

**Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; 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 2/2018

12 January 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; 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 33/30, 27/1, 35/15, 31/3 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged enforced disappearance, torture and judicial proceedings which do not appear to have fulfilled the most stringent guarantees of fair trial and due process standards of Mr. **Loutfy Ibrahim Ismael Khalil**, Mr. **Ahmed Abdel Moneim Salama Ali Salama**, Mr. **Ahmed Abdel Hady Mohammed al-Suhaimy** and Mr. **Sameh Abdallah Mohammed Youssef** who have been executed, Mr. **Abdulsalam Shoaib Abdulsalam Shoaib** who has been sentenced to death and Ms. **Samia Mohamed Dawood Shanan** who faces a possible death sentence.

Several related communications concerning the imposition of the death penalty following trials that reportedly did not meet fair trial and due process guarantees, have been sent to your Excellency's Government including:

- on 15 June 2017 regarding six individuals (case no. EGY 8/2017). We thank you for the reply received on 28 August 2017.
- on 24 February 2017 regarding six individuals (case no. EGY 2/2017). We thank you for the reply received on 6 October 2017.

On 9 October 2017, the cases of Mr. Loutfy Ibrahim Ismael Khalil, Mr. Ahmed Abdel Moneim Salama Ali Salama, Mr. Ahmed Abdel Hady Mohammed al-Suhaimy and Mr. Sameh Abdallah Mohammed Youssef, Mr. Abdulsalam Shoaib Abdulsalam Shoaib and Ms. Samia Mohamed Dawood Shanan were included in a General Allegation Letter

sent by the Working Group on Enforced or Involuntary Disappearances at its 113th session.

[REDACTED]

According to the information received:

*Cases of Mr. Loutfy Ibrahim Ismael Khalil, Mr. Ahmed Abdel Moneim Salama Ali Salama, Mr. Ahmed Abdel Hady Mohammed al-Suhaimy and Mr. Sameh Abdallah Mohammed Youssef*

On 15 April 2015 an explosion took place in the “Kafr el-Sheikh stadium,” killing three military college students and injured two others. Mr. Loutfy Ibrahim Ismael Khalil, Mr. Ahmed Abdel Moneim Salama Ali Salama, Mr. Ahmed Abdel Hady Mohammed al-Suhaimy and Mr. Sameh Abdallah Mohammed Youssef as well as five other individuals were arrested in the days following the attack and disappeared for periods ranging from 70 to 90 days. During this time they were subjected to torture and ill-treatment for the purpose of obtaining self-incriminating confessions. Their bodies showed signs of torture several months after their arrest.

The four individuals and three others were charged with “organizing and carrying the explosion”, “murder” and “belonging to a banned group,” under the 2015 Anti-Terrorism Law.

On 2 March 2016, the Military Court of Alexandria sentenced the seven individuals to death, three in absentia in case No. 325, 2015, solely on the basis of the forced confessions obtained under duress and the statements of security officers. They were denied the right to provide exculpatory evidence. The date of arrest for Mr. Loutfy and Mr. Ahmed was given 30 June and 1 July 2015 respectively although they had been arrested and disappeared since 19 April 2015.

The Defense Minister approved the sentences on 26 April 2016. The verdict was appealed. On 19 July 2017, the death sentences were upheld by the Supreme Military Court. The defense lawyers requested a copy of the verdict but this was refused on the ground that the judgment was a “military secret.” The verdict is required in order to request a supplication for review and an appeal against the death sentence judgment.

The defense informed the Military Court and the High Military Court that the defendants were tortured but no investigation was opened.

On 30 August 2017, defense lawyers submitted a request for reconsideration of the case to the Military Prosecutor based on new evidence in the form of a confession in a different case. On 7 October 2017, the Head of the Alexandria Military Prosecution indicated verbally that the request was rejected without giving a reason.

On 2 January 2018, Mr. Loutfy Ibrahim Ismael Khalil, Mr. Ahmed Abdel Moneim Salama Ali Salama, Mr. Ahmed Abdel Hady Mohammed al-Suhaimy and Mr. Sameh Abdallah Mohammed Youssef were executed. The families were not officially informed of the execution order.

*Case of Mrs. Samia Mohamed Dawood Shanan*

According to information previously received, Mrs. Shanan and one of her sons Hassan were arrested on 19 September 2013 from her home in relation to the attack on Kerdassa police station known as the “Kerdassa massacre,” which killed 11 police officers and two civilians. Another of Mrs. Shanan’s sons, Tarek, was arrested on 6 October 2013. They were subject to torture in order to obtain confessions and disappeared for several months. On 2 December 2014, 188 defendants were sentenced to the death penalty, including Mrs. Shanan and her son Mr. Tarek, under the 2015 Anti-Terrorism law.

According to new information received, on 6 February 2016 the sentence against Mrs. Shanan and her son Mr. Tarek were quashed by the Court of Cassation.

On 24 April 2017, the Cairo Criminal Court referred their case, along with 20 other defendants to the Grand Mufti for a decision on the death penalty.

Mr. Tarek has now been released and charges against him dropped. Mrs Shanan remains in detention in difficult conditions. A retrial was supposed to take place in December 2017 but has been postponed to an unknown date.

*Case of Mr. Abdulsalam Shoaib Abdulsalam Shoaib*

Mr. Abdulsalam Shoaib Abdulsalam Shoaib was arrested on 20 May 2014 in front of his work place in Fayoum by security officers He was verbally and physically assaulted, beaten and hooded by the officers before they took him to their headquarters in Fayoum. He was held incommunicado for several months in different locations, including the National Security facility in Fayoum, the Bandar Police Station in Fayoum, the Fayoum Public Prison and the Qasr Al Nil Police Department. During this time he was tortured and ill-treated for the purpose of obtaining self-incriminating confessions.

On 22 July 2013, Mr. Shoaib was charged with “belonging to a banned group” and “organising a gathering of more than five people” under the 2015 Anti-Terrorism Law. On 5 January 2017, he was sentenced to death by the Fifth Circuit Criminal Court of Giza on the sole basis of his confessions and in the absence of any material evidence. On 7 April 2017, Mr. Shoaib’s lawyer appealed the decision before the Cairo Court of Appeals. Following his sentence, Mr. Shoaib was transferred to the high security wing of the Minya Prison, where he is currently held pending appeal. His trial date has been set for 15 April 2018.

#### *Other cases*

Fifteen individuals were executed on 26 December 2017 after being sentenced to death on terrorism charges by a military court reportedly following trials with procedural defects. It is understood that their families were not informed prior to the executions.

Ten other civilians were sentenced to death by military trials on 27 December 2017 in the Case No. 2 /2016, Military East Cairo, known as “Ansar Beit al-Maqdes.” The case involved 155 individuals detained in connection of several different events, including an attack against a brigade of security forces in August 2014, the assassination of an officer in March 2015, the bombing of the Italian consulate in Cairo in July 2015, and two other incidents.

Another 33 individuals are subject to death sentences which have been upheld and no longer subject to appeal in 10 separate cases, including in two cases decided by the Supreme Military Court. In total an estimated 60 individuals, all civilians, were sentenced to death penalty by military courts since 2014. Currently, a total of 307 individuals have been sentenced to death. Their sentences are subject to appeal.

Without making a judgment as to the accuracy of the information made available to us, we would like to express our most serious concern about the execution of the four individuals, following a trial that appears to contradict fair trial and due process; about the death sentence against one other individual and possible death sentence against another. We are particularly concerned that they were tortured and ill-treated prior to their trial, while held in unknown locations for prolonged periods, and that confessions obtained under these conditions appear to have been used as the main basis for their convictions. Should this information prove accurate, these executions and potential executions may amount to arbitrary executions under international law.

We appeal to your Excellency’s Government to quash the death sentence against Mr. Abdulsalam Shoaib Abdulsalam Shoaib and recommend that he be tried anew in

compliance with Egypt's international human rights obligations under ICCPR and CAT. Moreover, in light of the repeated allegations of convictions based on evidence obtained through torture, often during a period of enforced disappearance, we urge that all death sentences be reviewed, that all case involving civilians be transferred to civilian tribunals, that they be retried in the full respect of Egypt human rights obligations, and that pending the outcomes of the review and retrials, all executions be halted. We reiterate our call to establish a moratorium on the death penalty or their executions, and to consider its abolition.

The facts alleged indicate a prima facie violation of the rights to life, liberty and security, the right not to be deprived arbitrarily of one's liberty, the right to be free from torture and other cruel, inhuman and degrading treatment or punishment, and the right to a fair trial by an independent and competent court, as set forth in articles 6 (1) and (2), 7, 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), as well as articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). Both treaties were ratified by Egypt on 14 January 1982 and 25 June 1986 respectively

It is a fundamental principle of international human rights law, as set forth in article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, that capital punishment may only be carried out after a legal process that gives all possible safeguards to ensure a fair trial. Only the full respect of the most stringent due process guarantees distinguishes capital punishment, as possibly permitted under international law, from an arbitrary execution.

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. The UN Working Group on Arbitrary Detention has also determined that military justice should not be competent to try civilians and should not have the power to impose the death penalty in any circumstances (E / CN.4 / 1999/63, para 80).

The prohibition of torture is absolute and non-derogable under international law as codified in article 1 of Convention against torture. Article 15 of that Convention prohibits the use of any statement made as a result of torture as evidence in any proceedings. This prohibition is reiterated in paragraph 7c of Human Rights Council Resolution 16/23. We took note of the information in your letter received on 6 October 2017 in reply to communication EGY 2/2017<sup>1</sup> detailing the legal provisions prohibiting torture. We are, however, extremely concerned that in practice, there appears to be a continuing pattern of systematic torture of persons arrested on security grounds to extract confessions, which are often used as evidence in legal proceedings and as a basis for conviction. The prolonged incommunicado detention of individuals suspected of security

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<sup>1</sup> The reply received on 28 August 2017 to communication EGY 8/2017 is currently being translated

offences in police, security or military custody, in particular during the initial phase of their detention, prior to their trial, is conducive to abuses of power, including acts of torture for the purpose of obtaining self-incrimination evidence. Such practice is strictly prohibited under international law.

The United Nations Declaration on the Protection of All Persons from Enforced Disappearance sets out the necessary protection and responsibility of the State. In particular article 2 states that no State shall practice, permit or tolerate enforced disappearances. We are extremely concerned by continuing allegations of systematic enforced disappearance of individuals after being arrested.

We condemn such violent incidents as the explosion in the Kafr el-Sheikh stadium killing three military college students and injuring two others or the attack on Kerdassa police station which killed 11 police officers and two civilians. Such violent acts should be fully investigated and their perpetrators prosecuted. We draw your Excellency's Government's attention to the relevant provisions of international law, including the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180 which require that States must ensure that any measures taken to combat "terrorism" and "violent extremism", including incitement of and support for "terrorist acts", comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the importance and urgency of the matter, we would appreciate a response on the steps taken by the Government of Egypt to safeguard the rights of the above-mentioned persons in compliance with its obligations under international law.

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 information on each stage of the judicial proceedings against the above-mentioned individuals and indicate how they comply with Egyptian and international law standards in particular guarantees related to the right to fair trial and due process.

3. Please provide detailed information and, where available, findings, of any investigation, judicial or otherwise, carried out in relation to the allegations that these above-mentioned individuals were forcibly disappeared and tortured during the investigations and forced to confess against themselves, and that their confessions were used as evidence to incriminate, try and sentence them. If no such inquiries have taken place, or if they have been inconclusive, please explain why, and in particular how this is compatible with Egypt's domestic legislation and its obligations under CAT.
4. Please provide information on the procedural and effective measures taken by relevant authorities to prevent torture and ill treatment in detention, to investigate allegations made, to ensure that no information obtained in these conditions is used in court as evidence, and to prosecute perpetrators
5. Please provide information on the number of prosecution and convictions for torture and ill treatment brought against law enforcement officials.
6. Please provide information on the legal procedural and effective measures in place to ensure individuals are not subject to enforced disappearances or held in incommunicado detention.
7. Please provide information on steps taken to review pending cases of individuals sentenced to death to ensure the trial processes fully complied with international standards and to give full re-trials in line with such standards.
8. Please provide information on whether a moratorium on the death penalty is being considered.

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 the accountability of any person responsible of the alleged violations.

As signatory of this letter, the Working Group on Arbitrary Detention wish to clarify that after having transmitted this urgent appeal to the Government, it may transmit the cases through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The current urgent appeal in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to both the urgent appeal procedure and the regular procedure

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate

a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s 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.

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Bernard Duhaime  
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