

*(Translated from Arabic)*

**Permanent Mission of the Arab Republic of Egypt to the United Nations and other international organizations in Geneva**

**Response of the Egyptian Government to the joint communication of a number of special procedures mandate holders concerning Mustafa Kassem Abdallah Mohamed Kassem**

**Introduction**

1. On 3 February 2020, the Government of the Arab Republic of Egypt received a joint communication from the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning the death of the convicted person Mustafa Kassem Abdallah Mohamed Kassem.

2. The Government submits this response to the communication to confirm its sincere willingness to cooperate with the special procedures mandate holders of the Human Rights Council in general, and in particular its desire to make information available to the public, both inside and outside Egypt, in order to achieve transparency and to correct misconceptions. The Government has nothing to hide with regard to the fulfilment of its obligations to respect human rights under the Constitution and international human rights instruments.

3. In order to avoid repetition, the Government draws attention to the elements of its response to communication No. 9/2019 from the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on Arbitrary Detention concerning the national legislative and executive structure in the field of criminal justice and respect for prisoners' rights. It also refers to the parts of that response concerning the rights and safeguards granted to anyone facing a situation of criminal liability. This begins with the evidence-gathering stage, followed by the initial investigation, along with any deprivation of liberty that might entail. Then comes the criminal trial, which leads to conviction or acquittal and, lastly, the enforcement of the sentence. Clarification is provided of the fair trial guarantees during each of these stages, which are applied in accordance with the Constitution, the law and internationally recognized standards and under internal judicial supervision before and after.

4. In order to refute the misinformation contained in the communication, the following pages describe the situation of the convicted individual from the beginning of his criminal liability until his death while serving his sentence, together with all the judicial and executive procedures undertaken and the safeguards related to the investigation and fair trial that he enjoyed, as well as his living conditions during his detention, the health care he received and the visits from his relatives and lawyers. He died as a result of his hunger strike despite all efforts to persuade him to abandon the strike, which should not in any way be used as a means for evading the enforcement of judicial rulings or as a tool to put pressure on the authorities enforcing the rule of law.

**I. Criminal proceedings against the individual in question**

5. The individual was arrested on 14 August 2013 in the Nasr City area in connection with Nasr City I District Criminal Case No. 34150 of 2015, registered as East Cairo Plenary Court Case No. 2985 of 2015, concerning the dispersal of the sit-in at Rabaa Al-Adaweya Square. He was brought before the Public Prosecution, which questioned him on 15 August 2013 in the presence of his lawyer. He admitted in his statements during questioning that he was in Rabaa Al-Adaweya Square to protest, contrary to the allegations contained in the communication. The Public Prosecution ordered him to be held in pretrial detention starting from the date of his interrogation and renewed his detention in accordance with the legally prescribed periods, in his presence and that of his lawyer.

6. On 11 August 2015, the Public Prosecution referred the individual in question and others to criminal trial. The court heard the case in 67 sessions over a period of almost three years, during which it reviewed the 22,000 papers in the case file in order to clarify the various aspects of the charges before reaching its verdict, in accordance with the principle of



the presumption of innocence. All fair trial standards were observed, and the accused were tried in a public trial before a natural judge. One hundred and fifty lawyers attended, and the court heard 40 prosecution witnesses and 30 defence witnesses. The individual concerned and the other accused were allowed to cross-examine witnesses and present substantive and procedural defence submissions. They were also allowed to meet with their relatives at every session.

7. On 18 September 2018, the court sentenced the individual concerned, who was in attendance, to 15 years of rigorous imprisonment after proving the charges against him, namely his participation with others in the commission of several crimes. The judgment was handed down in the light of the court's certainty – after hearing and examining the witnesses, verifying the photographic and physical evidence and allowing the individual in question to exercise his right to a defence – about his role in carrying out and/or facilitating the commission of these crimes, which included the possession of unlicensed firearms, knives and explosives; attacking and terrorizing the residents of Rabaa Al-Adaweya Square, cutting off their electrical supply and endangering their health and security; the use of force and weapons against civilians and law enforcement officers; the premeditated killing of 17 individuals and the attempted murder of 106 others; the unlawful detention, beating and torture of 19 individuals; the occupation of public facilities; the vandalization of a number of such buildings; the vandalization of mayors' private property; the theft of the property of 7 individuals; blocking roads; depriving civilians of freedom of movement and disrupting public transport.

