

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA EGY 2/2017

24 February 2017

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 26/12, 25/2, 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 **death sentences imposed on Messrs. Mohamed Fawzi Abd al-Gawad Mahmoud, Reda Motamad Fahmy Abd al-Monem, Ahmed Mustafa Ahmed Mohamed, Mahmoud al-Sharif Mahmoud, Abdul Basir Abdul Rauf and Ahmed Amin Ghazali Amin following unfair trials; and the killing of Messrs. Ahmed Youssef, Abd el-Aty Ali Abd el-Aty, Mohamed Ibrahim, Mansour Gamee, Belal Hemdan al-Naggar and [REDACTED], a minor, by Egyptian security Forces.**

According to the information received:

Death sentences

On 29 May 2016, a Military Court sentenced to death Messrs. Mohamed Fawzi Abd al-Gawad Mahmoud, Reda Motamad Fahmy Abd al-Monem, Ahmed Mustafa Ahmed Mohamed, Mahmoud al-Sharif Mahmoud, Abdul Basir Abdul Rauf and Ahmed Amin Ghazali Amin for belonging to a banned group (the Muslim Brotherhood), being in possession of firearms and explosives, and obtaining classified military information without authorization. The six men were reportedly tortured in prison and detained incommunicado. They did not have proper legal representation while in custody.

In December 2016, the defendants appealed their death sentences. The Supreme Military Court is due to set a date for the appeal hearing in which they may be given a final opportunity to present their defence. However, in similar cases, the practice of the Supreme Military Court is reportedly to deny the defendants a chance to challenge the sentence by not scheduling a hearing. As a result, there is a risk that the death sentence would no longer be considered on appeal.

Messrs. Mohamed Fawzi Abd al-Gawad Mahmoud, Reda Motamad Fahmy Abd al-Monem, Ahmed Mustafa Ahmed Mohamed, and Mahmoud al-Sharif Mahmoud are held in Wadi al-Natroun Prison, while Messrs. Abdul Basir Abdul Rauf and Ahmed Amin Ghazali are held in Tora Istiqbal Prison and in the Shebeen el-Koum Public prison in Shebeen el-Koum city, respectively. They can be executed at any time.

Alleged extrajudicial executions of prisoners

In October 2016, security officials arrested Mr. Mansour Gamee, a 27-year-old man, in Karam abu Negela neighbourhood in al-Arish. They allegedly took him to an unknown location. Several sources indicated that Mr. Mansour Gamee was held at the National Security Agency (NSA). He never received visits from his family.

The same month, police forces from the Ministry of Interior arrested Mr. Belal Hemdan al-Naggar, a 19-year-old student, from his home in al-Arish. Since his arrest, his relatives did not receive any information about his fate.

On 8 October 2016, armed security forces dressed in black and covering their faces arrested Mr. Abd el-Aty Ali Abd el-Aty, a 23-year-old student at Al Azhar University, in al-Qahera Street in al-Arish. Only several days after his arrest, Mr. Abd el-Aty's family realized that he had been arrested and was held at the al-Arish prison.

On 17 October 2016, security forces from the Ministry of Interior arrested Mr. Ahmed Youssef, a 22-year-old man, after raiding his home in al-Arish. During Mr. Ahmed Youssef's arrest, his wife who was pregnant, was allegedly beaten by the police and suffered a miscarriage. Mr. Ahmed Youssef was detained at the NSA building without the possibility to receive visits from his family.

In November 2016, police from the Ministry of Interior arrested [REDACTED], a 17-year-old student from his home in [REDACTED].

On 23 November at 2 a.m., armed and masked security forces arrested Mr. Mohamed Ibrahim, a 22-year-old man. Security forces in Humvee armoured vehicles allegedly arrested Mr. Ibrahim, his younger brother and his father without any explanation about the reasons for their arrests. Mr. Ibrahim's father and brother were taken to the second al-Arish police station and were released the next day. Mr. Ibrahim, who was taken separately to an unknown destination, has been missing since his arrest.

