires prison authorities to encourage and facilitate access to education for prisoners who may wish to continue their studies, and to allow them to sit for examinations.

Furthermore, the legislature gives persons deprived of their liberty the right to send and receive letters and to receive visits from their families. They also have the right to exceptional visits on feast days if necessary, the right to make telephone calls, the right to obtain permission to leave the prison in cases of force majeure or necessity, and the right to visit their families outside the prison for 48 hours during the transitional period prior to release, in accordance with articles 64, 64 bis, 71 and 85 of the Prison Regulatory Act internal regulations No. 79 of 1961.

The right to health care for persons deprived of their liberty is enshrined in article 33 of the aforementioned Act. It requires all prisons and penitentiaries to have one or more doctors, one of whom must be resident, who are responsible for prisoners' health. If the facilities for treating prisoners are not available in the prison hospital and the prison doctor considers that certain prisoners should be treated in another hospital, they must be transferred pursuant to an order issued by the Prison Service Medical Administration. In urgent or emergency cases, the prison doctor can take all measures he deems necessary to preserve the prisoners' health (article 37 of the above-mentioned regulations). Government medical institutions are required to provide treatment for prisoners in government and university hospitals in order to ensure that high-quality health care is provided.

It should be noted in this context that medical care in detention facilities is regulated by an integrated structure consisting of diverse facilities specializing in preventive or therapeutic medicine. It is run by a specialized medical services management board in coordination with the Ministry of Health and the aim is to ensure that prison inmates enjoy the right to treatment comparable to the level of health care provided to the external community.

With a view to ensuring sound living conditions, the cells are equipped with ventilation systems and water coolers, and all necessary precautions are taken to clean and disinfect the cells and all other facilities in places of detention. Steps are also taken to increase periods of physical exercise and to raise awareness of the risks of disease and preventive measures. Vaccination campaigns for disease prevention are organized in cooperation with the Ministry of Health.

In addition, the health status of police stations and detention facilities is determined in coordination with the Ministry of Health. Social workers provide inmates with social care, and religious leaders encourage them to improve their morality and to perform religious rituals.

II. Allegations of torture and enforced disappearance

The Egyptian legislature attaches great importance to combating torture and all forms of inhuman and degrading treatment. It is a key issue in the Egyptian Constitution, which provides for numerous safeguards, not only of a legal nature. The Egyptian State played a proactive role in addressing the issue by signing the Convention against Torture by Presidential Decree No. 154 of 1986. The Convention was thus incorporated in domestic legislation and the State is bound to comply with its provisions. Both the Constitution and the legislation contain clear provisions aimed at prosecuting all persons who perpetrate such acts.

Articles 51, 52, 55 and 60 of the Egyptian Constitution stipulate the following: dignity is an inviolable right of all human beings; all forms of torture constitute an offence with no statute of limitations; persons who are arrested, detained or have their freedom restricted shall be treated in a manner that preserves their dignity and may not be subjected to torture, intimidation or coercion, or to any physical or mental abuse; they may be confined or detained only in places that are designated for the purpose and that meet due humanitarian and health standards; the human body is inviolable and any assault, defilement or mutilation thereof is an offence punishable by law. All the authorities of the State are bound by those provisions and may not violate them.

The Code of Criminal Procedure also serves as a legal barrier against violations of human rights and freedoms.

The offences against personal freedoms and physical integrity defined in articles 117, 126, 127, 282, 309 bis and 309 bis (a) and those defined in Book II, Part 2, Section 1 of the Criminal Code are not subject to a statute of limitations.

The Criminal Code criminalizes all acts of torture that are perpetrated by public officials. The provisions are contained in articles 126, 127 and 129 of Part 6 of the Criminal Code, entitled "Coercion and ill-treatment of individuals by public officials", and in articles 280, 281 and 282. Article 126 of the Criminal Code prohibits the infliction of torture on accused persons to force them to confess. Article 127 of the Criminal Code provides for the prosecution of public officials and civil servants who order or inflict on a convicted person a penalty that is more severe than the penalty imposed by law or a penalty that is not imposed by law.

The Public Prosecution Office investigates all reports it receives concerning torture and use of force, conducting all the requisite criminal investigation procedures. As soon as a complaint is received and its validity has been verified, a member of the Office examines the corpse (in the event of death) or the injuries sustained by the person who claims to have been subjected to torture or ill-treatment. The official also visits the scene of the incident and seizes all items that were allegedly used to commit the offence. Moreover, the corpse (in the event of death) or the person who was subjected to torture undergoes a forensic medical examination to determine the nature and cause of the injuries, the date on which they were inflicted and the instruments used. Witnesses to the incident and supervisors of the detention facility are questioned, all evidence linked to the offence is gathered, and the persons responsible for inflicting the injuries are interrogated and their statements are compared with those of the victim and witnesses and with any other evidence that may emerge. They are then charged and action is taken on the case file depending on the outcome of the investigation: either referral for trial or suspension of the case on legal grounds. The victim may file a complaint and appeal against a decision to suspend the case.

In light of the foregoing, the allegations are unfounded and bereft of evidence. The legal system of the Arab Republic of Egypt provides for rigorous procedures to counter and prosecute perpetrators of the crime of torture. Moreover, the State authorities, particularly the Public Prosecution Office, undertake investigations of such crimes with a view to identifying the perpetrators and instituting criminal proceedings. Steps are also taken to ensure that the penalty imposed serves as a deterrent for perpetrators of such crimes. It is therefore absolutely unacceptable to accuse the Egyptian State authorities of torture. Where such offences occur, they constitute individual cases and all State institutions do their utmost to prosecute and punish the perpetrators. Legal and procedural measures have been taken against members of the security services in cases involving torture and the use of force. During the period from 2011 to 2015, criminal proceedings were instituted against more than 29 persons and some of them were sentenced to imprisonment.

With regard to the allegations of cases of enforced disappearance, Egypt has a sound record in this respect. It emerges from data for the period since 2011 that there was a marked increase in allegations of enforced disappearances following the revolution of 30 June 2013 concurrently with an increase in terrorist operations. The Muslim Brotherhood organization has persistently submitted false and deceitful complaints aimed at supporting negative allegations and embarrassing Egypt in international forums. The practice of enforced disappearance is systematically invoked to bring pressure to bear on State bodies to release its members and to divert attention from their role in prosecuting them. According to a survey of the allegations, most of the complaints concerned terrorist elements who were arrested and brought before the competent judicial authorities. Others concerned members of extremist organizations based either abroad or within the country. They were identified as suicide bombers or were killed after exchanging fire with the security forces. Others were illegal immigrants who had crossed from the Egyptian coast to European territory. It follows that the reports in this regard are unfounded.

It should be noted that the Ministry of the Interior has established a human rights section, which is tasked with building a human rights culture in the police force and with

familiarizing police officers with constitutional and legal principles applicable to their work. Many training courses have been held to build such a culture.

In addition, many directives have been issued on the proper treatment of detainees and the prohibition of coercive measures, which constitute a punishable offence whose perpetrators are liable to criminal, civil or administrative interrogation. In addition, reports and complaints are received on any acts that may be defined as the use of force or torture.

III. Guarantees of a fair trial in Egypt and their compatibility with international due process norms

The judiciary in Egypt and legal safeguards

The subject of the judiciary is addressed in Chapter V, Section 3, of the Constitution. Articles 184 to 197 state that the judiciary is independent, that judges and members of the Public Prosecution Office are independent and are subject to no authority other than the law, that interference in their work is not permissible, and that they cannot be dismissed. Judicial Authority Act No. 46 of 1972 regulates all questions pertaining to the appointment of judges and members of the Public Prosecution Office and their professional status.

1. The courts

The civil and criminal divisions of the courts rule on all kinds of civil disputes and the criminal divisions try legally defined offences in accordance with the law, on the basis of the disputes brought before them, in light of established constitutional principles and in conformity with the rules and procedures laid down in the Code of Civil Procedure applicable to civil courts or the Code of Criminal Procedure applicable to criminal courts. Both codes regulate the levels and types of courts, their jurisdiction, levels of appeal against court judgments, judicial remedies, the procedures for conducting legal proceedings and the safeguards that must be provided for plaintiffs and defendants. Anyone who is a victim of a criminal offence is entitled to bring a civil action for damages before the criminal court hearing a case concerning offences defined by law, including as a matter of course offences involving violations of individual rights and freedoms. The Egyptian judicial system is based on the principle of two levels of jurisdiction, and the courts are divided into courts of first instance, appeal courts and the Court of Cassation.

2. The Public Prosecution Office

The Judicial Authority Act defines the Public Prosecution Office as the legal representative of society in the conduct of legal proceedings. It is composed of the Prosecutor General, assistant public prosecutors, senior attorneys, attorneys, chief prosecutors, deputy prosecutors and junior officers.

The Egyptian Public Prosecution Office is deemed to be a key authority when it comes to enforcing the rule of law in general and protecting human rights in particular. It is therefore the most effective source of justice to which individuals may have recourse in order to safeguard their personal and general rights and freedoms.

The Public Prosecution Office is entrusted with the investigation of crimes as part of the Egyptian judiciary. It enjoys impartiality and independence, and is entrusted with authority to investigate and lay charges. It also monitors prisons and all matters pertaining to the enforcement of criminal sentences. As the investigating authority, it controls all investigation procedures in order to ensure that the interrogation of the accused, the questioning of witnesses and the collection of evidence are conducted in accordance with due process, leading either to the acquittal or conviction of the accused.

Constitutional and legal safeguards for members of judicial bodies and authorities and the Public Prosecution Office

(a) Constitutional safeguards

- The judiciary is independent and is entrusted with responsibility for different types and levels of courts, which hand down their judgments in accordance with the law. Its powers are defined by law, and interference in judicial affairs or proceedings constitutes a crime to which no statute of limitations may be applied (article 154 of the Constitution).

