

(Translated from Arabic)

Reply to the communication from the Working Group on Arbitrary Detention of the Human Rights Council concerning several cases of arbitrary detention

Subject:

A joint communication from the Working Group on Arbitrary Detention and several special rapporteurs of the Human Rights Council concerning the arbitrary detention of Mr. Abdullah Ahmed Mohammed Ismail Alfakharany, Mr. Samhy Mostafa Ahmed Abdulalim, Mr. Mohamed Mohamed Aladili and Mr. Youssouf Talat Mahmoud Abdulkarim for reasons related to their work as journalists covering what is described in the communication as the violent dispersal of supporters of the Muslim Brotherhood from the Rabaa al-Adawiya Square in Cairo on 14 August 2013.

The following points will be addressed in this response:

- I. Guarantees with regard to detention in Egypt and their compliance with international standards
- II. The allegations of torture and enforced disappearance
- III. The procedures followed with regard to the accused
- IV. The results and the findings

I. Guarantees with regard to detention in Egypt and their compliance with international standards

Safeguards are guaranteed under the Egyptian Constitution for persons deprived of their liberty, in accordance with article 9 of the International Covenant on Civil and Political Rights. Such persons must also be tried before independent judicial bodies. The legislature has not provided for any exceptions to these guarantees except pursuant to laws on combating terrorism or emergency legislation. Article 54 of the Constitution stipulates that: "Personal freedom is a natural right that is protected and may not be violated. Apart from cases of flagrante delicto, it is not permissible to arrest, search, detain, or restrict the freedom of any person except pursuant to a reasoned judicial order necessitating an investigation. All persons whose freedom is restricted shall be promptly informed of the grounds therefor, shall be notified in writing of their rights, shall be permitted forthwith to contact their relatives and lawyer, and shall be brought before the investigating authority within 24 hours of the time when their freedom was restricted. Questioning may begin only once a person's lawyer is present. A lawyer shall be appointed for persons who have no lawyer. Persons with disabilities shall be provided with the requisite assistance, in accordance with the procedures prescribed by law. All persons whose freedom is restricted, as well as other persons, shall be entitled to file a complaint with the judiciary. A decision on the complaint shall be rendered within one week; otherwise, the person shall be released forthwith."

Article 55 stipulates that: "All persons who are arrested or detained or whose freedom is restricted shall be treated in a manner that preserves their dignity. They may not be tortured, intimidated or coerced. They may not be physically or mentally harmed, and they may not be arrested or confined save in designated locations that comply with humanitarian and health standards. The State shall provide means of access for persons with disabilities. Any violation of the aforementioned provisions shall constitute an offence and the perpetrator shall be prosecuted. An accused person shall have the right to remain silent. Any statement that is proven to have been made by the detainee under pressure of the kind described above, or the threat of such pressure, shall be deemed 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 as 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 directors 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, in addition to 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 that 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 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/her 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.”

Article 39 of the same Act provides that persons deprived of liberty may contact their lawyer and meet with members of their family, having first obtained permission from

the competent judicial authorities. Legislators have also taken care to provide education for persons deprived of their liberty and have made provision for the Minister of the Interior to cooperate with the Minister of Education to develop a curriculum for men and women, as set forth in articles 28 and 29 of the same Act. Other legislative measures to promote the education of persons deprived of liberty include creating a library containing books on religious, scientific and ethical subjects at each prison and allowing persons deprived of liberty to order their own books, newspapers and magazines, pursuant to article 30 of the Act. In addition, under article 31, prison authorities are obliged to encourage and facilitate access to education for prisoners who may wish to continue their studies, and to allow them to sit exams at committee headquarters.

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/she must transfer the prisoner to an external hospital, after first 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/she 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 so as to ensure that the health care provided is of a high standard.