On 13 January 2017, the Government of Egypt announced that its forces had raided a house on the same day in al-Arish, where 10 members of the armed group Ansar Bait al- Maqdes, a.k.a. "Sinai Province", were allegedly hiding. The Ministry of Interior indicated that the 10 men were killed during fire exchanges with the police. Among the persons killed, the Ministry of Interior reported the names of Messrs. Ahmed Youssef, Abd el-Aty Ali Abd el-Aty, Mohamed Ibrahim, Mansour Gamee, Belal Hemdan al-Naggar and the minor [REDACTED], who had been arrested between October and November 2016 by the security forces and held in the custody of the NSA in al-Arish. The four other persons killed were unidentified.

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. Further concern is expressed at the allegations of torture against the aforementioned individuals. Grave concern is also expressed that the death penalty appears to be used as a tool to clamp down on political dissent, particularly against members of the Muslim Brotherhood. We also express concern at the circumstances surrounding the killings of prisoners, who were known to be held at official Egyptian prisons.

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.

While international human rights treaties do not specifically address the trial of civilians by military courts, Principle 5 of the Basic Principles on the Independence of the Judiciary stipulates that military courts should, in principle, have no jurisdiction to try civilians. In paragraph 22 of its general comment No. 32, the Human Rights Committee reminded that the ICCPR requires that trials by military courts be in full conformity with the requirements of article 14 of the Covenant. The Committee, in several concluding observations stated that such trials can be accepted only if: (a) regular civilian courts are unable to undertake the trials; (b) that other, alternative, forms of special or high-security civilian courts are inadequate for the task; and (c) that recourse to military tribunals ensures that the rights of the accused are fully protected pursuant to article 14 of the

Covenant. (Report A/68/285 of the Special rapporteur on Independence of Judges and Lawyers, para 47-54).

We recall article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty which provides that capital punishment may only be carried out after a 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 draw your Excellency's Government's attention to the fact that any judgments imposing the death sentence and executions of juvenile offenders are incompatible with the international legal obligations undertaken by your Excellency's Government under various instruments. Article 6 (5) of the ICCPR, and article 37(a) of the Convention on the Rights of the Child, ratified by Egypt in 1990, expressly prohibit the imposition of the death penalty for offences committed by persons below eighteen years of age. The Committee on the Rights of the Child, in its General Comment No. 10 on children's rights in juvenile justice, has interpreted article 37(a) of CRC to mean that a death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction.

Regarding the allegations of torture against the victims, 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 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 six 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 information on the legal assistance provided to the convicts during their trial.
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 against the abovementioned victims. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide detailed information about the arrest, detention and killings of Messrs. Ahmed Youssef, Abd el-Aty Ali Abd el-Aty, Mohamed Ibrahim, Mansour Gamee, Belal Hemdan al-Naggar and the minor, [REDACTED].

In view of the irreversibility of the punishment of the death penalty, we urge your Excellency's Government to take all steps necessary to **halt the execution of Messrs. Mohamed Fawzi Abd al-Gawad Mahmoud, Reda Motamad Fahmy Abd al-Monem, Ahmed Mustafa Ahmed Mohamed, Mahmoud al-Sharif Mahmoud, Abdul Basir Abdul Rauf and Ahmed Amin Ghazali, which if carried out, would be inconsistent with standards of international human rights law.** We further appeal to your Excellency's Government to annul the death sentence against the aforementioned individuals and to ensure a re-trial in compliance with international standards. We reiterate our call to your Excellency's Government to establish an official moratorium on death penalty, and to consider its complete abolition.

We also urge your Excellency's Government to clarify the circumstances surrounding the killings of Ahmed Youssef, Abd el-Aty Ali Abd el-Aty, Mohamed Ibrahim, Mansour Gamee, Belal Hemdan al-Naggar and the minor [REDACTED], who were believed to be in custody when they were executed; to carry out the necessary investigations on these allegations, bring the perpetrators to justice and provide the necessary redress to the affected families.

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 would 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.

José Antonio Guevara Bermúdez
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment