

*(Translated from Arabic)*

**Response to the joint urgent appeal, signed by the Chair-Rapporteurs of the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and association, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, concerning the case of Mr. Ebrahim Abdelmonem Metwally Hegazy**

*Subject:* Egypt has received a joint urgent appeal signed by the Chair-Rapporteurs of the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and association, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. That appeal referred to reports to the effect that Mr. Ebrahim Abdelmonem Metwally Hegazy had suffered reprisals for his activities as a human rights defender and for his cooperation with the Human Rights Council's Working Group on Enforced or Involuntary Disappearances. The appeal, which gave an account of the circumstances in which he was arrested at Cairo International Airport while travelling to Geneva to meet with the Working Group on Enforced or Involuntary Disappearances, requested the Egyptian Government to respond by:

1. Providing information or comments on the allegations contained in the appeal;
2. Explaining how the factual and legal grounds for the said person's arrest and detention are compatible with Egypt's international human rights obligations under the International Covenant on Civil and Political Rights;
3. Indicating whether the letter from the Office of the High Commissioner for Human Rights confirming the meeting with the Working Group on Enforced or Involuntary Disappearances to facilitate his application for an entry visa was attached to the criminal file as a piece of evidence and, if so, clarifying the reasons therefor;
4. Describing the conditions under which the said person was given access to his legal counsel in order to prepare his defence, and how those conditions are in accordance with the right to a fair trial as provided for in the International Covenant on Civil and Political Rights;
5. Explaining the reasons why the said person has been denied the right to receive family visits since his arrest;
6. Providing the details of any investigation ordered in connection with the allegations that he was tortured during the first two days when his whereabouts were unknown and, if no inquiries have taken place into those allegations, or if they have been inconclusive, explaining why;
7. Providing information on the measures taken to ensure that he is protected against any abuse of power while in detention, including torture or any other form of cruel, inhuman or degrading treatment;
8. Indicating what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear, threats or harassment of any sort.

We will respond to those points as follows:

With regard to the provision of information or comments on the allegations contained in the appeal and an explanation of how the factual and legal grounds for the said person's arrest



and detention are compatible with Egypt's international human rights obligations, article 9 of the International Covenant on Civil and Political Rights stipulates that:

- “1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

Egypt signed the International Covenant on Civil and Political Rights on 4 August 1967, without expressing any reservation concerning that article, and its ratification of the Covenant was approved by Presidential Decree No. 537 of 1 October 1981. The Covenant was published in the Official Gazette on 8 April 1982 and entered into force as part of Egypt's domestic law on 14 April 1982.

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. 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.” 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 acts 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. 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, members of the Public Prosecution and any president or vice-president of an appellate court or a court of first instance are 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.

With regard to the circumstances in which the accused person was arrested, he was apprehended on 10 September 2017 at Cairo International Airport, while attempting to leave the country, pursuant to a warrant issued by the Public Prosecution for the search of his person and his home. That warrant was issued on the basis of investigations conducted by the security services into the instructions that fugitive leaders of the Muslim Brotherhood group living abroad had issued to some of its members in Egypt to contact a number of human rights organizations in and outside the country for the purpose of securing their support through false or misleading reports concerning the security and political situations in the country with a view to harming its interests. This was to be done by holding organizational meetings with members of the Muslim Brotherhood and conspiring with them to persuade their relatives to absent themselves from their places of residence for a certain period of time during which complaints in respect of their alleged enforced disappearance would be submitted to the governmental authorities and human rights organizations in and outside the country so that it could be claimed that human rights were being violated in Egypt.

The accused person was arrested at Cairo International Airport while he was attempting to travel abroad. He was brought before the Public Prosecution on 11 September 2017 and it was decided to hold him in custody until the following day. When he was questioned on 12 September 2017, the proceedings were attended by three lawyers and he was charged with heading a terrorist group and disseminating false reports, statements and rumours abroad concerning the internal situation in the country in a manner likely to undermine the State's trustworthiness, esteem and standing and harm its national interests. While denying those charges, the accused admitted to participating in the Muslim Brotherhood group's trade union activities in the Bar Association at Kafr al-Sheikh from 1988 until he joined the Freedom and Justice Party, which was subsequently dissolved due to its affiliation to that group. He also admitted to participating in the Rabi'a al-'Adawiya sit-in and added that his son 'Amru had disappeared on 8 July 2013 while taking part in the demonstration in front of the Republican Guard headquarters. He had submitted complaints concerning his son's alleged enforced disappearance to numerous governmental authorities and to the National Council for Human Rights. His case is still under investigation pending completion of his interrogation,

inspection of the items found in his possession, receipt of the report on the examination of his email and telephone communications and his compact disc, and the questioning of the officer who conducted the inquiries and ordered his arrest and search.

It is evident from the above that Egypt is respecting all the international human rights instruments and all the allegations made concerning the said accused person are false insofar as no acts of retaliation were committed against him; he was arrested pursuant to a substantiated judicial warrant issued by the Public Prosecution and there is no record of any previous measures being taken against his son.