The health care provided in places of detention is regulated within an integrated and graded structure of preventive and therapeutic medicine 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 enjoy 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. All necessary preventive measures have been taken: all the cells and facilities at detention centres are cleaned and disinfected, longer exercise periods have been introduced and inmates are educated about the dangers posed by diseases and about ways to prevent them. The Ministry of Health is also working with prison administrations to conduct vaccination campaigns to protect against various diseases.

In addition, the Ministry of Health has helped to renovate police stations and places of detention and determine their optimal holding capacity. Social workers are available to cater for the welfare of prisoners and almoners are appointed to encourage them to lead righteous lives and observe religious rites.

These provisions are consistent with article 10 of the International Covenant on Civil and Political Rights, which stipulates that:

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
- (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders

shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

These provisions are also consistent with article 11 of the International Covenant on Economic, Social and Cultural Rights, which stipulates that:

1. The States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

2. The States parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

These provisions are also consistent with article 12 of the International Covenant on Economic, Social and Cultural Rights, which stipulates that:

1. The States parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

This applies to all prisoners, including the complainants, as described in section 3.

II. The allegations of torture

The Egyptian legislature accords great importance to the prevention of torture and all forms of degrading and inhuman treatment, which is one of the key topics addressed in the Constitution. There are not only legal guarantees against torture, but also numerous constitutional guarantees. Egypt was one of the first States to act on the issue of torture by signing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, pursuant to Republican Decree No. 154 of 1986. The Convention was incorporated into the body of domestic legislation applicable in Egypt. The State abides by the provisions of the Convention and the law and the Constitution contain clear provisions on the sanctions to be applied to any person who violates its provisions.

Under articles 51, 52, 55 and 60 of 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/her liberty must be treated in a manner that preserves his/her 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; and the human body is inviolable and any assault thereon or disfigurement or mutilation thereof constitutes a legally punishable offence. These rules and provisions are binding on all the State authorities and must not be contravened.

The Code of Criminal Procedure sets out the legal protections for human rights and freedoms and prohibits any attack thereon. 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 1, section II, book two of the Criminal Code, is not subject to any statute of limitations.

All acts of torture perpetrated by public officials are criminalized under articles 126, 127, 129, 280, 281 and 282 of the Criminal Code, as contained in section VI concerning coercion and ill-treatment by public officials. Article 126 prohibits the use of torture to extract confessions from suspects, and article 127 stipulates that any public official or 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, shall be deemed to have committed an offence.

The Public Prosecution Office investigates all reports that it receives concerning allegations of torture or brutality and takes all the measures required to investigate such allegations. Immediately after receiving and verifying a complaint, a member of the Public Prosecution Office examines the corpse (in the event of death) or the alleged victim in order to identify any injuries. He/she also examines the location of the incident and seizes all instruments alleged to have been used to commit the offence. He/she refers the corpse (in the event of death) or the victim to the medical examiner to determine the nature, cause and date of any injuries and the instruments used to inflict them. He/she questions any persons who witnessed the incident and every person who was in any way responsible for supervising the place of detention. In addition, he/she collects all the criminal evidence, interrogates the person or persons responsible for inflicting the injuries on the victim and confronts them with the statements provided by the victim and the witnesses and any other evidence obtained, after which he/she may prefer charges against them. Based on the findings of the investigation, the case file is either referred for prosecution or closed on the legally prescribed grounds. The victim has the right to lodge a complaint or appeal against a decision to close the case.

In the light of the foregoing, it is clear that the allegations are unfounded and are not supported by evidence. The Arab Republic of Egypt has a legislative system with well-defined procedures for combating torture and punishing perpetrators. The authorities of the State, first among them the Public Prosecution Office, investigate such offences with a view to discovering the perpetrators, sending them for criminal trial and ensuring that they receive a punishment that will act as a deterrent to others. It is therefore absolutely unacceptable to claim that the authorities of the Egyptian State have carried out acts of torture. There is no record that any of the complainants or their representatives have filed a complaint of torture or ill-treatment with the competent authorities, which proves that the allegations contained in the communication are unfounded.

