

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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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 independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 26/7, 26/12, 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 risk of imminent execution of six individuals sentenced to death in Egypt.

According to the information received:

Mr. Mohamed Ali Afifi Badawi

On 19 November 2013, Mr. Badawi was arrested at his house together with his wife and one of their children by Security Forces. The three were brought to an unknown place where they were separated. Mr. Badawi's wife and child remained detained for 15 days during which they reported having been ill-treated. Mr. Badawi's place of detention remained unknown until April 2014, when the family learned through statements made by the authorities in the media that Mr. Badawi was detained in Tora prison and that he was being accused of having taken part in the "Arab Sharkas" events, which took place on 19 March 2014 when a military raid against the Ansar Beit Al-Maqdis group, in a warehouse in

Ezbet Arab Sharkas in the governorate of Qalyubia, resulted in the killing of two security officers and six group's militants.

Mr. Mohammad Bakri Mohammad Haroun

On 28 November 2013, Mr. Haroun, aged 31, was arrested in the El Asher City (also called 10th of Ramadan City), Sharqia Governorate, with his wife and two young children. Mr. Haroun's wife and children were separated from him and detained for ten days in the Zagazig State Security facility without knowing the reason of their detention and having access to the outside world. Mr. Haroun was placed in an unknown location and his whereabouts remained unknown. Subsequent reports indicate that Mr. Haroun was held in the State Security Department, where he was subjected to torture, and was transferred to Al-Azouly alleged detention facility ten days after his arrest, where he was also tortured (he was beaten with wooden sticks, kicked and punched on different parts of his body). As a result of the torture, Mr. Haroun was transferred to Al-Azouly's hospital and marks of torture are still apparent on his body. On 21 March 2014, he was transferred to Al-Aqrab prison where he was interrogated by the prosecutor without the presence of his lawyer. During his detention, Mr. Haroun was not allowed to receive visits from his family.

On 24 December 2014, Mr Haroun's family learned through the media that he was mentioned by the authorities as linked to the bombing of a Cairo State Security facility and the 24 January 2014 bomb attack against Dakalhia State Security, both of which took place while Mr. Haroun was detained. Later, he was also mentioned by the authorities in relation to the "Arab Sharkas" events, which took place four months after Mr. Haroun's detention had started. Mr. Haroun was subsequently transferred to Tora prison where he remained detained.

Mr. Hani Mustafa Amin Amer

On 16 December 2013, Mr Amer, aged 33, was arrested along with several other people, including the head of the third district of Ismailia, while he was in the headquarters of this district for administrative reasons. While the other individuals arrested with him were later released, he was brought to Al-Azouly where he reported having been severely tortured to force him to confess to no less than 43 different crimes. He refused to confess despite the torture which made the police forces use even more force leading to, inter alia, the dislocation of his shoulders and a broken leg. Mr. Amer's health condition as a result of the torture was so severe that he was unable to feed himself and other prisoners had to feed him to keep him alive. Mr. Amer was prevented from seeing a doctor, despite the numerous obvious injuries he had all over his body. During the first three months of detention in Al-Azouly, Mr. Amer was kept incommunicado.

On 27 January 2014, Mr. Amer was brought before a prosecutor. Although he informed the prosecutor that he had been tortured, and despite the evident signs of torture on his body, the prosecutor refused to take this into account and decided to renew his detention.

On 5 February 2014, his family filed a complaint to challenge his arrest and consequent detention, but to no avail. On 20 March 2014, Mr. Amer was transferred to Tora prison and detained with the other individuals accused in the "Arab Sharkas" case. It is reported that he did not recognise having committed the different crimes he had been accused of before the court, but the prosecutor nevertheless stated that he had confessed having perpetrated them. On 8 April 2014, he was transferred to Al-Aqrab prison where he was again subjected to torture with the aim of extracting false confessions. Mr. Amer is detained in solitary confinement at Al-Aqrab prison, and he is denied access to medication, clothes, food and family visits.

Mr. Islam Sayed Ahmed Ibrahim

On 16 March 2013, Mr. Ibrahim, aged 26, was arrested by members of the Security Forces together with Mr. Khaled Farag Mohammed Ali and Mr. [REDACTED], while they were applying for visas to Turkey in a travel agency in the 6th of October City. The arrest was carried out without any arrest warrant. Mr. Ibrahim was brought to the State Security headquarters and then to Al-Azouly where he reported having been tortured in order to force him to recognise his participation in the "Arab Sharkas" events. He refused to confess to the accusations made against him. However, he was indicted and transferred to Tora prison.

Mr. Khaled Farag Mohammed Ali

On 16 March 2013, Mr. Ali, aged 27, was also brought to the State Security headquarters following his arrest at the travel agency in the 6th of October City. He was later transferred to Al-Azouly where he reported having been tortured, as a result of which he had his foot broken and had to undergo surgery. His father filed a complaint regarding his disappearance before the Attorney General under case file n°9157/2014, but it was never answered. Mr. Ali's relatives later learned through a statement made by the authorities in the media that he was prosecuted in the "Arab Sharkas" case and that he was in Tora prison.