## II. Living conditions of the individual concerned

8. From the beginning of his detention, the individual in question was held in the Tora prison complex in Cairo, one of the public prisons of the Prison Service, where he was provided with the appropriate living conditions in terms of room size, number of prisoners, good ventilation, toilets, appropriate food rations, laundry facilities, a cafeteria and a library. The individual received all the necessary care during his imprisonment, including medical, social, cultural and religious services, and he was granted daily periods of exercise and sun exposure in the open air, in accordance with the regulations in place. The individual did not lodge any complaints about his living conditions or being subjected to ill-treatment or discrimination.

9. The individual in question was provided with food rations by the prison administration on a regular basis, like the rest of the inmates, although he refused to accept them. A given meal was not taken away until the next meal was presented to him, in accordance with the prison instructions. The special dietary requirements for diabetics were taken into account in the provision of his meals, on the instructions of his therapists.

10. It should be noted that during his pretrial detention he was held separately from the convicted prisoners. Under article 14 of Act No. 106 of 2015 amending the Prisons Act, pretrial detainees may be authorized to reside in furnished rooms, at their own expense – as previously stated in the response to communication No. 9/2019 – but the individual in question did not request this arrangement.

## III. Visits received

11. He received numerous visits from his family, including exceptional visits on various occasions and holidays. Throughout his imprisonment he received a total of 251 visits from his relatives and 20 from officials of the United States embassy. Visitors from the United States embassy in Cairo included:

- 2013: Third Secretary [REDACTED] and Consular Assistant [REDACTED]
- 2014: First Secretary [REDACTED] and Consular Assistant [REDACTED]
- 2015: Vice- [REDACTED], Third Secretary [REDACTED], Assistant Attaché [REDACTED], Assistant Attaché [REDACTED], Consular Assistant [REDACTED], Consular Assistant [REDACTED] and Consular Assistant [REDACTED].

- 2016: Second Secretary [REDACTED], Second Secretary [REDACTED], Consular Assistant [REDACTED], Consular Assistant [REDACTED] and Consular Assistant [REDACTED].
- 2017: Second Secretary [REDACTED] and Consular Assistant [REDACTED].
- 2018: Vice-[REDACTED], Second Secretary [REDACTED], Consular Assistant [REDACTED] and Consular Assistant [REDACTED].
- 2019: Consul [REDACTED], Vice-[REDACTED], Second Secretary [REDACTED], Consular Assistant [REDACTED] and Consular Assistant [REDACTED].

12. The last visit he received from his relatives on 8 January 2020 was an extraordinary visit allowed to prisoners for Christmas. It was his brother [REDACTED] who visited him. He received the last visit from United States embassy officials, consul [REDACTED] accompanied by consular assistant [REDACTED], on [REDACTED] November 2019.

13. Like other inmates, he received clothes and food from his relatives. They also provided him with medicines after they were examined by the prison doctor to ensure that they were suitable for his medical condition, in accordance with prison regulations, which apply to all inmates without discrimination.

14. It should be noted that, as the individual in question holds another nationality in addition to his Egyptian nationality, after his conviction under a final criminal ruling, the Egyptian Government offered to hand him over to the authorities of that State for him to serve the sentence there, through the procedures stipulated in Act No. 140 of 2014 on the provisions for the extradition and transfer of convicted offenders, but the offer was rejected by the Government of that State.

#### **IV. The individual's state of health**

15. The individual in question was ill with high blood sugar before being admitted to the prison. The prison doctor administered the necessary treatment and his blood glucose level was monitored regularly. In addition, he kept an insulin pump in his cell, and the medicines brought to him by his family, once approved by the prison doctor, were kept in specially designated refrigerators. In this regard, the Government recalls what was previously stated in the response to communication No. 9/2019 regarding the provisions of the implementing regulations to the Prisons Act regulating inmates' right to health care. In particular article 27 provides that: "The doctor must examine all inmates as soon as they are admitted to prison, and in no case later than the morning following admittance, in order to determine their state of health and to identify what work they are capable of doing. The doctor must also treat sick inmates on a daily basis as well as inmates who complain of an illness".

16. He was provided with a special diet for diabetics designed by nutritionists to ensure that he had balanced meals every day (20 per cent protein, 25 per cent fat, 55 per cent carbohydrates), including hot food, to provide sufficient variety: legumes, cheese and milk, vegetables, starches, animal proteins and fruit.