III. The procedures followed with regard to the accused

Firstly, it should be noted that the accused were arrested pursuant to orders issued by the competent investigative authorities, and interrogated by the Public Prosecution Office:

- The individuals referred to in the communication were sentenced to 5 years' imprisonment in case No. 2210 of 2014 concerning the crimes committed in Agouza, widely known in the media as the "Rabaa Operations Room" case. They are being detained in the Istiqbal section of Tora Prison, with the exception of Mr. Mohamed Mustafa Aladili, who is being detained in Liman 440 Wadi al-Natrun Prison.
- Mr. Samhy Mostafa Ahmed Abdulalim (sentenced to 5 years' imprisonment in case No. 2210/2014 on the crimes committed in Agouza, known as the "Rabaa Operations Room" case) is being detained in the Liman section of Tora Prison. His

prison term began on 26 August 2013. He was examined by the prison medical officer, who diagnosed inflammation of the jaw. He regularly visits Al-Manial University Hospital to receive appropriate treatment (cortisone injections). His latest appointment was on 30 January 2018 and the next is on 13 March 2018.

- Mr. Mohamed Mohamed Mustafa Aladili (sentenced to 5 years' imprisonment in case No. 2210/2014 on the crimes committed in Agouza, known as the "Rabaa Operations Room" case) is being detained in the Liman section of Tora Prison. His prison term began on 26 August 2013. Having complained of pain in his lower back, he was examined by the prison medical officer. An MRI of the lumbar vertebrae was conducted which revealed no sign of damage. He was examined by a specialist in internal medicine, who recommended that an MRI of the lumbar vertebrae be performed, which also revealed no sign of damage. Mr. Aladili was also referred to another specialist in internal medicine who recommended that a non-urgent MRI of the brain be performed. An appointment will be made for Mr. Aladili at Al-Manial University Hospital so that he can undergo the necessary medical procedures.
- Mr. Abdullah Ahmed Mohammed Ismail Alfakharany (sentenced to 5 years' imprisonment in case No. 2210/2014 on the crimes committed in Agouza, known as the "Rabaa Operations Room" case) is being detained in the No. 2 high-security section of Tora Prison. His prison term began on 26 August 2013. He was examined by the prison medical officer, who confirmed that he was free from injury and disease.
- Mr. Youssouf Talat Mahmoud Abdulkarim (sentenced to 5 years' imprisonment in case No. 2210/2014 on the crimes committed in Agouza, known as the "Rabaa Operations Room" case) is being detained in the Istiqbal section of Tora Prison. His prison term began on 20 August 2013. Having complained of pain in his spine that was affecting his walking and for which he required analgesic drugs, he was examined by the prison medical officer, who confirmed that Mr. Abdulkarim was in generally sound health. Mr. Abdulkarim is due to be examined by an orthopaedic specialist to confirm whether his claims are true.
- Our investigations revealed the allegations that these individuals were subjected to torture during their incarceration were false. The prison sector provides the necessary health care and suitable living conditions for all prisoners without discrimination, in accordance with the relevant prison regulations.
- The order to refer the suspects for trial as part of case No. 2210/2014 listed the charges brought against them, namely: joining an association that had been established illegally; participating in a criminal agreement with the aim of undermining the Egyptian Constitution; spreading chaos; committing deliberate acts of destruction; and possessing wireless communication devices without authorization for the purpose of undermining national security. The individuals were placed in detention pursuant to a judicial ruling; the claim that they are being detained arbitrarily is therefore unfounded.

IV. The results and the findings

The Egyptian State respects all instruments of international human rights law. The allegations contained in the communication are all unfounded; the accused have experienced no ill-treatment and no torture of any kind, and they have not been denied health care. During its investigations, the Public Prosecution Office found no evidence of such treatment; it did, however, uncover sufficient evidence on which to charge the suspects, including witness statements, the results of forensic examinations, technical evidence and medical reports. Based on that evidence, the case was referred to court.