Mr. [REDACTED]

On 16 March 2013, Mr. Rizq, aged 19, was also brought to the State Security headquarters following his arrest at the travel agency in the 6th of October City. He was later transferred to Al-Azouly where he also testified having been tortured, including by electrocution, to force him to confess that he was involved in the "Arab Sharkas" events. He was later transferred to Tora prison along with the other defendants in the case.

Judicial proceedings against the six defendants

Mr. Badawi, Mr. Haroun, Mr. Amer, Mr. Ibrahim, Mr. Ali and Mr. Rizq, together with three other men, were prosecuted under terrorism charges for their alleged involvement in the "Arab Sharkas Cell" case and in a series of other deadly attacks against military and civilian targets, as well as for their membership in radical armed groups. All defendants were referred to the Supreme Military Court despite being civilians, as Egyptian military courts are competent to try civilians under certain circumstances prescribed in article 204 of the Constitution. Several trial hearings were held before this military court, at times without the presence of their lawyers, inside Hikestep military camp, located on Ismailia-Cairo road.

Although the defendants' lawyers indicated to the military judges that the men did not know each other before being brought before the court and that some of the families had filed complaints against the authorities against their arbitrary arrests and enforced disappearances, which should constitute proof that those men could not have been on site the day of the raid since they were secretly detained at the time, the judges reportedly did not take these statements into account.

The lawyers also informed that the six defendants reported having been tortured or ill-treated to force them to confess to the crimes. The judges did not request an investigation into the allegations of torture, nor did they reject elements of proof that had been obtained through this mean. Further, although the accused had first admitted being affiliated to Ansar Beit Al Maqdes, some of them later retracted their confessions, claiming that they had been forced to say that under torture and that consequently the confessions had no legal validity. Their claims were also rejected by the judges. It is reported that false confessions written by the authorities were presented before the court to serve as proofs of the victims' involvement in the "Arab Sharkas" events. These confessions were admitted by the judges without prior verification regarding their veracity. Furthermore, it is reported that the defense witnesses were never able to testify before the court and, in the end, only a military officer listed by the military prosecutor was allowed to testify against the men.

On 21 October 2014, the six aforementioned individuals were sentenced to death by the Supreme military court in the case n°43 of 2014. Another accused was also sentenced to death while two other were sentenced to life in prison.

The death sentences were later confirmed by the Grand Mufti of Egypt, whose interpretation of Sharia law is necessary in order for the authorities to carry out sentences. Except for Mr. Rizq, who is a child under Egyptian law, none of the defendants were able to appeal the decision of the Supreme Military Court. Reports also indicate that officers of Tora prison deliberate and continuously tried to prevent the defendants from filing their appeal before the court on time.

On 24 March 2015, Mr Rizq's appeal was rejected by the Court of Appeals giving thus to the authorities the legal possibility to carry out the sentences at any time, as the victims have exhausted all remedies available at the domestic level.

Without making a judgment as to the accuracy of the information made available to us, we would like to express our serious concern about the allegations of imposition of the death penalty following trials that did not comply with international standards of fair trial and due process. We express further concern about the allegations of torture, and confessions extracted under torture, of the aforementioned individuals while held in detention.

In view of the irreversibility of the punishment of the death penalty and of the allegations of unfair trial leading to the imposition of the death sentences mentioned above, **we urge your Excellency's Government as a matter of urgency to take all steps necessary to prevent the execution of Messrs. Badawi, Haroun, Amer, Ibrahim, Ali and Rizq, which if carried out would be inconsistent with Egypt's obligations under international human rights law, and thus an arbitrary execution.** We further call upon your Excellency's Government to commute the deaths sentences against the aforementioned individuals and to ensure a fair retrial to all.

The above alleged facts indicate a prima facie violation of the right to life and security, not to be arbitrarily deprived of life, and not to be arbitrarily deprived of their liberty, as set forth in Article 3 of the Universal Declaration of Human Rights (UDHR), and Articles 6 and 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982. In addition, these allegations appear to be in contravention of the persons' right to a fair and public hearing before a competent, independent and impartial tribunal established by law, which includes the right to be assisted by a lawyer, as set forth in Articles 10 of the UDHR and 14 of the ICCPR, as well as in the Basic Principles on the Role of Lawyers. Finally, the allegations indicate a prima facie violation of the right to be free from torture and other cruel, inhuman and degrading treatment or punishment as set forth in Article 7 of the ICCPR and Article 1

and 16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT).

Article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. In this context, we wish to refer to the Special Rapporteur on torture's report A/67/279 (paras. 60-61), stating that the imposition of the death penalty following an unfair trial amounts to a violation of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the aforementioned individuals is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR.

We would also like to stress that article 15 of the CAT prohibits the use of any statement made as a result of torture as evidence in any proceedings. Moreover, we would like to draw your Excellency's Government's attention to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

We would further like to recall that according to article 4 of General Comment 31 of the Human Rights Committee, the obligations contained in the Covenant are binding on every State as a whole and that all branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party.

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

As 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, we would appreciate engaging with your Excellency's Government on the matter and obtaining your observations regarding the aforementioned allegations. In view of the urgency of the

matter, your Excellency's Government is requested not to execute the above-mentioned persons and to safeguard their rights in compliance with international instruments.

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.

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

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