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PROCEDURES SPECIALES DU
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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: UA G/SO 218/2 G/SO 214 (3-3-16) G/SO 214 (53-24) G/SO 214 (89-15)
EGY 4/2014

17 April 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 independence of judges and lawyers; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 24/7, 17/2, 25/13, and 23/25.

In this connection, we would like to bring to your Excellency's Government's attention the information we have received concerning the alleged **arbitrary arrest, detention and sentencing of four individuals on the basis of their sexual orientation and/or gender identity, as well as allegations of physical violence, including sexual violence and attempted rape by other prisoners while in detention.**

The first names of the four individuals concerned are [REDACTED] and [REDACTED], and their case reference is "[REDACTED]". At least two of the individuals identify as transgender (male-to-female).

According to the information received:

On 31 March 2014, [REDACTED], [REDACTED], [REDACTED], and [REDACTED] reportedly rented an apartment in the [REDACTED] district of Cairo.

On 1 April 2014, [REDACTED] police officers reportedly arrested the four individuals while they were in the apartment and searched the premises without presenting a warrant.

The police officers allegedly indicated explicitly that the individuals were guilty of homosexual conduct. When a lawyer enquired about the four detainees at [REDACTED] police station later on 1 April 2014, one police officer allegedly referred to the four detainees as “faggots” (*khawalat*). It is further reported that the police supposedly found make-up, women’s clothing and underwear in the apartment, which they cited as evidence of debauchery.

On 2 April 2014, the four detainees reportedly appeared before the [REDACTED] Prosecutor and were interrogated for more than seven hours in the presence of a lawyer. The Prosecutor reportedly ordered another four days of pre-trial detention. According to reports, the four individuals have been subjected to physical violence, including sexual violence and attempted rape by other detainees with the alleged collusion of prison guards while in detention.

According to reports, there are no criminal provisions in the Arab Republic of Egypt which expressly criminalize gender expression or the wearing of clothes of the opposite sex. However, both commercial and non-commercial consensual homosexual conducts between male adults are criminalized in the country as *fujur* or “debauchery” under Law 10/1961 “On the combating of prostitution”. This law is said to have been used for decades to arrest and imprison individuals who are biologically male on suspicion of homosexual conduct.

On 7 April 2014, the [REDACTED] Court convicted all four individuals of “habitual practice of debauchery” under article 9(c) of Law 10/1961, although no evidence other than the defendants’ appearance was allegedly adduced to show that they had engaged in homosexual conduct. [REDACTED], [REDACTED], and [REDACTED] were reportedly sentenced to three years’ imprisonment. [REDACTED], who was the principal tenant of the apartment, received a further five-year prison sentence for “facilitating debauchery” and maintaining “premises for the purposes of debauchery”, also under Law 10/1961. In total, [REDACTED] was reportedly sentenced to eight years’ imprisonment.

It is alleged that the case proceeded extraordinarily quickly, leaving the lawyers with very little time to prepare their clients’ defence.

According to information received, the four individuals’ appeal is due to be heard on 22 April 2014.

Concern is expressed that the individuals may have been arrested, detained, convicted, and received prison sentences on the sole basis of their sexual orientation and/or gender identity. Further serious concern is expressed over the allegations of physical violence, including sexual violence and attempted rape by other prisoners while in detention.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the above mentioned 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, and articles 9 and 14 of the International Covenant on Civil and Political Rights.

With regard to allegations of physical violence in detention, including attempted rape by other prisoners, we would like to refer to the recommendation made by the Special Rapporteur on torture which states “countries should take effective measures to prevent prisoner-on-prisoner violence by investigating reports of such violence, prosecuting and punishing those responsible, and offering protective custody to vulnerable individuals, without marginalizing them from the prison population more than is required by the need for protection and without putting them at further risk of ill-treatment. Training programmes should be considered to sensitize prison officials to the importance of taking effective steps to prevent and remedy prisoner-on-prisoner abuse and to provide them with the means to do so. In accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, prisoners should be segregated according to gender, age and seriousness of the crime, alleged/committed; first-time prisoners should be segregated from repeat offenders and pre-trial detainees from convicted prisoners” (E/CN.4/2003/68, para. 26 (j)).

We further appeal to your Excellency’s Government to take all necessary measures to guarantee to the above mentioned persons the right to be free from any gender-based violence, discrimination and abuse. Towards that end, we would like to draw your Excellency’s Government’s attention to article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

We also take this opportunity to make reference to the findings of the Special Rapporteur on violence against women in her 2013 report to the General Assembly (A/68/340). The report highlights how transgender prisoners face unique and particularly harsh circumstances in prison systems, including issues of classification for their prison placement, the possibility of administrative segregation, barriers to the accessibility of hormone treatment, and higher instances of abuse and discriminatory treatment. Transgender people are usually classified according to their birth sex for purposes of prison housing, regardless of how long they have lived as a member of the other gender and regardless of how much medical treatment they have undergone. Furthermore, in some prisons, guards will blatantly allow abuse and rape to occur, and also facilitate abuse by placing lesbian, gay, bisexual, transgender and intersex persons in less safe conditions than the majority population. Additionally, those prisoners are sometimes deliberately placed in cells with known sexual predators. Transgender prisoners face sexual abuse and rape, especially when they are placed in accommodations according to their birth gender, particularly when male-to-female transgender prisoners are placed with men.

We would also like to note that in relation to the provisions of the criminal code on “debauchery”, the Human Rights Committee 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 adults¹. The UN Committee Against Torture further expressed concern with regards to ill-treatment against persons because of their real or alleged homosexuality in the Arab Republic of Egypt². United Nations treaty bodies have also consistently held that sexual orientation and gender identity are prohibited grounds of discrimination under international law³. 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 discrimination⁴.

Regarding the allegation that the lawyers did not have adequate time to prepare their clients’ defence, we would like to refer your Excellency’s Government to article 14(3) of the International Covenant on Civil and Political Rights, which states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”.

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 the above 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. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims for the alleged ill-treatment in detention?

¹ CCPR/CO/76/EGY, para. 19

² CAT/C/CR/29/4, para. 5(e)

³ See inter alia: CCPR/C/50/D/488/1992 and CCPR/C/KWT/CO/2, para. 30; CESCR General Comments No. 20 E/C.12/GC/20, para. 32 and No. 14 E/C.12/2000/4, para. 18; CRC General Comment No. 13 CRC/C/GC/13, para. 60 and 72(g) and No. 4 CRC/GC/2003/4, para. 6; CAT General Comment No. 2 CAT/C/GC/2, para. 21; CEDAW General Recommendation No. 28 CEDAW/C/GC/28, para. 18.

⁴ A/HRC/19/41, para 84(a)-(h)

3. Please indicate what measures have been taken to respect the gender identity of the alleged victims and to protect them from violence, torture and cruel, inhuman and degrading treatment and discrimination while in detention.

4. 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 the ICCPR.

5. Please provide detailed information on the judicial proceedings against the four individuals and explain how these complied with the right to a fair trial and due process, as recognized, among others, in article 14 of the ICCPR. In particular, please explain why the trial seems to have been rushed.

6. Please provide information concerning access of human rights monitors and independent civil society representatives to [REDACTED] prison.

7. Please provide information on the measures taken by the authorities to protect lesbian, gay, bisexual and transgender persons from violence and discrimination on the grounds of sexual orientation and/or gender identity.

We undertake to ensure that your Excellency's Government's response will be available 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 the above mentioned persons 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.

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

Gabriela Knaut
Special Rapporteur on the independence of judges and lawyers

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

Rashida Manjoo
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