

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:
AL EGY 3/2018

1 February 2018

Excellency,

We have the honour to address you in our capacities 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 allegations of **enforced disappearances and extrajudicial killings of Mohammed Younis Ali Ibrahim, Mr. Ali Sami Fahim El Far, Mr. Imad El Din Sami El Far and Mr. Omar Abdel Mohamed Abdelbaki, and the enforced disappearance of Mr. Mohammed Shaaban Owais Shaaban Abdelhady and [REDACTED] who may also have been extra judicially killed.**

Mr. Ali Sami Fahim El Far, Mr. Imad El Din Sami El Far, and Mr. Omar Adel Mohamed Abdelbaki, were the subject of a Communication (General Allegation) sent by the Working Group on Enforced or Involuntary Disappearances adopted at its 113th session and transmitted on 9 October 2017.

According to the information received:

Mohammed Younis Ali Ibrahim, (محمد يونس على ابراهيم) a 33-year-old man from the village of [REDACTED]; national ID number: [REDACTED]

In April 2017, Mr. Ibrahim left his house to go to Damanhour Governorate to buy supplies for work, but never returned. On the same day, National Security Agents searched Mr. Ibrahim's house and broke some furniture in the process.

Some days later, the authorities conducted a second search of the house. National Security Agents warned persons associated with Mr. Ibrahim against filing a missing person report because it would put Mr. Ibrahim's life in danger. A lawyer also advised against filing a complaint with the Government about Mr. Ibrahim's disappearance. Persons associated with Mr. Ibrahim repeatedly visited the National

Security office in Behria to inquire about his location. Every time, they were told that his whereabouts were unknown and that if found, the National Security Services would notify them.

On 24 August 2017, the Ministry of Interior issued an announcement in several newspapers that Mr. Ibrahim and another individual had been killed, claiming they were members of the terrorist organisation "Hasm." The Ministry explained that they were killed after opening fire at the Police Officers who raided an abandoned building in Wadi El Natrun area in Beheira Governorate. The Ministry also declared that the two men were in possession of weapons, explosives, and chemicals ingredients to make bombs. The statement noted that the High State Security Prosecution was investigating the incident but persons associated with Mr. Ibrahim have not been informed of any investigation.

However, on 26 August 2017, persons associated with him received a call that Mr. Ibrahim had been involved in an accident and was hospitalized in the Alyom Alwahd (One Day) Hospital. When they arrived at the hospital, they could not find him. Eventually, they later learned that Mr. Ibrahim was dead and that his body was in the Damanhour General Hospital's morgue. On 28 August 2017, they were permitted to retrieve Mr. Ibrahim's body from the morgue.

Mr. Ali Sami Fahim El Far (علي سامي فاهيم الفار), born 2 August 1989, from El Basarta city, Damietta Governorate, National ID Number: [REDACTED]

Mr. Imad El Din Sami El Far (عماد الدين سامي الفار) born 15 January 1996 from El Basarta in the Damietta Governorate. Brother of Ali Sami Fahim El Far.

On 4 April 2017, State Security Forces and Special Forces raided the neighbourhood of Mr. Imad El Far in the El Basarta city, destroyed several houses with bulldozers and arrested numerous individuals. Mr. Imad El Far was assaulted by security officers, blindfolded, beaten and taken to an unknown location.

On 22 April 2017, his brother, Mr. Ali El Far, was similarly abducted from home, blindfolded and taken to an unknown location by members of State Security and Police forces.

Following their arrests, the fate and whereabouts of both individuals were not disclosed. Persons associated with them submitted several complaints to the Attorney General offices of Damietta and Cairo, as well as to the Ministry of Interior.

Four months after their disappearances, the Ministry of Interior published statements on its website in which they announced the death of Mr. Ali El Far and his brother Mr. Imad El Far, on 9 July 2017 and 18 July 2017 respectively, in the context of the "Ministry's efforts to prosecute the terrorist elements belonging to the Muslim Brotherhood."

In a statement dated 9 July 2017, the Ministry of Information stated that the death of Mr. Ali El Far occurred after an exchange of fire. In its statement of 18 July 2017, the Ministry of Information stated that the death of Mr. Imad El Far occurred following an operation aiming at preventing a terrorist attack against State Security Forces supposedly planned by the victim and another individual. The statement indicated that Mr. Imad El Far was in a car carrying military weapons and large quantities of ammunition.

Persons associated with Mr. Ali El Far and Mr. Imad El Far were allowed to see and identify their bodies in Cairo a week after their respective deaths. Both bodies were still bearing marks of torture: bruises, cigarette burns and mutilations on different parts as well as several bullets wounds.

Mr. Omar Adel Mohamed Abdelbaki (عمر عادل محمد عبدالباقى) born 10 September 1997, from the [REDACTED] Belbeis City in the Al Sharqiya Governorate.

On 13 July 2017, Mr. Abdelbaki was abducted in front of his football club, nearby his house, by several members of State Security Forces (Amn Al Dawly or Amn Al Watany). Mr. Abdelbaki was surrounded by the officers, forcibly put in a car and taken to an unknown location.

Following his arrest, his fate and whereabouts remained unknown. Persons associated with him asked about him at different Police Stations but were told he was not there. They also sent several complaints to the Attorney General and General Prosecutor of the Al Sharqiya governorate and to the Ministry of Interior.

On 15 July 2017, the Al-Bawaba newspaper, published an article about Mr. Abdelbaki, stating that the "Al Sharqiya Security Directorate, in coordination with officers of the State Security Forces, arrested a young man belonging to the organization of the Muslim Brotherhood in the Selmant neighbourhood of the city of Belbeis". The article reported that he was sentenced to ten years imprisonment, following a military trial, for "demonstrating without permission, inciting and participating in riots and violence, and undermining the security and stability of the country".

Persons associated with him reported that Mr. Abdelbaki was sentenced to ten years of imprisonment *in absentia*.

On 23 July 2017, ten days after his disappearance, the Ministry of Interior published a statement on its website in which it announced the death of Mr. Abdelbaki, as a result of the "Ministry's efforts to prosecute the terrorist elements belonging to the armed wing of the Muslim Brotherhood." The statement explained that the death of Mr. Abdelbaki, as well as of seven other individuals, occurred following an exchange of fire between State Security Forces and a group of eight terrorists

belonging to the Muslim Brotherhood in the desert back area of Snoras in the Fayoum Governorate. The statement further stated that Mr. Abdelbaki was in a car carrying weapons and large quantities of ammunition.

Persons associated with Mr. Abdelbaki were allowed to see and identify his body on 24 July 2017. It was still bearing marks of torture: bruises in the back, mutilations on different parts as well as several bullets wounds including one in his heart.

Mohammed Shaaban Owais Shaaban Abdelhady, (شعبان عويس شعبان عبد الهادي محمد) a 22 year-old man from al [REDACTED] Village in the Fayyoun Governorate; national ID number: [REDACTED]

On 9 November 2017, Mr. Mohammed Shaaban Owais Shaaban Abdelhady (hereinafter Mr. Abdelhady) was arrested by men in plainclothes.

Following his arrests, his fate and whereabouts remained unknown. Persons associated with him filed a missing person report and submitted requests for information about the whereabouts of Mr. Abdelhady to the Attorney General's and the Public Prosecutor's offices. They have not received a response to these queries.

On November 23, 2017, the Ministry of Interior announced that Mr. Abdelhady was killed in an exchange of fire with the police during a raid on a terrorist compound.

To date, the authorities have not investigated the killing of Mr. Abdelhady, and they have rejected the requests from persons associated with him to see his body.

[REDACTED], a 16-year-old child from 10th of Ramadan, Sharkia; national ID number: [REDACTED]

Mr. [REDACTED] disappeared on 10 November 2017. Persons associated with him called his mobile phone repeatedly, but there was no answer. Believing that Mr. [REDACTED] was disappeared, they submitted a written complaint to the Police. They did not receive a response.

On 23 November 2017, the Ministry of Interior issued a statement describing a Police raid in an apartment in Wady Altatroum followed by an exchange of fire in which Mr. [REDACTED] was killed. According to the statement, the police found automatic weapons in the apartment.

On 2 December 2, 2017, the authorities refused requests from persons associated with Mr. [REDACTED] to see and collect his body.

Without making a judgment as to the accuracy of the information made available to us, we express our most serious concern about the alleged enforced disappearances and extrajudicial killings of Mr. **Ibrahim**, Mr. **Ali El Far**, Mr. **Imad El Far**, Mr. **Abdelbaki**.

We are similarly concerned by the enforced disappearance of Mr. **Abdelhady** and Mr. [REDACTED] who may also have been extra judicially as their deaths were reported by the authorities. These constitute some of the most serious crimes under international human rights law, in violation of the universally-recognized right to life, as set forth in article 6(1) and 9 of the International Covenant for Civil and Political Rights, ratified by Egypt on 14 January 1982. The allegations that the bodies of three of these individuals bore marks indicating acts of torture also indicate *prima facie* evidence that they were tortured or otherwise ill-treated, in violation of Egypt's human rights obligations under the Convention against torture that it ratified in 1986.

Furthermore, we are concerned that National Security officers threatened persons associated with Mr. Ibrahim, which has prevented them from filing a missing person report. Additionally, the next of kin of the individuals in three cases had to wait between four days and one week to receive the bodies of the deceased or in two cases have not been allowed to receive the body at all.

We respectfully remind your Excellency's Government of the relevant provisions of 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 resolution 49/60, 51/210, 72/123 and 72/180. All these resolutions 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.

