

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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.

REFERENCE: UA
EGY 14/2014:

23 December 2014

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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 24/5, 26/7, 26/12, 22/8, 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 recommendations of death sentences against 188 individuals in Egypt, following unfair trials on charges related to an attack on the Kerdassa police station in the Giza governorate.

According to the information received:

On 2 December 2014, an Egyptian court recommended the death penalty for some 188 defendants, including 34 *in absentia*, on charges related to the 14 August 2013 attack on the Kerdassa police station in the Giza governorate. This case known as the "Kerdassa massacre" resulted in the killing of some 11 police officers and two civilians as well as the looting of the station's equipment and firearms. The case files have been transferred to the Grand Mufti of the Republic for a non-binding opinion in line with Article 381 of the Egyptian criminal

procedures code. Among the defendants are a woman and her two sons. Two defendants are already dead; one died in prison as a result of alleged neglect while the other was shot by the police. The court sentencing on the case is now scheduled for 24 January 2015.

Ms. [REDACTED], who was not involved in any acts related to the attack was arrested from her home on 19 September 2013, in an alleged effort to force her sons to hand themselves in. Although authorities later arrested her sons, Ms. [REDACTED] was not released. Police forces transferred Ms. [REDACTED] and her son [REDACTED] to a security forces camp where she faced brutal torture both physically and mentally. She was hung for hours on the wall, beaten and electrocuted causing welts on her back and rendering her unable to walk. Later, her son was tortured and sexually assaulted and raped in front of her to make them confess to alleged murders.

Ms. [REDACTED] torture continued during every interrogation, reportedly in presence of the prosecutor, at the Giza Security headquarters. She ended up confessing to the accusations falsely levelled against her, but later revoked her confession stressing that they had been extracted under torture.

Since the coup d'état of 3 July 2013, several mass death sentences have been pronounced; these are viewed as collective punishment and revenge against the supporters of ousted President Mohamed Morsi. Verdicts including the death penalty and the imposition of life sentences have targeted many political detainees. These court rulings have fallen short of international human rights standards regarding the administration of justice, in particular standards related to fair trial and due process guarantees. This includes the absence of thorough investigations into the allegations; the lack of any evidence, witnesses or forensic discovery to establish culpability; and the trial of 48 individuals in absentia. All defendants have in fact denied the charges against them.

According to the information available, since January 2014 Egyptian courts have recommended the death penalty for more than 1,432 individuals and upheld such sentences against 247 individuals, all of whom were reportedly supporters of former President Morsi.

Without making a judgment as to the accuracy of the information made available to us, we would like to express our concern about the repeated imposition of the death penalty following mass trials that contradict international standards relating to fair trial and due process. Although your Excellency's Government stated in the Annex of its correspondence in response to the Press Release issued by several Special Procedures mandate holders on 30 June 2014 that "the decision to refer the defendant's papers to His Eminence the Grand Mufti, seeking his advisory opinion ahead of the pronouncement of

the verdict (...) does not constitute a verdict, and does not necessarily imply that a verdict will be issued sentencing all the defendants to death", we would like to express concerns that, at the initial stage of the proceedings, the death penalty may be recommended by a court without thorough investigations, in contravention of the minimum standards of fair trial and due process, as enshrined in both Egyptian domestic law and international human rights instruments.

Further concern is expressed at the allegations of torture against Ms. [REDACTED]. Grave concern is also expressed that the death penalty appears to be used as a tool to clamp down on political dissent, particularly against supporters of former President Morsi.

The above alleged facts seem to indicate a prima facie violation of the rights to life and security, not to be deprived arbitrarily of one's liberty, freedom of expression, and freedom of association, as set forth in articles 3 and 9 of the Universal Declaration of Human Rights (UDHR), and Articles 6 (1) and (2), 9, 19, 22 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 right to fair proceedings before an independent and impartial tribunal, as set forth, inter alia, in Articles 10 of the UDHR and 14 of the ICCPR. 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 Articles 1 and 16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), acceded by Egypt on 25 June 1986.

We wish to affirm that, 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 after legal process which gives all possible safeguards to ensure a fair trial. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution.

We would like to remind your Excellency's Government of General Assembly resolution 68/178 and Human Rights Council resolution 25/7, which emphasize that States must adhere to international human rights while countering terrorism. In that context, we would further like to draw the attention of your Excellency's Government to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/63/223, paragraph 43), in which the Special Rapporteur emphasized that any trial for terrorism offences which could lead to the imposition of the death penalty, including all stages before the trial and the consideration of appeals on matter of fact and law after the trial, must rigorously comply with all aspects of a fair trial. In this context, we also 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.

In addition and as stated in his 2012 report to the General Assembly (A/67/279) the Special Rapporteur on torture observed that there is evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur called upon all States to reconsider whether the use of the death penalty *per se* respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79).

Regarding the allegations of torture of Ms. [REDACTED] and her son [REDACTED], 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 CAT. 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. In this context, we would also like to recall paragraph 7c of Human Rights Council Resolution 16/23.

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 allegations of unfair trial leading to the possible imposition of the death sentences mentioned above, we call upon your Excellency's Government to assure that the aforementioned people are tried as per international human rights standards.

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.

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 be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide detailed information concerning the legal grounds for the detention, prosecution, and possible sentencing of the 188 individuals mentioned

above? Please also explain how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR, the ICCPR and the CAT.

3. Please provide detailed information on each stage of the judicial proceedings against the individuals recommended to be sentenced to death in relation to the Kerdassa events of 14 August 2013, and indicate how they comply with international human rights norms and standards, in particular guarantees related to the right to fair trial and due process. Please also provide information as to whether the defendants were guaranteed unhindered access to lawyers, allowed adequate time and facilities for the preparation of their defence and provided with effective legal representation in the courts.

4. Please provide detailed information and, where available, results of any investigation, and judicial or other inquiries carried out in relation the allegations of torture of Ms. [REDACTED] and her son [REDACTED]. If no inquiries have taken place, or if they have been inconclusive, please explain why.

5. Please provide detailed information about measures taken to ensure the prohibition of the use of any statement made as a result of torture as evidence in any proceedings, including judicial proceedings.

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 new and fair trials to all defendants.

We may publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Ben Emmerson
Special Rapporteur on the promotion and protection of human rights
and fundamental freedoms while countering terrorism

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment