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AUX DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 218/2 G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24)
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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 15/18, 17/2, 17/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the cases of Mr. **Ahmed Mohamed Salem Ali**, Mr. **Mohamed Gomaa Hassan Nassar**, Mr. **Yasser Jermey Attiya Al-Torbini**, Mr. **Amr Mohamed Mahmoud El-Malah**, Mr. **Hossam Abdo Abdelrady Hassan**, and Mr. **Ahmed Selmy Hammad Alyan**, who are reportedly at risk of execution in Egypt.

According to information received:

Mr. Ahmed Mohamed Salem Ali, an Egyptian national aged 25; Mr. Mohamed Gomaa Hassan Nassar, aged 31; Mr. Yasser Jermey Attiya Al-Torbini, a Palestinian aged 24; Mr. Amr Mohamed Mahmoud El-Malah, an Egyptian national aged 25; Mr. Hossam Abdo Abdelrady Hassan, an Egyptian national aged 23; and Mr. Ahmed Selmy Hammad Alyan, aged 27, were arrested at various times in 2011, as part of a group of 25 individuals suspected of carrying out an attack on Al-Arish II Police Station on 29 July 2011, as well as the of killing of two members of the security forces and injury of others.

They were allegedly charged at various times before the Military Prosecution of the city of Ismailia for the deliberate killing of police officers from Al-Arish II Police Station, possession of unlicensed weapons, destruction of public properties and State institutions, and constituting a threat to the public security. After the

transferal of their cases to the State Security Criminal Court, it is reported that the six men were sentenced to death on 14 August 2012, which was confirmed on 24 September 2012. The defendants currently risk the death sentences being carried out against them, which is subject to approval by the President of Egypt.

It is further reported that these individuals were arrested by the National Security Forces without arrest warrants, and tried under the Emergency Law that had been abolished on 31 May 2012. The Court that handed down their death sentences is reported to be a special court, the decisions of which cannot be appealed. Moreover, the said individuals have allegedly been subjected to torture and their confessions obtained by way of coercion.

In the case of Mr. Ahmed Mohamed Salem Ali, we are informed that he was arrested from home on 13 November 2011, and charged by the Military Prosecution on 14 November 2011. It is reported that he was detained incommunicado during the period of investigation by the Prosecution bodies and until referral of his case to the Court. His family and lawyers were allegedly denied visits to him during this period. It is further alleged that Mr. Ahmed Mohamed Salem Ali was mistreated and tortured while in detention. He was reportedly coerced to make false confessions that were used at a later stage as evidence in court against him.

Without prejudging the accuracy of the information made available to us, we would like to express concern that the death penalty may have been imposed and may be carried out against Messrs. Ahmed Mohamed Salem Ali, Mohamed Gomaa Hassan Nassar, Yasser Jermey Attiya Al-Torbini, Amr Mohamed Mahmoud El-Malah, Hossam Abdo Abdelrady Hassan, and Ahmed Selmy Hammad Alyan, following proceedings that may not have complied with international human rights provisions regarding due process and fair trial safeguards. We are also concerned about the information that the said persons have been reportedly subjected to torture or ill-treatment.

In view of the urgency of the matter and of the irreversibility of the punishment of the death penalty, we call on your Excellency's Government not to execute Messrs. Ahmed Mohamed Salem Ali, Mohamed Gomaa Hassan Nassar, Yasser Jermey Attiya Al-Torbini, Amr Mohamed Mahmoud El-Malah, Hossam Abdo Abdelrady Hassan, and Ahmed Selmy Hammad Alyan, which, if carried out, could be inconsistent with international human rights law.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons 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 Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), that the Government of Egypt ratified on 14 January 1982.

We would also like to respectfully remind your Excellency's Government that, under international human rights law, in countries that have not abolished the death penalty, capital punishment may be imposed only following a trial that complied with fair trial safeguards, as provided in articles 6(2) and 14 of the ICCPR. Only full respect for stringent due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates human rights standards. In this respect, we would like to refer also to the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, in particular to:

- Safeguard 4, stipulating that "capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts";

- Safeguard 5, providing that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR;

- Safeguard 6, requiring that anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

Furthermore, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the UDHR, the ICCPR, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would further like to refer 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. Moreover, paragraph 6b of Human Rights Council Resolution 8/8 urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited

act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture”.

We would also like to draw your Excellency's Government's attention to article 2(2) of the CAT, which provides that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. In this regard, we note that paragraph 2 of Resolution 8/8 of the Human Rights Council, which “Condemns in particular any action or attempt by States or public officials to legalize, authorize or acquiesce in torture under any circumstances, including on grounds of national security or through judicial decisions”.

We also recall that article 15 of the CAT, which provides that, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

Paragraph 7c of Human Rights Council Resolution 16/23 further urges States “To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;”

Regarding the allegation that the above mentioned persons were tried by a special court, we would like to refer your Excellency's Government to General Comment No. 32 of the Human Rights Committee, in which the Committee stated: “The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military. [...] While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14. Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.”

Principle 5 of the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, also states: “Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”

Regarding the allegation that the death sentences cannot be appealed, we would like to refer your Excellency's Government to article 14(5) of the International Covenant on Civil and Political Rights, which states: “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”

Concerning the torture allegations, we would further like to refer your Excellency's Government to the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular guideline 16, which states: “When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.”

Regarding the allegation that Mr. Ahmed Mohamed Salem Ali did not have access to a lawyer, we would like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 5, which states: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”; principle 7, which states: “ Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”; and principle 8, which states: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

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. Are the facts alleged in the summary of the cases accurate?
2. Please provide information concerning the legal grounds for the arrest and detention of the abovementioned persons and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and ICCPR.
3. Please provide detailed information on each stage of the judicial proceedings against Messrs. Ahmed Mohamed Salem Ali, Mohamed Gomaa Hassan Nassar, Yasser Jermei Attiya Al-Torbini, Amr Mohamed Mahmoud El-Malah, Hossam Abdo Abdelrady Hassan, and Ahmed Selmy Hammad Alyan, and indicate how they comply with the requirement and guarantees of a fair trial and due process as enshrined, inter alia, in articles 6(2) and 14 of the ICCPR, and United Nations Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty.
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 the allegations of torture or ill-treatment in these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Messrs. Ahmed Mohamed Salem Ali, Mohamed Gomaa Hassan Nassar, Yasser Jermei Attiya Al-Torbini, Amr Mohamed Mahmoud El-Malah, Hossam Abdo Abdelrady Hassan, and Ahmed Selmy Hammad Alyan are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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Chair-Rapporteur of the Working Group on Arbitrary Detention

Gabriela Knaul

Special Rapporteur on the independence of judges and lawyers

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