

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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.

REFERENCE: UA
EGY 1/2015:

8 January 2015

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 24/6, 26/7, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged arbitrary arrest, detention, torture, and public stigmatisation of 26 men who are being tried on charges related to their alleged sexual orientation.**

According to the information received:

On 7 December 2014, at around 22:00 hours, members of the moral department of the police in Cairo raided a *hammam* (traditional bathhouse) on Bab el-Bahr Street in the Ramsis neighbourhood. It is reported that the police were accompanied by a journalist and a camera crew from the TV program *El Mostakhbai* ("The Hidden") who took photographs and filmed the entire raid.

The 26 men arrested include: Mr. [REDACTED];
Mr. [REDACTED]; Mr. [REDACTED]; Mr. [REDACTED];
[REDACTED]; Mr. [REDACTED]; Mr. [REDACTED];
[REDACTED]; Mr. [REDACTED]; Mr. [REDACTED];

██████████; Mr. ██████████; Mr. R ██████████
; Mr. ██████████; Mr. ██████████; and
Mr. ██████████.

Reports indicate and photographs show that during the arrest the 26 men were led naked into the police wagons on a cold night. It is alleged that police forced some of the men who were fully clothed inside the bathhouse to strip for the cameras.

The same night of the raid, the journalist that accompanied the police during the raid reportedly posted, on her personal and professional Facebook pages, photographs of the arrests which clearly showed many of the men's faces. The journalist later broadcasted on her television program footage of the raid, as well as what was claimed to be undercover footage taken inside the bathhouse. During the TV program, it was asserted that "MSMs [men who have sex with men] cause the spread of HIV/AIDS in Egypt."

According to reports received, the police provided information to the journalist and camera crew and facilitated the filming and photographing of the arrest, which is said to have violated the rights to privacy and the dignity of the arrested men.

The trial of the 26 men has proceeded before the Azbekeya Court of Misdemeanors (case no. ██████████) on charges relating to their alleged sexual orientation. The men are facing charges under Article 9c of Law 10/1961, which punishes the "habitual practice of debauchery" [*fujur*], a term in Egyptian law that is both vague and has been used for decades to arrest and imprison individuals on the basis of their actual or alleged sexual orientation. The provision carries a prison term of up to three years. They are also facing charges under Article 278 of the Criminal Code, which punishes "flagrant offenses against modesty" with up to one year's imprisonment.

All 26 men have been in detention since their arrest. It is reported that following the instructions of the prosecutor they were subjected to forced anal examinations by the Forensic Medical Authority. The State Forensic Medical Authority allegedly leaked to the media that tests on three of the men indicated they were victims of sexual assault. However, no investigation has reportedly been conducted into these claims so far, or into where exactly the alleged assaults would have taken place, the police lockup, the bathhouse, or elsewhere. The three alleged victims continue to face charges of consensual homosexual conduct.

At an initial hearing on 21 December, bailiffs and guards excluded families of the defendants from the courtroom, while admitting journalists, encouraging their presence. There are also witness testimonies of guards beating the defendants as

they were conducted to the hearing. Further hearing sessions were held on 4 and 5 January 2015, and a verdict is due on Monday 12 January 2015.

Grave concern is expressed about the allegations of arbitrary arrests, torture and public stigmatisation of the 26 men in connection to their actual or alleged sexual orientation. Serious concern is expressed at allegations that the men arrested were subject to forensic anal examinations to "prove" the charges against them. Further concern is expressed at reports indicating the presence of the media during the arrest and the broadcast of photos, images and statements that could lead to the violation of the right to privacy, to a fair trial, including the presumption of innocence, and to non-evidence based representation of the reality and epidemiology of the HIV/AIDS pandemic.

We are further concerned at reports received indicating that over the last eighteen months Egypt has witnessed an increased number of raids on private properties, arrests targeting individuals on the basis of their actual or perceived sexual orientation or gender identity, and a surge in homophobic coverage by the media and attitudes towards lesbian, gay, bisexual and transgender persons in the country.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The above mentioned allegations appear to be in contravention of the right not to be deprived arbitrarily of liberty, and of the right to a fair trial and due process, including the fundamental principle of the presumption of innocence, as enshrined, inter alia, in articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Further, we would like to note that in relation to the provisions of the criminal code on "debauchery", the UN Human Rights Committee has recommended that the Arab Republic of Egypt should uphold its obligations under articles 17 and 26 of the ICCPR and refrain from penalizing private sexual relations between consenting adults (CCPR/CO/76/EGY para. 19). The UN Committee Against Torture has further expressed concern with regards to ill-treatment against persons because of their real or alleged homosexuality in the Arab Republic of Egypt (CAT/C/CR/29/4, paras. 5(e) and 6 (k)). The UN Working Group on Arbitrary Detention has held that laws criminalizing homosexual behaviour between consenting adults in private and the application of criminal penalties against persons accused of such behaviour violate the rights to privacy and freedom from discrimination set forth in the International Covenant on Civil and Political Rights and are incompatible with articles 17 and 26 of the Covenant (Opinion 25/2009 (Egypt)).

With regards to forced anal examinations of individuals charged with engaging in consensual relations with adults of the same sex, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Egypt signed on 25 June 1986. The Committee Against Torture, the Special Rapporteur on Torture and the Working Group on Arbitrary Detention have repeatedly condemned the above-mentioned practice as contravening international human rights standards, and as intrusive, abusive and medically worthless for the determination whether or not a person has engaged in consensual same-sex sexual conduct between adults (A/HRC/19/41 para. 37).

With regard to discriminatory, non-evidence based and stigmatizing information spread by the media in this case with regards to homosexuality and HIV/AIDS, the Working Group on Arbitrary Detention has already raised concerns with your Excellency's Government with regards to the "incorrect assumption that homosexual relationships are responsible for HIV/AIDS and thus detrimental to public health" (Opinion 25/2009 (Egypt) para. 26).

Sexual orientation and gender identity are prohibited grounds of discrimination under international law. The Human Rights Council, through resolutions 17/19 and 27/32, has expressed grave concern at acts of violence and discrimination committed against individuals because of their sexual orientation and gender identity.

The United Nations High Commissioner for Human Rights recommends States to, inter alia, repeal laws criminalizing homosexuality, ensure that criminal laws are not used to harass or detain people on the basis of their sexual orientation or gender identity, protect persons from homophobic and transphobic violence, prevent the torture and cruel, inhuman and degrading treatment of lesbian, gay, bisexual and transgender persons in detention, and enact comprehensive laws that include sexual orientation and gender identity as prohibited grounds of discrimination (A/HRC/19/41 para. 84).

With regard to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, we would like to refer your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Special Rapporteur on the right to health has underlined that criminalization of same-sex conduct has an adverse effect on the ability of individuals to access appropriate health facilities, goods and services due to the stigma attached to criminalization. These laws are inherently discriminatory, tend to reinforce existing prejudices, and often legitimize community violence and police brutality directed at affected individuals. (A/HRC/14/20, paras 17-20).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Please provide any additional information and any comment(s) you may have on the above mentioned allegations.
2. Please provide information concerning the legal grounds for the arrest and detention of the 26 men, including the abovementioned individuals, and how these measures are compatible with the obligations of the Arab Republic of Egypt under international human rights law as stated, *inter alia*, in the UDHR and ICCPR.
3. Has a complaint been lodged by or on behalf of the alleged victims for their arbitrary detention, ill-treatment in detention, forced anal examinations and of sexual assault?
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please indicate what measures have been taken to ensure the physical and psychological integrity of the 26 men while in detention.
6. Please provide detailed information on the judicial proceedings against the 26 individuals to date and on the measures taken to ensure that the legitimate rights to privacy, fair trial and due process are guaranteed, including in relation to the broadcast of photographs and footage of the men on internet and on television.
7. Please provide information related to allegations indicating that the 26 men were subjected to forensic anal examinations upon the request of the prosecutor, and explain how this complies with Egypt's obligations under international human rights law and standards.

8. Please provide information on and indicate what measures have been taken to counter the dissemination by the media of discriminatory, non-evidence based and stigmatizing messages in relation to homosexuality and the reality and epidemiology of the HIV/AIDS epidemic.
9. Please provide information with regards to the measures taken by the Arab Republic of Egypt to implement previous recommendations by the UN Human Rights Committee, the Working Group on Arbitrary Detention and the Committee Against Torture to review legislation relating to "debauchery" and bring it in line with international human rights standards.
10. Please provide information on the measures taken by the authorities to protect lesbian, gay, bisexual and transgender persons in Egypt from arbitrary arrest and detention, violence and discrimination on the grounds of their sexual orientation and/or gender identity.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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