17. On 9 September 2018, he informed the prison administration that he was refusing the food provided to him by the prison and was going on a liquid-only hunger strike to protest against his sentence. He was advised and instructed by the prison administration not to go on strike, but he did not comply. The Public Prosecution issued instructions to the prison administration to prepare and submit to it detailed daily medical reports on the state of health of the individual in question. Indeed, 475 daily records were verified. They were all drawn up on the basis of the medical examinations conducted on the inmate, which involved measuring his pulse, blood pressure and blood sugar. He was also advised to give up the hunger strike but did not respond.

18. On 7 April 2019, upon doctor's orders, the individual was placed in a room in the Tora Liman hospital under medical observation in light of his continued hunger strike and refusal to accept the meals provided to him by the prison administration in accordance with

the instructions of the competent doctor.<sup>1</sup> He was seen by the internal medicine consultant and underwent the necessary medical examinations, which came back normal. He was advised to abandon the hunger strike, but to no avail. The necessary medical examinations continued to be conducted periodically, and the Public Prosecution was provided with regular reports on his state of health and the measures taken in his case. It should be noted that, under articles 27 and 37 of the implementing regulations of the Prisons Act, only the prison doctor has the authority to order the transfer of a sick prisoner to the prison hospital. The doctor may submit a report for the Prison Authority's medical department if he or she considers that treatment should take place in an outside hospital. In emergency or urgent cases, the prison doctor may take whatever measures he or she deems necessary to maintain the prisoner's health and provide the Authority with an urgent medical report, as previously explained in the response to communication No. 9/2019.

19. On 9 January 2020, the individual concerned stopped taking any liquids other than water. The medical examination carried out showed that his vital signs were as follows: blood pressure 130/90, random blood sugar 257 and pulse 82. He was again given advice and guidance, but he insisted on his position. When asked, the individual reported in the record that he signed that his hunger strike was aimed at attracting attention in the hope of securing his release and that he was not accusing the prison administration of anything and that he was being treated well. The Prison Authority notified the Public Prosecution, which tasked the prison superintendent with providing continuing advice and guidance to the individual to call off his hunger strike, for fear of something bad happening to him, while continuing to provide him with the necessary medical care, carrying out a daily medical examination in order to preserve his life and presenting a detailed daily report on his state of health to the Public Prosecution.

20. On 11 January 2020, he felt exhausted as a result of high blood sugar and was unwell because he was abstaining from all food and drink except water, so he was transferred to Qasr El Eyni hospital at the recommendation of the doctors at Tora Liman hospital. He was kept in intensive care and all the necessary examinations, analyses and therapeutic interventions were carried out. On 12 January 2020, the Public Prosecution was notified through a report written by an officer at Liman Tora prison.

21. On 13 January 2020, notice No. 327 of 2020 was issued by the administration of Old Cairo regarding the death of the the individual in question, and the Public Prosecution, which had initiated the investigations, was notified.

#### **V. The individual's death**

22. On 13 January 2020, the Public Prosecution was informed of the individual's death at Qasr El Eyni hospital and immediately opened an investigation, starting with an examination of the body. This examination revealed that there were no apparent injuries other than some needle marks on the right and left palms and right and left arms. It ordered that his body be transferred to the forensic morgue, and a forensic doctor was assigned to perform the autopsy under the supervision of the investigating prosecutor and in the presence of the deceased's two sisters. The Public Prosecution kept his medical files and papers issued by Qasr El Eyni hospital and the prison hospital.

23. The statements of the specialist doctor at Liman Tora hospital and the medical reports he submitted on the individual's case confirmed what is stated in paragraph 17 above regarding the individual's liquid-only hunger strike and the fact that he had diabetes. The doctor reported that the individual's state of health deteriorated on 8 January 2020 as a result of his hunger strike (he was drinking only water). He fell into a diabetic coma and was transferred to Qasr El Eyni hospital on 12 January 2020.

24. The resident physician in the internal medicine department at Qasr El Eyni hospital also reported in her testimony that when the individual was presented to her on 12 January 2020, he was suffering from dizziness. Following the necessary tests, he was found to have

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<sup>(1)</sup> There is a hospital located within the Tora prison complex with a 160-bed capacity. It has intermediate care operating rooms, a centre for ophthalmological surgery, a laparoscopic unit, another for physiotherapy and radiology, a dental clinic, a pharmacy and clinics equipped for various medical specialties, such as internal medicine, ear, nose and throat surgery and urology. It employs highly competent doctors and also has contracts with a number of consultants in various medical specialties to provide an excellent level of medical care.

high blood sugar and low blood pressure, and the level of biocarbonate in the blood indicated an increase in blood acidity, signalling a diabetic coma. He was treated in the intensive care unit. This was confirmed by the testimony of the resident physician in the intensive care unit of the internal medicine department at Qasr El Eyni hospital, [REDACTED].

25. The statements of a number of prisoners also confirmed that he was not subjected to any kind of threat or assault, and that his death was a result of his deteriorating health due to his hunger strike. It was also established that he had not made any complaints or requests, and that his hunger strike was aimed at attracting attention in the hope of securing his release. He was provided with all the necessary health care, advice and guidance, and daily reports on his hunger strike were submitted to the Public Prosecution. There is no suspicion that his death was of a criminal nature.

## **VI. Conclusion**

26. The Government of the Arab Republic of Egypt hopes that the information provided above will be sufficient to respond to all of the mandate holders' queries and to clarify aspects of the individual's criminal responsibility based on his own statements, thus confirming the invalidity of the allegations contained in the complaint. The Government wishes to note the following:

(a) First, the recent communications of the special procedures mandate holders have a key point in common, namely, the reference in each communication to "alleged facts and concerns". It does not make sense to refer to "alleged facts" in the context of a communication. Either they are verified facts on which the mandate holders are basing their conclusions and convictions, or they are merely allegations that the mandate holders wish to verify before forming an opinion. The resulting confusion is reflected in the language of the communication itself, which is merely an inconsistent combination of the allegations received by the mandate holders and their prior convictions in that respect, without waiting for the reply from the Government concerned, whatever it may be, which also clearly contradicts article 13 (a) of the Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council adopted by resolution No. 5/2 of 18 June 2007, which requires that the expression of the mandate holders' views should be accompanied by a fair indication of what responses were given by the concerned State.

(b) The Government regrets that the communication shows that the mandate holders do not have the discretion and even-handedness required by article 8 (a) of the Code of Conduct. If, as claimed in the communication, the reason for the individual's detention was that he held a passport from another State, Egyptian prisons would be filled with thousands of citizens of that country who live in Egypt or who hold dual nationality, which of course is not the case. There is also a clear contradiction in the communication between the acknowledgement by the source that the individual was with his brother-in-law at the time of his arrest and the claim that his family was not notified of his arrest. In addition, no mention is made of the fact that he would not have appeared before the Public Prosecution within the legally established period after his arrest without the lawyer hired for him by his family.

(c) If any of the allegations that he was subjected to beatings or torture by law enforcement officers were true, he and his lawyers would have had this entered in the official records of the investigations before the Public Prosecution and raised the matter during trial. Similarly, if he had subsequently been tortured or ill-treated, leading to his death, as claimed by the mandate holders, the consulate of the foreign State of which he was a national would have raised the matter with the relevant Egyptian authorities. Nor was there anything to prevent his and his family's legal representative from lodging a complaint to hold those responsible accountable or to claim compensation. On the contrary, it has been established that he was treated with dignity, allowed to exercise all of his legal rights and, like other detainees and prisoners, provided with the highest possible level of physical and mental health care, in accordance with the resources available. The mandate holders should have put aside their prior personal convictions and avoided jumping to unsubstantiated conclusions, in accordance with article 12 (a) of the Code of Conduct, which affirms that their conclusions and recommendations should be based on objective assessments.

(d) The Government realizes that, despite its tireless efforts to promote and protect human rights, in accordance with its capacity, Egypt, like other countries, is still far from perfect. However, the Government affirms its commitment in all cases to observing the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles for the Treatment of Prisoners. For the sake of argument, if the allegations concerning his conditions of detention or the denial of the necessary treatment were true, the foreign country of which he is a national would have raised the matter with the relevant Egyptian authorities, especially since the representatives of its consulate visited him regularly, but this did not happen. Although the Government clarified in its previous response to communication No. 9/2019 the safeguards in place to protect the rights of prisoners and the various aspects of care that are provided to them, as well as the fact that prisons and places of detention are subject to judicial inspection, it is regrettable that the communication jumps straight to demanding that the Government change what it claims to be “an intentional disregard for the lives of thousands of prisoners”, which is an unfounded accusation based entirely on rejected assumptions, in addition to being a violation of article 8 (c) of the Code of Conduct, which stipulates that mandate holders should rely on objective and dependable facts.

(e) Specialist doctors had absolute authority to determine whether the individual in question needed treatment in his prison cell, in the prison hospital or in an external hospital, and to determine the type of food and liquids to be provided to him. The mandate holders do not have the necessary knowledge or experience to qualify them to deal with these matters or to assess the readiness of prison hospitals to deal with medical conditions.

(f) The above information clearly shows that the mandate holders should have investigated the accuracy of the claims before including false allegations as established facts. Unfortunately, however, they did not make the slightest effort to verify the credibility of the allegations, which is a violation of article 6 (a) of the Code of Conduct, which stipulates the need for them to establish the facts, based on objective, reliable information from relevant credible sources, that they have duly cross-checked to the best extent possible.

(g) The communication reflects a clear bias by the mandate holders in favour of the source of the allegations, contrary to the impartiality required under article 8 (a) of the Code of Conduct. By way of example, here are three inaccuracies included in the communication:

- It is well established that all of the criminal proceedings taken against the individual were in accordance with the law and the State’s obligations under articles 9 and 10 of the International Covenant on Civil and Political Rights. He was brought to trial on 11 August 2015, less than two years after he was placed in pretrial detention, which was renewed by the Public Prosecution at hearings attended by him and his lawyers, for the prescribed legal periods. This shows that the claim made by the mandate holders in the communication that he spent 5 years in prison awaiting trial is incorrect.
- It is also well established that, contrary to what was stated by the mandate holders in their communication, the court did not sentence the individual to prison for being a member of the Muslim Brotherhood, but rather for his involvement, with others, in the commission of specific crimes punishable by law. It should be noted that no such charges were ever brought against him.
- The communication does not provide evidence to support the source’s claim that the individual or his legal representative requested that he be transferred to an outside hospital for treatment, yet the mandate holders concluded that the Government had ignored or denied these requests. The facts confirm that he was transferred to an external hospital on the recommendation of the competent doctor, according to his evaluation of the individual’s condition at the time.

(h) This bias is reflected in the tendentious claims made in the communication, which reveal convictions and prejudices that are not consistent with the requirement of impartiality and objectivity on the part of the mandate holders. These include, for example, the allegation that the charges against the individual were “dubious” and that he “was swept up in a system of abuse”. If these allegations were true, the court would not have heard the case in 67 sittings over a period of almost three years and it would not have gone to the trouble of reading all of the evidence and the 22,000 papers in order to establish the various aspects of the charges before reaching its verdict once it was convinced that he was involved

in committing the crimes of which he was accused. Nor would it have been necessary to observe all fair trial standards, in accordance with the State's obligations under the International Covenant on Civil and Political Rights, particularly articles 9 and 14. As previously stated, the defendants were tried in a public trial before a natural judge. One hundred lawyers attended, and the court heard 40 prosecution witnesses and 30 defence witnesses. The individual concerned and the other accused were allowed to cross-examine witnesses and present their substantive and procedural defences. They were also allowed to meet with their relatives at every session.

There is no doubt that if the mandate holders had read the Government's responses to previous communications, especially communication No. 9/2019, they would not have needed to raise most of the points made in the present communication and they would not have had to repeat some of the same conclusions that they had previously made, despite the logical differences in each case, unless they are unwilling to change their preconceived beliefs despite the unambiguous facts that are presented to them. The Government emphasizes that questioning the independence and credibility of the judiciary risks undermining public confidence in the basic safeguards to protect human rights and provide reparation, which could cause some individuals to take justice into their own hands, leading to chaos and violence. The mandate holders should think carefully about the negative repercussions of their arbitrary accusations on the justice system and human rights before making them.

In order to carry out their tasks optimally and in the manner expected of them, the mandate holders should be more prudent in the future in transmitting the allegations they have received to the Government, avoid confusing facts and their personal convictions and make a greater effort to be impartial and objective in their work. In conclusion, the Government always welcomes constructive cooperation with those who abide by the Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council, strives to improve the human rights situation in Egypt and around the world and looks forward to strengthening the system of special procedures as a whole.

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