- All judicial bodies administer their own affairs. Each has an independent budget, whose items are discussed by the House of Representatives and incorporated in the State budget following their approval. The judicial bodies are consulted on bills governing their affairs (article 185 of the Constitution).
- Judges are independent, cannot be dismissed, are subject to no authority other than the law, and are equal in terms of their rights and duties. The conditions and procedures for their appointment, secondment, delegation, retirement and disciplinary accountability are regulated by law. They may not be fully or partially delegated except to specific bodies and to perform tasks that are specified by law, and provided that the independence and impartiality of the judiciary and judges are upheld and no conflicts of interest exist (article 186 of the Constitution).
- Court sessions are public, unless the court decides that they should be confidential on grounds of public order or morals. In all cases, the judgment is handed down in a public session (article 187 of the Constitution).
- The judiciary rules on all disputes and offences save for matters over which another judicial body has jurisdiction. The judiciary has sole competence to rule on disputes pertaining to the affairs of its members, and its affairs are administered by a Supreme Council whose structure and mandate are organized by law (article 188 of the Constitution).
- The Public Prosecution Office is an integral part of the judiciary. It is responsible for investigating, laying charges and prosecuting all criminal cases save where an exception is specified by law. The Office's other areas of competence are established by law. The Public Prosecution Office is run by a Prosecutor General who is selected by the Supreme Judicial Council from among the deputies to the President of the Court of Cassation, presidents of the appeal courts or assistants to the Prosecutor General by means of a presidential decree for a period of four years, or for the period remaining until retirement age, whichever comes first, and only once during a judge's career (article 189 of the Constitution).

(b) Legal safeguards

Judicial Authority Act No. 46 of 1972 establishes the following guarantees and safeguards for members of the judiciary and the Public Prosecution Office:

1. Appeal courts or courts of first instance are established and divisions thereof are designated or modified solely in accordance with the law (article 10).
2. The rules governing the jurisdiction of the courts are specified in accordance with the Code of Civil and Commercial Procedure and the Code of Criminal Procedure, and the courts are required to abide by those rules (article 15).
3. Court sessions are public, unless the court decides that they should be confidential on grounds of public order or morals. In all cases, the judgment is handed down in a public session (article 18).
4. The language used in courts is Arabic and the courts must hear the statements of parties and witnesses who do not know Arabic through a sworn interpreter (article 19).
5. The allocation and scheduling of work, the formation of divisions, the determination of the number of sessions and other court affairs are the responsibility of general assemblies composed of all court judges (articles 30 and 31).
6. Judges are appointed by a republican decree following the approval of the Supreme Judicial Council, and they may not be transferred, reassigned or seconded save in the circumstances prescribed by law (articles 52 and 53).
7. Members of the judiciary and the Public Prosecution Office may not be dismissed (article 67).
8. The Supreme Judicial Council is composed of the President of the Court of Cassation, the President of the Cairo Court of Appeal, the Prosecutor General, the two most senior vice-presidents of the Court of Cassation, and the two most senior presidents of the

other courts of appeal. It is legally competent to hear all matters relating to the appointment, promotion, transfer, assignment and secondment of members of the judiciary and the Public Prosecution Office, as well as other matters prescribed by law.

9. The disciplinary control of judges at all levels is exercised by a disciplinary board composed of the most senior presidents of the courts of appeal who are not members of the Supreme Judicial Council, the most senior chief justices of the Court of Cassation, and the most senior vice-presidents of the courts of appeal. The disciplinary proceedings are instituted by the Prosecutor General on his own initiative or based on a proposal by the Minister of Justice or the president of the court to which the judge belongs. A convicted person may appeal to a higher disciplinary board chaired by the President of the Court of Cassation and composed of the three most senior presidents of the courts of appeal and the three most senior chief justices of the Court of Cassation (articles 98, 99 and 107).

10. The judiciary and the Public Prosecution Office have an independent annual budget produced by the Supreme Judicial Council and incorporated in the general budget. The Supreme Judicial Council exercises in this regard all the powers vested in the Ministry of Finance in the applicable laws and regulations (article 77 bis (5)).

11. The views of the Supreme Judicial Council must be taken into account in bills concerning the judiciary and the Public Prosecution Office (article 77 bis (2)).

12. The provisions and rules enshrined in the Egyptian Constitution and the above-mentioned legislation demonstrate the guarantees and safeguards contained in the Egyptian legal system to ensure the independence of judges and members of the Public Prosecution Office, as well as to ensure due process through courts whose jurisdiction and composition are specified by law and whose judgments may be appealed against to courts at a higher level. All these provisions are in conformity with the standards required by international human rights treaties for the administration of criminal justice. They clearly demonstrate the availability, effectiveness and independence of judicial remedies in Egypt. Any interested party and any person whose rights or freedoms have been infringed can have recourse to any of these judicial authorities, depending on the nature of the dispute and the rights stemming from it or the claims arising from it, with a view to securing their rights or obtaining compensation for damages, in accordance with the law in force.

Judicial remedies in the Egyptian legal system

The Egyptian Public Prosecution Office, as a key component of the judiciary that is entrusted with authority to enforce the law by investigating, laying charges, instituting and implementing criminal proceedings and monitoring prisons, is fully aware of the importance of human rights and the international obligations of the Arab Republic of Egypt pursuant to the binding international treaties that it has ratified, and its moral obligations stemming from treaties for which the ratification procedures have not yet been completed or from relevant United Nations declarations, rules and guiding principles.

Article 54 of the new Egyptian Constitution promulgated in 2014 stipulates that: "Personal freedom is a natural right that is safeguarded and cannot be infringed upon. Aside from cases of flagrante delicto, no persons may be apprehended, searched, arrested or have their freedom restricted save on the basis of a reasoned judicial warrant necessitated by an investigation. All persons whose freedoms have been restricted shall be immediately informed of the grounds therefor, notified of their rights in writing, allowed to contact their family and lawyer forthwith, and brought before the investigating authority within 24 hours of the time at which their freedom was restricted. Questioning of persons may only begin once their lawyer is present. If they have no lawyer, a lawyer shall be appointed. Persons with disabilities shall be provided with all necessary assistance, in line with the procedures laid down by law. Persons whose freedom has been restricted and other persons are entitled to have recourse to the judiciary. A judgment must be handed down within a week of such recourse; otherwise the petitioner shall be immediately released. The law shall regulate pretrial detention, its duration and grounds, and cases in which the State is required to pay compensation for pretrial detention or for enforcement of a penalty the imposition of which is overruled by a final judgment. In all cases, the accused may be tried for offences entailing incarceration only in the presence of an authorized or appointed lawyer."

The current Constitution provides for numerous safeguards in this context. In addition to article 54 cited above, article 95 stipulates that: "Penalties are personal and offences and penalties shall be based on the law. Penalties may only be imposed by a judicial ruling and for acts committed after the date on which the law enters into effect."

Article 1 (1) provides for the rule of law. It stipulates that: "The Arab Republic of Egypt is a sovereign and united State that is indivisible and no part of which may be relinquished. It is a democratic republic based on citizenship and the rule of law."

Article 94 stipulates that: "The rule of law is the basis of State governance. The State is subject to the law, and the independence, immunity and impartiality of the judiciary provide fundamental guarantees for the protection of rights and freedoms."

Article 184 stipulates that: "The judiciary is independent and is entrusted with responsibility for different types and levels of courts, which hand down their judgments in accordance with the law. Its powers are defined by law, and interference in judicial affairs or proceedings constitutes a crime to which no statute of limitations may be applied."

Article 186 stipulates that: "Judges are independent, cannot be dismissed, are subject to no authority other than the law, and are equal in terms of their rights and duties. The conditions and procedures for their appointment, secondment, delegation, retirement and disciplinary accountability are regulated by law. They may not be fully or partially delegated except to specific bodies and to perform tasks that are specified by law, and provided that the independence and impartiality of the judiciary and judges are upheld and no conflicts of interest exist. Their rights, duties and guarantees are specified by law."

Egyptian national legislation contains all safeguards specified in international treaties and the Egyptian Constitution on behalf of persons deprived of their liberty. No person may be arrested save on the basis of a judicial warrant issued by the investigating authorities or the competent judge for reasons pertaining to the investigation. Article 130 of the Code of Criminal Procedure stipulates that: "If the accused fails to appear after being summoned without a valid ground or has no known residence, or if it is a case of flagrante delicto, the investigating judge may issue an arrest warrant for the accused even if remand detention of the accused is not permissible." Article 127 stipulates that: "Every warrant shall contain the accused person's name, surname, occupation, place of residence, the charge levelled against him, the date of the warrant, the signature of the judge and the official seal. In addition, the subpoena shall specify the date on which he is required to appear. The arrest warrant and subpoena shall authorize public officials to arrest the accused and bring him before the judge if he refuses to appear voluntarily." Article 40 stipulates that: "No person may be arrested or incarcerated except pursuant to a warrant issued by the legally competent authorities. All persons shall be treated with dignity and may not be physically or morally abused."

Furthermore, any person who is detained in a manner contrary to the applicable legal procedures or in a place that is not legally designated for the purpose, or any person who learns of that fact, may report the matter to the Public Prosecution Office, which immediately proceeds to the location, releases the person and conducts the requisite investigation. Article 43 of the Code of Criminal Procedure stipulates that: "Every prisoner shall be entitled, at any time, to submit a written or oral complaint to a prison warden and request that it be transmitted to the Public Prosecution Office. The officer shall accept the complaint and immediately transmit it after having recorded it in the prison complaints register. Anyone who learns that a person is being detained unlawfully or in a place not designated for the purpose shall notify a member of the Public Prosecution Office who, on receipt of the notification, shall immediately proceed to the place in which the person is being held and investigate the matter, order the release of any person who is being detained unlawfully, and write a report on the matter." Article 41 stipulates that: "No person may be incarcerated except in prisons designated for the purpose and no prison warden may admit a person to a prison except pursuant to a warrant signed by the competent authority. No person shall be incarcerated for any period of time exceeding that specified in the warrant." Article 42 authorizes members of the Public Prosecution Office and judges to inspect prisons in accordance with their fields of competence. It stipulates that: "Any member of the Public Prosecution Office and any chief justice and vice-president of a court of first

instance or a court of appeal may visit public and central prisons located within their areas of jurisdiction and ensure that no person is unlawfully detained. They may inspect the records of the prison and the warrants of arrest and incarceration and may take copies thereof. They may also communicate with any detainee and listen to any relevant complaints. Prison governors and personnel shall assist the persons concerned in obtaining any information they request.”

Nobody may be detained for more than 24 hours before being brought before the competent investigating authority. Article 36 of the Code of Criminal Procedure stipulates that: “The law enforcement officer shall immediately hear the statements of the arrested suspect who, if he fails to establish his innocence, shall be referred to the office of the competent public prosecutor within 24 hours. The office of the public prosecutor shall question him within 24 hours, following which it shall order that he be detained or released.”

Article 131 stipulates that: “The investigating judge shall immediately interrogate an accused person who has been arrested. If this is not possible, the accused shall be placed in custody pending interrogation for a period that shall not exceed 24 hours. Once that period has elapsed, the prison warden shall refer the accused to the Public Prosecution Office, which shall immediately request the investigating judge to conduct the interrogation. If necessary, the request may be submitted to the judge of the court of first instance, the president of the court or any other judge appointed by the president of the court. Otherwise the accused shall be released.”

The accused must be informed of the charges against him upon arrest and prior to the investigation. Article 123 of the Code of Criminal Procedure stipulates that: “When opening the investigation, the investigator shall confirm the identity of the accused, inform him of the charge against him and record his statements.”

The Code of Criminal Procedure also requires the lawyer of the accused to be present during the investigation. If the accused has no lawyer, a lawyer must be appointed for proceedings concerning felonies or misdemeanours that are punishable with mandatory imprisonment. The accused may not be separated from his lawyer and he must have access to all documents pertaining to the investigation. Article 124 stipulates that: “In cases concerning felonies or misdemeanours that are punishable with mandatory imprisonment, the investigator may not interrogate the accused or confront him with other accused persons or witnesses unless his lawyer is present, except in cases of flagrante delicto or urgent cases involving a fear of loss of evidence, which shall be reflected in the record. The accused shall state the name of his lawyer for inclusion in the report to the court registrar or shall notify the prison warden or the investigator thereof. The announcement or notification may also be made by his lawyer. If the accused has no lawyer, or if the lawyer fails to respond to his request, the investigator shall, on his own initiative, appoint a lawyer. The lawyer may include any defences, requests or observations in the record.”

Article 125 stipulates that: “The lawyer shall be permitted to acquaint himself with the investigation on the day prior to the interrogation or confrontation unless the judge decides otherwise. The accused may not, in any circumstances, be separated from his lawyer during the investigation.”

The order for remand detention of the accused may be issued only by the competent judge or the investigating authority following the interrogation of the accused. The reasoned order must be issued by an official at least of the rank of deputy public prosecutor. The order must be temporary and renewable for a specific period. The accused must be released, as a matter of course, on its termination. Other interim measures may be taken on behalf of the accused such as alternatives to remand detention. The Public Prosecution Office may also release an accused placed in remand detention if it considers that the case file warrants such action.

Arrest and detention orders issued by the Public Prosecution Office may not be implemented if six months have elapsed from the date on which they were issued unless they are extended. Article 202 stipulates that: “If the Public Prosecution Office decides to extend the period of remand detention, it must, four days prior to its termination, submit the

relevant papers to the judge of the court of first instance so that he may issue an order after hearing statements by the Public Prosecution Office and the accused.”

The judge may extend remand detention for one or more successive periods. Each period should not exceed 15 days and the total period of remand detention should not exceed 45 days. Article 203 stipulates that: “If the investigation has not been completed by the end of the remand detention period mentioned in the preceding article, the Public Prosecution Office shall submit the documents to the advisory chamber of the appeal court for misdemeanours so that it may issue a ruling based on the provisions of article 143.” Article 143 stipulates that: “If the investigation has not been completed and the judge considers it necessary to extend remand detention for a period that exceeds the period specified in the preceding article, the documents shall be submitted to the advisory chamber of the appeal court for misdemeanours so that it may issue a ruling, after listening to the statements of the Public Prosecution Office and the accused, to extend detention for successive periods, each of which shall not exceed 45 days, if the investigation so requires, or to release the accused with or without bail. However, the matter shall be submitted to the public prosecutor if the remand detention of the accused continues for three months, so that appropriate measures may be taken to conclude the investigation.”

The period of remand detention may not exceed three months unless the accused is notified of his referral to the competent court before the end of the period. In such cases the Public Prosecution Office must issue the detention order within five days at most from the date of notification of referral to the competent court, in accordance with the provisions of article 151 (1) of the Code. Otherwise the accused must be released. If the charge against the accused constitutes a felony, the period of remand detention should not exceed five months unless, prior to the end of the period, an order is received from the competent court to extend detention for not more than 45 days, a period that may be extended one or more times. Otherwise the accused must be released.

The period of remand detention during the preliminary investigation in criminal proceedings may not, under any circumstances, exceed one third of the maximum penalty of deprivation of liberty. Thus, it may not exceed 6 months for misdemeanours, 18 months for felonies and 2 years if the penalty prescribed for the offence is life imprisonment or the death penalty. Moreover, the Court of Cassation and the court of referral may, in the case of a judgment imposing the death penalty, order that the accused be placed in remand detention for a renewable period of 45 days, regardless of the periods prescribed in the preceding paragraph.

The Code of Criminal Procedure regulates the procedures whereby the accused can lodge an appeal against decisions regarding remand detention. Article 164 stipulates that: “The Public Prosecution Office may appeal, in the case of a felony, against an order concerning the temporary release from remand detention of an accused. Furthermore, the accused may appeal against an order concerning remand detention or its extension.” Article 166 stipulates that: “The period of time for lodging an appeal shall be 10 days from the date of issuance of an order for the Public Prosecution Office and from its notification for the other litigants, except in the cases specified in paragraph two of article 164 of this Code. In such cases, the period of time for lodging an appeal shall be 48 hours from the date of issuance. Moreover, the accused may lodge an appeal at any time, and if the appeal is dismissed the accused may lodge a further appeal 30 days after the date of each dismissal.”

“In all cases, a ruling shall be issued on an appeal against orders concerning remand detention, extension of detention and temporary release within 48 hours of the date on which the appeal was lodged. Otherwise the accused shall be released. One or more chambers of the court of first instance or the criminal court shall hear the appeal against orders for remand detention or temporary release mentioned in this article. The decisions issued by the advisory chamber shall be final in all cases.”

The legislature has also guaranteed the right of remand detainees to obtain compensation for their period in custody if they are acquitted. Article 312 bis stipulates that: “The Public Prosecution Office shall publish any final decision to acquit a remand detainee and any ruling that there are no grounds for criminal proceedings in two widely distributed daily newspapers at the expense of the Government. The publication shall be based in both

cases on a request by the Public Prosecution Office, or by the accused or one of his heirs with the consent of the Public Prosecution Office, in the case of a ruling that there are no grounds for legal proceedings. The State shall guarantee the right, in principle, to material compensation for remand detention in both cases referred to in the previous paragraph, in accordance with the rules and procedures applicable under the relevant legislation.”

IV. Safeguards in death penalty cases under the Egyptian legal system

We wish to reaffirm at the outset that the Arab Republic of Egypt respects and complies with all international treaties that it has ratified in this regard, and that its domestic legislation is consistent with their provisions, particularly those of article 6 of the International Covenant on Civil and Political Rights, which stipulates that: “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. In countries which have not abolished the death penalty, 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 and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.”

As the right to life, as already stated, is a fundamental human right, any assault on the right to life constitutes one of the most dangerous and grievous crimes addressed in the Egyptian Criminal Code, entailing under specific aggravating circumstances the maximum penalty (the death sentence) for perpetrators, in accordance with the Constitution and Egyptian legislation. The death penalty is prescribed for the most serious, violent and flagrant crimes. Deprivation of the right to life through enforcement of the death penalty is possible only pursuant to a final and conclusive judgment concerning crimes for which the death penalty was prescribed at the time of their commission. It may not be imposed on persons who were under the age of 18 years when the crime was perpetrated. These legal safeguards are fully consistent with the international standards enshrined in article 6 of the International Covenant on Civil and Political Rights (1966) and the Convention on the Rights of the Child (1990), to which Egypt is a party.

In view of the aforementioned international and constitutional obligations, Egyptian legislation contains the following provisions concerning the fundamental safeguards that must be respected in order to abolish and enforce the death penalty:

The Public Prosecution Office is responsible for the investigation, referral and prosecution before the courts of all categories of offences, in accordance with the rules, procedures and safeguards enshrined in the Code of Criminal Procedure. The Public Prosecution Office forms part of the judiciary under the Egyptian legal system and its members enjoy judicial immunity just like judges and are not subject to dismissal, in line with the rules issued by United Nations congresses on crime prevention and the treatment of offenders.

Cases concerning felonies, which are crimes entailing penalties of imprisonment or the death penalty, are tried by the assize courts, which are served by the highest ranking judicial staff.

The Public Prosecution Office and the aforementioned assize courts, which try felony cases, comply with all procedures aimed at guaranteeing a fair and impartial trial, and with the legal rules and principles applicable to criminal investigations and trials enshrined in the Constitution and the Code of Criminal Procedure. The Public Prosecution Office and the courts are required to appoint lawyers to defend accused persons who have no defence counsel. Violation of the right of defence constitutes a legal ground for quashing the judgment and arranging for a retrial.

A death penalty may be imposed solely on the basis of a unanimous opinion by the members of the chamber and after obtaining the opinion of the Mufti of the Republic on the compatibility of the judgment with the Islamic sharia. This procedure is binding on the court and the judgment is quashed if it is disregarded.

An appeal may be lodged against the judgment with the Court of Cassation either by the Public Prosecution Office or by the convicted person (article 46 of Act No. 57 of 1959

concerning the circumstances and procedures for lodging an appeal with the Court of Cassation). A request for review may be submitted to the court that handed down the judgment in the cases specified in article 441 et seq. of the Code of Criminal Procedure.

The law requires the Public Prosecution Office and the Military Prosecutor's Office to submit judgments imposing the death penalty to the Supreme Court, even if no appeal is lodged by the convicted person, so that it may ascertain whether the law has been applied correctly and whether the court has complied with the standards governing the effective conduct of a fair and impartial trial. The cases should be considered in terms of the legally specified grounds for an appeal in cassation, which are a breach of the law, incorrect application of the law, a violation to the right of defence or shortcomings in the reasoning. Should the Court ascertain that there has been a violation, it must quash the judgment and provide for a retrial by a court other than the one that handed down the judgment to be appealed against.

If the Supreme Court endorses the judgment, the case file containing the final judgment imposing the death penalty must be submitted to the President of the Republic so that he may exercise his constitutional right to grant a pardon or commute the sentence.

A death sentence may not be imposed on a person who was under 18 years of age when the crime was committed, in accordance with the Convention on the Rights of the Child and article 112 of the Children's Act No. 12 of 1998. Child offenders are tried before special children's courts established pursuant to the Act, and the lighter penalties prescribed in the Act are applicable.

Judgments delivered in absentia imposing a death penalty or some other penalty prescribed by law are viewed as minatory judgments and they become null and void if the person convicted in absentia is arrested or turns himself in voluntarily before the expiration date of the sentence, in accordance with article 395 of the Code of Criminal Procedure. A new trial must be held and the court may not, in such cases, impose a harsher penalty than in the judgment delivered in absentia.

It is clear from the foregoing safeguards that Egyptian law complies fully with all international standards governing criminal justice and fair and impartial legal proceedings, in accordance with the provisions of the Egyptian Constitution and of international human rights treaties ratified by Egypt.

V. Measures taken against the accused

We wish to state at the outset that the accused were arrested pursuant to warrants issued by the competent investigating authorities. They were investigated with the knowledge of the Public Prosecution Service, which laid the charges set out below:

The accused Khaled Refaat Gad Askar, Ahmed al-Waleed al-Sayed al-Sayed al-Shal, and others

They joined an illegal group, the purpose of which was to annul the provisions of the Constitution and the law, to prevent State institutions and the public authorities from performing their duties, to attack citizens' personal freedom and rights, to undermine national unity and to breach the peace. They joined the Muslim Brotherhood, which aims to use force to change the Government, to attack the institutions and staff of the armed forces and police, and to target public institutions with a view to disrupting law and order and endangering the safety and security of society. Terrorism was one of the means used by the group to achieve its aims.

The accused Ibrahim Yahya Abdelfattah Azab

He was charged with establishing, organizing and running an illegal group, the purpose of which was to annul the provisions of the Constitution and the law, to prevent State institutions and the public authorities from performing their duties, to attack citizens' personal freedom and rights, to undermine national unity and to breach the peace. He was also charged with establishing, organizing, running and assuming the leadership of a group which calls for the rulers to be designated as infidels, which claims that it is legitimate to rise up against them and to change the Government by force, which calls for attacks on the members and institutions of the armed forces and the police, and which claims that it is

legitimate to spill Christians' blood, to attack their places of worship and to seize their funds and property with a view to disrupting law and order and endangering the safety and security of society. Terrorism was one of the means used by the group to achieve its aims.

The accused Khaled Refaat Gad Askar, Ibrahim Yahya Abdelfattah Azab, Ahmed al-Waleed al-Sayed al-Sayed al-Shal, Mahmoud Mamdouh Wahba Atteya Abouzaid, and others

They provided an illegal group with material and financial aid so that it could acquire weapons, ammunition, funds and information, while fully aware of its aims and the means used to achieve them.

The accused Khaled Refaat Gad Askar, Ahmed al-Waleed al-Sayed al-Sayed al-Shal, Abdulrahman Mohamed Abdo Atteya, Bassem Mohsen Hassan al-Khareiby, Mahmoud Mamdouh Wahba Atteya Abouzaid, and others

They killed [REDACTED] a police sergeant with Dakahlia Security Directorate, deliberately and with premeditation. They carefully planned the murder and were absolutely determined to kill him. Following a previous attempt to murder the victim, the accused Khaled Refaat Gad Askar held a meeting to develop a plan and assign a specific role to each of the accused. They prepared a car and a motorcycle for the purpose and acquired firearms (two automatic rifles and a revolver). They then proceeded to the victim's workplace. The accused Mahmoud Mamdouh Wahba Atteya Abouzaid kept watch and, on seeing him leave with his motorcycle, he contacted the accused who were hiding in his vicinity. The accused Khaled Refaat Gad Askar and Bassem Mohsen Hassan al-Khareiby, who were armed with automatic rifles, were in the car, and the accused Abdulrahman Mohamed Abdo Atteya was riding the motorcycle with Ahmed al-Waleed al-Sayed al-Sayed al-Shal sitting behind him and carrying a firearm (a revolver). When the victim passed by, they followed him and, on reaching his motorcycle, the accused Ahmed al-Waleed al-Sayed al-Sayed al-Shal showered him with a hail of bullets in order to kill him. They caused the fatal injuries described in the autopsy report. The crime was committed for terrorist purposes.

The accused Ibrahim Yahya Abdelfattah Azab, and others

He created an explosive (trinitroglycerin) without obtaining a licence, intending to use it for activities aimed at endangering security, disrupting law and order, violating the principles enshrined in the Constitution, undermining national unity and breaching the peace.

The accused Khaled Refaat Gad Askar, Ibrahim Yahya Abdelfattah Azab, Ahmed al-Waleed al-Sayed al-Sayed al-Shal, Abdulrahman Mohamed Abdo Atteya, Bassem Mohsen Hassan al-Khareiby, Mahmoud Mamdouh Wahba Atteya Abouzaid, and others

They possessed and acquired firearms (automatic rifles), for which a licence may not be issued, as well as ammunition, intending to use them for activities aimed at endangering security, disrupting law and order, violating the principles enshrined in the Constitution, undermining national unity and breaching the peace.

The accused Khaled Refaat Gad Askar, Ibrahim Yahya Abdelfattah Azab, and Ahmed al-Waleed al-Sayed al-Sayed al-Shal

They possessed and acquired edged weapons (daggers, penknives, knives, batons, and shields) and gadgets for attacking people (catapults, bottles and iron balls) without obtaining a legal permit for their possession or acquisition.

VI. Findings and conclusions

In light of the foregoing, we wish to affirm that the Egyptian State complies with all international human rights treaties and that the allegations and claims in the communication are unfounded. The accused terrorists were not subjected to any form of torture or ill-treatment or denied health care. Such matters were not reflected in the investigations conducted by the Public Prosecution Office. The charges were brought against them based on the investigations, which provided sufficient evidence, in the form of

witness statements, legal inspections, technical evidence and medical reports, for the Public Prosecution Office to refer the cases to the courts.

We also wish to draw attention to the fact that the Egyptian State is confronted with a wave of terrorist attacks on Egyptians' right to life, and this case constitutes such a wave. Certain groups, particularly the terrorist Muslim Brotherhood, are using violence to undermine the State. Human rights are invoked by some people in Egypt as a means of promoting conflict and political polarization and of imposing heavy pressure on the State. Established facts are exploited to portray the State as a body that fails to respect human rights and that violates freedoms. It is therefore essential to examine and verify the validity of the allegations and claims and to assess their reliability in legal and factual terms. Thus, the information provided in the communication and the press release, alleging that the death penalty was imposed against a group of accused terrorists in an unfair trial following their subjection to torture and ill-treatment, is false. They are merely allegations and statements issued by a group of terrorists seeking to divert attention from their acts. Furthermore, some of the statements concerning the terrorists and their conditions of detention, interrogation and trial stem from the terrorists themselves or their relatives and therefore cannot be properly authenticated. They are refuted by the fact that the trial sessions were held in public before the competent court and not before an exceptional court. The court provided all the guarantees of a fair trial through public sessions during which it listened to all the requests by the defence and the arguments put forward by the accused, as evidenced by the records of the sessions. The court also heard witnesses and examined all the evidence provided by the Public Prosecution Office. It thus handed down its judgment after having fulfilled all legal guarantees. This seriously undermines the existing allegations, which are unsubstantiated and contrary to the professional rules applicable to any investigation of violations of human rights.

We also wish to state that the allegations and claims are not based on the solid foundations that are required to prove the alleged facts, to understand and specify the applicable legal definition, and to produce results that are consistent with all international norms. The communication failed to explain how the validity of the claims should be assessed and how to prove that the alleged facts actually occurred, since no clear and logically interlinked facts were identified in a chronological sequence that could be used as evidence to substantiate the allegations. Yet this is essential, especially if the evidence cannot be used to prove the contrary, since there is no means of doing so or of proving that it is unsubstantiated. Furthermore, the allegations were based on facts transmitted in the context of the allegations and claims presented in the guise of a defence in order to escape the charges against the accused terrorists that were proven beyond any reasonable doubt.

We also wish to point out in this connection that the United Nations bodies display a certain amount of deliberate ambiguity regarding the allegations, which is inconsistent with reason and logic. Furthermore, the above-mentioned acts of which the accused terrorists were convicted constituted crimes under the national Criminal Code at the time that they were perpetrated and demonstrate the gravity of the terrorist acts with which they were charged and the serious criminality of the accused.

In addition to the foregoing, we wish to draw attention to the fact that the acts of which the accused terrorists have been convicted violated the rights of other persons, who were performing their duties in accordance with the law, and of other innocent citizens who deserve care and protection. By perpetrating such acts, they attacked society as a whole, and this calls for the imposition of a penalty commensurate with the crimes committed against society and innocent citizens who are protected by the law and international treaties. It is essential to respect legal procedures, and the interests of innocent persons cannot, under any circumstances, be undermined or ignored by the international community or relevant international treaties.

In conclusion, we wish to state that Egypt is waging a fierce war against terrorism. The communication is based on faulty standards and ambivalent logic and lacks objectivity. We wish to express our concern regarding this approach and negative attitude, which reflects considerable ambivalence towards action to address the threat of terrorism and extremism throughout the world.

In light of the foregoing, we wish to reaffirm that the allegations in the communication are unfounded, unsubstantiated and devoid of proof, and that the measures taken against all the accused terrorists were consistent with international and regional human rights standards.
