

(Translated from Arabic)

Reply to the complaint received from the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning the case of the Egyptian citizen Hanane Baderraddine Abdalhafez Othman

The following points are covered in this reply:

- I. Guarantees to ensure that detention in Egypt is in conformity with international standards.
- II. Allegations concerning torture and inhuman treatment.
- III. Protection of human rights defenders in Egypt.
- IV. Measures taken against the complainant.
- V. Summary of the findings and results.

I. Guarantees to ensure that detention in Egypt is in conformity with international standards

The Egyptian Constitution respects the guarantees that persons restricted in their liberty should enjoy, in conformity with article 9 of the International Covenant on Civil and Political Rights, by requiring their appearance before independent judicial bodies. No exceptions to these guarantees are made in counter-terrorism or emergency legislation. In this regard, article 54 of the Constitution stipulates that: “Personal freedom is an inviolable natural right that shall be protected and, except in cases of *flagrante delicto*, it is not permissible to arrest, search, detain or in any way restrict the freedom of any person save on the basis of a substantiated judicial order required for the purposes of an investigation. Anyone whose freedom is restricted must be immediately notified of the reasons therefor, must be informed of his/her rights in writing, must be immediately enabled to contact his/her relatives and lawyer and must be brought before the investigating authority within 24 hours from the time at which his/her freedom is restricted. The suspect can be questioned only in the presence of his/her lawyer. A lawyer must be appointed for persons who do not have one and the requisite assistance must be provided, in accordance with the legally prescribed procedures, for persons with disabilities. Every person whose freedom is restricted, or any third party, has the right to file a judicial appeal against that measure. A decision must be taken on such appeal within one week from the date on which it is filed; otherwise the person must be released immediately.”

Under article 55 of the Constitution: “Any person who is arrested or detained or whose freedom is in any way restricted must be treated in a manner that preserves his dignity. He may not be tortured, intimidated, coerced or physically or mentally harmed. He may be confined or detained only in places designated for that purpose and which meet humanitarian and health requirements. The State shall provide special facilities for persons with disabilities. Violation of any of these provisions shall constitute a legally punishable offence. An accused person has the right to remain silent and any statement proved to have been made by a detainee under any of the above-mentioned forms of duress, or threat thereof, shall be deemed null and void and shall not be admissible as evidence against him.”

Article 56 of the Constitution further stipulates that: “Prisons are places for reform and rehabilitation. Prisons and places of detention are subject to judicial supervision and actions that are inconsistent with human dignity or which endanger human health are prohibited therein. The procedures for the reform and rehabilitation of convicted persons and the facilitation of a decent life for them after their release shall be regulated by law.”

In this regard, Egypt’s domestic legislation respects all the safeguards for persons deprived of their liberty, as provided for in international instruments and the Egyptian



Constitution. In its capacity as an intrinsic branch of the judiciary entrusted with the effective enforcement of the rule of law, including investigation, indictment, the institution and conduct of criminal proceedings, supervision of the enforcement of judgements and the inspection of prisons in an impartial and independent manner, the Public Prosecution is well aware of the importance of human rights and the relevant obligations of the Arab Republic of Egypt under the binding international instruments that the State has ratified, as well as its moral obligations under instruments the ratification procedures of which have not yet been completed or under the declarations, rules and guidelines adopted by the United Nations. It is therefore one of the principal means of legal redress available to individuals seeking to safeguard their personal and public rights and freedoms.

Under article 40 of the Code of Criminal Procedure, no one may be arrested or detained except by order of the legally competent authorities and any person so arrested or detained must be treated in a manner conducive to the preservation of his human dignity and must not be subjected to physical or mental harm.

Under article 41 of the Code, no one may be detained except in the prisons designated for that purpose and no warden may admit any person into a prison except in accordance with an order signed by the competent authority, nor may he retain any person therein after the expiration of the period specified in the said order.

Under article 42 of the Code, any member of the Public Prosecution and any president or vice-president of an appellate court or a court of first instance is authorized to visit district and central prisons located within their respective areas of jurisdiction to ensure that no one is detained unlawfully therein; they are entitled to examine the prison records, as well as arrest and detention orders, take copies thereof, communicate with detainees and hear any complaints that they might wish to make; prison wardens and staff are required to provide them with full assistance to obtain any information that they request.

Within the context of the judicial authority's supervision of criminal investigation officers, articles 85 and 86 of the Prisons Regulatory Act No. 396 of 1956 stipulate that the Attorney General and his deputies within their respective areas of jurisdiction, as well as representatives of the judicial authority consisting in the presidents of appellate courts and courts of first instance and investigating judges, have the right of access at any time to the prisons located within the areas of jurisdiction of the courts in which they are serving and the president and vice-president of the Court of Cassation have the right of access to all prisons to ensure that no one is detained unlawfully therein; to that end, they are entitled to examine the prison records and the arrest and detention orders issued, empower representatives of the judicial authority to contact detainees and hear their complaints, and instruct the responsible prison officials to help the representatives to obtain any information that they might request. Since the judicial authority is vested, by law, with the above-mentioned rights, it cannot be claimed that the situation of detainees is deteriorating or that they are not being provided with appropriate living and health conditions while the judicial authority is legally empowered to take any measure that it deems appropriate to meet the requirements of all forms of lawful detention.

Under articles 5 and 6 of the Act, no one may be confined in a prison without a written order signed by the legally competent authority and no one may be retained therein after the expiration of the period specified in such order. Before admitting anyone to a prison, its director or warden or the official responsible for prisoner inductions must be given a copy of the confinement order after signing the original in acknowledgement of receipt. The original must be returned to the person who delivered the prisoner and a copy signed by the person who issued the order must be kept in the prison.

Under article 39 of the Act, persons who are restricted in their liberty are permitted to contact and meet with their lawyers in private after permission has been obtained from the competent judicial authority. The Act also makes provision for the education of persons who are restricted in their freedom by stipulating that the Minister of the Interior, in collaboration with the Minister of Education, must draw up a curriculum for male and female detainees (arts. 28 and 29). A library containing books of a religious, scientific or ethical nature must be established in every prison and inmates are permitted to have books, newspapers and magazines brought in from outside (art. 30). The prison administration also

has an obligation to encourage inmates to acquire an education and is required to facilitate the studies of those wishing to pursue further educational courses and permit them to take the requisite examinations in the relevant examination centres (art. 31).

Persons who are restricted in their liberty are entitled to send and receive letters and messages, make telephone calls and receive visits from their relatives, including exceptional visits during religious holidays and whenever deemed necessary; they may also be granted temporary leaves of absence in emergencies or for compelling reasons and are allowed to visit their relatives outside the prison for a period of 48 hours during the pre-release transitional period (arts. 64, 64 bis, 71 and 85 of the Implementing Regulations for the Prisons Act No. 79 of 1961).

With regard to the health-related rights of persons who are restricted in their liberty, under article 33 of the Act every penitentiary or prison must have one or more medical officers, one of whom must be resident, to provide the inmates with health care. If the prison medical officer finds that the treatment facilities required by a prisoner are not available in the prison hospital, he must transfer the prisoner to an external hospital after referring the matter to the Medical Department of the Prison Service. In urgent or emergency situations, the prison medical officer may take whatever measures he deems necessary to safeguard a prisoner's health (article 37 of the above-mentioned Implementing Regulations). Moreover, State medical facilities are required to treat prisoners at government and university hospitals with a view to ensuring that the health care provided is of a high standard.

In this regard, it is noteworthy that the health care provided in places of detention is regulated within an integrated and graded structure of preventive and therapeutic procedures overseen by a specialized Department of Medical Services which, acting in collaboration with branches of the Ministry of Health, is upholding the right of prison inmates to the same standard of health care and treatment as that enjoyed by the general public outside the prison.

In order to ensure decent living conditions, cells are provided with supplementary ventilation and water coolers. The full range of protective measures taken includes the cleaning and disinfection of cells and all other detention facilities, longer exercise periods, raising awareness of the dangers posed by diseases and ways to prevent them, and coordination with the Ministry of Health in vaccination campaigns to provide protection against various diseases.

II. Allegations concerning torture and inhuman treatment

The Egyptian legislature has shown great concern to prevent torture and all forms of degrading and inhuman treatment and, to this end, has promulgated numerous constitutional and legal safeguards. Egypt was among the first States to address this issue by signing the Convention against Torture under the terms of Presidential Decree No. 154 of 1986 and the Convention thereby became part of the State's domestic legislation and is applicable as such. The State is therefore committed to the provisions of the Convention and its national Constitution and laws clearly designate all acts of torture as punishable offences.

Under the Egyptian Constitution, dignity is a human right that must not be violated; all forms of torture constitute imprescriptible offences; anyone who is arrested, detained or restricted in his liberty must be treated in a manner that preserves his dignity; no one may be tortured, intimidated, coerced or subjected to physical or mental harm; detention and imprisonment are permitted only in facilities that are designated for that purpose and which meet humanitarian and sanitary standards; the human body is inviolable and any assault thereon or disfigurement or mutilation thereof constitutes a legally punishable offence (arts. 51, 52, 55 and 60). These rules and provisions are binding on all the State authorities and must not be infringed.

The Code of Criminal Procedure forms a legal shield under which rights and freedoms enjoy guaranteed protection against any violation. Criminal prosecution in respect of the offences prejudicial to personal freedoms and physical integrity to which reference is made in articles 117, 126, 127, 282, 309 bis and 309 bis (a) thereof, as well as the offences

specified in chapter I, section II, book two of the Penal Code, is not subject to any statute of limitations.

In section VI of the Penal Code, concerning coercion and ill-treatment by public officials, torture is listed among the offences that must not be committed by members of the public authority (arts. 126, 127, 129, 280, 281 and 282). Article 126 prohibits the torture of a suspect with a view to the extraction of a confession and article 127 stipulates that any public official and any person entrusted with the performance of a public service who orders or personally imposes on a convicted person a penalty harsher than that imposed by the court, or a penalty that was not imposed, is liable to a term of imprisonment.

III. Protection of human rights defenders in Egypt

With regard to measures taken by the State to protect human rights defenders so that they are able to engage in their legitimate activities, it is noteworthy that the right to freedom of opinion in Egypt is guaranteed by the Constitution of 2014, article 65 of which stipulates that everyone has the right to express his or her opinion orally, in writing, through imagery or by any other means of expression and publication. Article 73 of the Constitution further stipulates that citizens have the right to organize public meetings, processions, demonstrations and all forms of peaceful protest. The right to private assembly is likewise guaranteed without any need for prior notification and members of the security forces are not permitted to attend, monitor or eavesdrop on such assemblies. Moreover, in accordance with article 99 of the Constitution, the State guarantees fair compensation for anyone whose personal freedom or privacy has been violated and the National Council for Human Rights is authorized to report such violations to the Public Prosecution and to intervene in the civil proceedings in favour of the injured party, if the latter so requests, in the manner prescribed by law.

IV. Measures taken against the complainant

The complainant was arrested on 6 May 2017 and charged on the basis of police report No. [REDACTED] which stated that, during a search of visitors to Al-Qanater al-Khayriyah Prison, she was found to be in possession of a paper containing details of the prison, its visitors, its daily routine, names of its officers and enlisted personnel and other information. When the complainant was questioned, she claimed that she had gone to the prison to visit [REDACTED], who ([REDACTED]) was accused of being a member of a terrorist group, so that she could ask him about her husband, Khaled Mohamed Hafez Mohamed Azzedine, who had been missing since 27 July 2013. Inquiries conducted by the national security authorities found that leaders of the Muslim Brotherhood organization were planning to carry out armed assaults on the country's prisons in order to facilitate the escape of senior and lower-ranking members of the organization, together with other criminals. Those assaults were due to coincide with terrorist acts targeting officers and members of the police, the army and the judiciary, as well as public figures, police and other vital installations, with a view to creating a state of violent turmoil in the country which would enable them to overthrow the present regime, seize power and establish a so-called "Islamic Caliphate". The complainant was a member of one of the women's committees which were formed to discover the number and names of the prison officers and other personnel and identify the vehicles in which they travelled, so that they could be targeted in terrorist acts, and also to study the vulnerabilities in prison security and ways in which they could be exploited during the implementation of the planned assaults.

In the course of the investigations conducted by the Public Prosecution, the officer who drew up the police report confirmed the facts recorded therein. During her interrogation, the suspect denied the charges brought against her and the Public Prosecution decided to remand her in custody pending further investigation. The criminal court extended her remand order and she is still being held in pretrial detention.

The allegations concerning psychological pressure suffered by the complainant, the possibility of her being subjected to torture and the denial of her right to receive family visits were found to be unsubstantiated insofar as, like the other inmates, she is being treated in accordance with the prison regulations. She is in good health and is not suffering from any chronic diseases.

V. Summary of the findings and results

In the light of the above, we find that the Egyptian State is respecting all the international human rights instruments and the allegations and assertions referred to in the communication are false since the complainant has not been subjected to any form of arbitrary detention, torture or inhuman treatment. She has been questioned and remanded in custody on the basis of the results of the investigations conducted by the Public Prosecution, which showed that there was sufficient evidence against her. All the measures taken against the complainant were in conformity with international and regional human rights standards.