With regard to the allegation that the complainants were arrested for reasons related to their work as journalists:

Article 19 of the International Covenant on Civil and Political Rights stipulates that:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

The individuals were not arrested because of their work as journalists, but rather because they had committed criminal, terrorist offences. The modern concept of a political offence does not apply to these offences, as it excludes espionage and terrorist offences, which are punishable under the ordinary law.

The Egyptian Government is currently confronting a wave of violent terrorism that is undermining the day-to-day rights of Egyptian citizens. This case is just one example of such terrorism. Terrorist groups, led by the Muslim Brotherhood, are pursuing acts of violence with the aim of undermining the State. Some groups are exploiting supposed human rights abuses in Egypt to provoke conflict and political polarization and to place pressure on the State. They manipulate facts to make it appear as though the State has no respect for human rights or freedoms. This should be taken into account when assessing the veracity of the allegations and determining their legal and factual accuracy. There is no basis to the information provided in the communication or in the press release according to which the complainants were subjected to torture and ill-treatment and were not given a fair trial. Such information is based purely on allegations and statements by a group of terrorists seeking to avoid the consequences of their actions. Numerous articles have been published about the identities of the terrorists, the conditions of their detention and the specifics of the investigations and the trial; however, these articles were also based solely on the accounts given by those terrorists and their families. Their version of events is not supported by documented evidence, nor does it correlate with the facts. The trial was conducted publically before the legally competent court, not a special court. All the guarantees of a fair trial were met; the trial was held in public session and the court took account of all the requests submitted by the defendants and listened to their defence, all of which was duly registered in the court records. The court also listened to witnesses and examined all the evidence presented by the Public Prosecution Office. It issued its ruling only after having ensured that all legal guarantees were met. These facts throw serious doubt on the allegations and expose their inaccuracy. Furthermore, reliance on such allegations runs contrary to the professional regulations governing investigations into human rights offences.

The allegations are completely unsupported by evidence; there is therefore no way of determining whether the alleged events actually took place, understanding and defining those events within a legal context or coming to a general conclusion, as required by all international norms. Furthermore, the communication fails to clarify how the authors verified the accuracy of the allegations and proved that the alleged events had indeed taken place. No clear, logical, chronological explanation of the evidence was provided to support the allegations. Such an explanation is essential, in particular when the allegations cannot be refuted, as there is no way to prove that they are false or incorrect. The allegations are based on accounts fabricated by the defence in an attempt to evade the charges brought against these confirmed terrorists, whose guilt is in no doubt.

United Nations entities are deliberately maintaining a sense of confusion around the allegations. Firstly, the allegations make no logical sense. Secondly, the acts carried out by these individuals constituted offences under the criminal laws in force in Egypt at the time of their commission. This reflects the gravity of the terrorist offences for which the charges were handed down and the criminal threat posed by the perpetrators.

It has been proven that the perpetrators violated the rights of security personnel who were carrying out their legal duties, as well as other innocent individuals, to whom priority

is afforded as regards care and protection. In committing those acts, the perpetrators also committed an attack against society. Therefore, a penalty appropriate to crimes against society and against innocent citizens, who are protected by the law and by international instruments, was required. The legal procedures that have been taken should be respected. Under no circumstances may the international community or international instruments call for the interests of innocent victims to be ignored.

Opinion No. 7/2016 adopted by the Working Group on Arbitrary Detention refers to the same matters as those contained in this complaint, and all the allegations set out therein have been addressed.

As part of the Government's efforts to guarantee that all testimonies and information concerning the events of 14 August 2013 are published, a committee was established to investigate the events that occurred during the dispersal of the Rabaa al-Adawiya sit-in. The committee concluded that no legal or criminal violations had been committed. Its report was published online and on official media channels and is publically available.

Lastly, we wish to confirm that the allegations contained in the communication are false and unfounded and are not backed by evidence and that all the procedures taken in respect of the individuals charged with terrorism are in line with international and regional human rights standards.