With regard to the request for the release of the accused, no interference is permitted in the work of the Public Prosecution, which enjoys full independence in its capacity as part of the judicial authority in Egypt. We emphasize that the accused has not been subjected to any form of enforced disappearance, arbitrary detention, torture or inhuman treatment. His right of defence has been respected since his questioning has been conducted in the presence of three lawyers and all the measures taken against him have been in conformity with international and regional human rights standards.

On the question of whether the letter from the Office of the High Commissioner for Human Rights confirming the meeting with the Working Group on Enforced or Involuntary Disappearances to facilitate his application for an entry visa was attached to the criminal file as a piece of evidence, we wish to point out that all the items found in his possession at the time of his arrest are still being inspected and, consequently, it cannot be confirmed whether he was holding a letter from the High Commissioner for Human Rights.

With regard to the conditions under which the said person was given access to his legal counsel in order to prepare his defence, and how those conditions are in accordance with the right to a fair trial as provided for in the International Covenant on Civil and Political Rights, it should be noted that article 14, paragraph 3 (d), of the Covenant stipulates that, in the determination of any criminal charge against him, everyone shall be entitled, in full equality, to be tried in his presence, to defend himself in person or through legal assistance of his own choosing and to be informed, if he does not have legal assistance, of this right.

Egypt signed the International Covenant on Civil and Political Rights on 4 August 1967 without expressing any reservation concerning that article, which therefore has the force of law. We can confirm that the guarantees concerning the right of defence, as provided for in that article, are consistent with those applied in Egypt since, under the terms of article 54 of the Egyptian Constitution, 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.

In accordance with article 39 of the Prisons Regulatory Act No. 396 of 1956, persons who are deprived of their liberty are permitted to contact and meet with their lawyers in private after obtaining permission from the competent judicial authorities.

Under the Code of Criminal Procedure, a lawyer must be present with the suspect during the investigation proceedings and, in cases involving felonies or misdemeanours punishable by a mandatory term of imprisonment, the investigating authorities must appoint a lawyer to assist any suspect who does not have one. It is not permissible to separate the suspect from his lawyer, who has the right to examine all the papers in the case file. Article 124 of the Code stipulates that, except in cases of flagrante delicto or urgent situations in which the investigator records his substantiated fear that evidence might be lost, persons suspected of committing felonies or misdemeanours punishable by a mandatory term of imprisonment must not be questioned or confronted with other suspects or witnesses without their lawyer being invited to attend. The suspect is required to register the name of his lawyer with the clerk of the court or the prison warden or to inform the investigator thereof. Alternatively,

this may be done by his lawyer in person. If the suspect does not have a lawyer, or if his lawyer fails to attend after being invited to do so, the investigator must appoint a lawyer ex officio and the lawyer may enter in the record any pleas, requests or observations that he might wish to make.

Under article 125 of the Code, the lawyer must be permitted to examine the case file on the day preceding the questioning or confrontation, unless otherwise decided by the judge, and the suspect and the lawyer appearing with him during the investigation must not be separated under any circumstances.

The above provisions were applied following the arrest of the accused and we find that his right of defence was respected insofar as he was enabled to meet with his private lawyers, namely [REDACTED]

[REDACTED] who attended the investigation proceedings with him and were permitted to examine the entire case file and acquaint themselves with all the charges brought against the accused, who denied them. All the measures taken against the accused in this regard were therefore in conformity with the safeguards provided for in the International Covenant on Civil and Political Rights and international and regional human rights standards.

With regard to family visits, article 38 of the Prisons Regulatory Act No. 396 of 1956 stipulates that every convicted person has the right to correspond and to make and receive telephone calls, and his relatives have the right to visit him twice a month, under the control and supervision of the prison administration and in accordance with the rules and procedures laid down in the internal regulations. Persons remanded in custody enjoy the same rights, unless otherwise decided by the competent public prosecutor or investigating judge, in accordance with the procedures laid down in the internal regulations. The prison administration treats visitors in a humane manner and provides them with appropriate waiting and visiting rooms. Under the terms of article 40 of the same Act, the Attorney General, the district attorney and the Assistant Minister of the Interior for the Prisons Sector, or their appointed representatives, may permit prisoners' relatives to visit them outside normal visiting hours as and when necessary.

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 Minister of the Interior's decision No. 79 of 1961 concerning prison internal regulations).

With regard to the alleged torture of the said accused person and the measures taken to ensure that he is protected against any abuse of power while in detention, including torture or any other form of cruel, inhuman or degrading treatment, it should be noted that article 7 of the International Covenant on Civil and Political Rights stipulates that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Since Egypt has signed the Covenant without expressing any reservation concerning that article, it has the force of law. It should also be noted that the safeguards provided for in the Covenant, under which torture and cruel or inhuman treatment or punishment are prohibited, are consistent with those found in Egypt's Constitution and law. 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 health requirements; 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.

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.

Any accused person who has been subjected to torture or inhuman or degrading treatment has a constitutional right to seek redress by submitting a complaint to the legally competent authorities in accordance with article 97 of the Constitution which stipulates that every person's right to seek legal redress shall be guaranteed and safeguarded.

With regard to the measures taken by the State to ensure that human rights defenders are able to carry out their legitimate work, 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.

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