We are particularly concerned by the apparent pattern that emerges from these allegations. All six individuals were subject to an enforced disappearance before their deaths were reported by the Ministry of Information and explained as having resulted from exchange of gunfire, in the context of counter-terrorism operations. In at least four cases the individuals were arrested by state security personnel prior to their deaths. In three of the cases, the bodies of the victims bore signs of torture. These allegations indicate *prima facie* extrajudicial, arbitrary executions.

International human rights law provides that when the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. In case of a death of a person in custody, there is a presumption of State responsibility.¹ As a result of this presumption, it is the responsibility of the state to prove that it did not violate, by action or omission, the right to life of the victims. The state has an obligation to conduct investigations by a competent and independent body into the circumstances that caused the death and an obligation to make reparations to the victim's family.² In at least four cases, the victims were arrested by security personnel prior to their death, which indicates that they died in their custody.

¹ *Dermi Barbato v Uruguay*, Communication No. 84/1981, Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40), annex IX.

² A/61/311, par. 54

The State's duty to conduct thorough, prompt and impartial investigations into all instances of death in custody, including suspected cases of extra-legal, arbitrary and summary executions is aimed at determining the causes of the deaths and the responsibilities, direct or supervisory, of any authority. Failure to investigate violations of the Covenant and to bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR.³

The allegations that four of the individuals were detained prior to their deaths, and that in three cases the bodies showed signs of torture contradict the official information released that they died during armed confrontations. Even if they were killed in exchange of fire, as official reported, international law provides that any loss of life that results from the excessive use of force by law-enforcement or security personnel without strict compliance with the principles of necessity and proportionality may constitute an arbitrary deprivation of life, and thus an arbitrary or summary execution.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the factual and legal basis for the arrest and detention of four of the individuals, the charges brought against them and the places where they were detained. Please provide information on whether Mr. Ibrahim, and Mr. [REDACTED] were arrested or detained prior to their deaths and if so the factual and legal basis for their arrest and detention.
3. Please provide detailed information explaining what has happened between the moment when these individuals disappeared, to their deaths.
4. Please provide the details, and where available, the results of any investigation and judicial or other inquiry undertaken in relation to these allegations, especially in relations to allegations of torture, enforced disappearance and extra-judicial killings. If no investigations have taken place, or if they have been inconclusive, please explain why, and how this is compatible with Egypt's international human rights obligations under the conventions it has ratified.
5. Please provide information on any reparations afforded to the families of the aforementioned individuals.

³ CCPR / C / 21 / Rev.1 / Add.13, paras. 15

6. Please provide information on the measures in place to ensure family members have the remains of their loved ones returned to them. Please explain why the families of Mr. [REDACTED] and Mr. Abdelhady have not received their remains.
7. Having taken note of the Ministry of Interior statement on the “Ministry’s efforts to prosecute the terrorist elements belonging to the Muslim Brotherhood”, please provide information in details of how those efforts comply with 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 resolution 49/60, 51/210, 72/123 and 72/180.
8. Please provide information about the directives issues by the Government to law-enforcement personnel concerning the precise circumstances in which the use of lethal force is authorized, and indicate how these directives comply with the international human rights obligations of Egypt under the ICCPR, as well as the requirement of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

We would appreciate receiving a response within 60 days. Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

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(s) responsible for the alleged violations.

We would like to inform your Excellency’s Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information in our possession indicates a matter warranting the most serious 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 would indicate that we have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

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

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

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Article 6(1) of the International Convention on Civil and Political Rights (ICCPR), ratified by Israel on 3 October 1991, provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In General Comment No. 6, the Human Rights Committee reiterated that the right to life is the supreme right from which no derogation is permitted even in time of public emergency that threatens the life of the nation. Moreover, in General Comment No. 31, the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces. Permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990) provide that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9). Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles (principle 8). According to the Basic Principles and the Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979, law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated.

We would as well like to remind your Excellency's Government of the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary or summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989.

Moreover, according to principle 4 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, States have an obligation to investigate all allegations of prohibited murders of civilians committed by

their armed forces or nationals. Where there is sufficient evidence of the commission of an offence, States have a duty to prosecute those responsible.

The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), which reiterates that the duty to investigate is an essential part of upholding the right to life, highlights that the right to know the truth extends to family members and society, particularly given the public interest in preventing international law violations. Therefore, absent a compelling need to protect the public interest or the legal rights of the victims and their families, the State party must disclose relevant details about the investigation to the victim's next of kin and make its findings public.

We would as well like to remind your Excellency's Government that 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, and article 7 that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. Moreover, in the paragraph 6 of the General Comment on the Right to Truth, the Working Group on Enforced or Involuntary Disappearances states that the right to know the truth about the fate and the whereabouts includes, when the disappeared person is found to be dead, the right of the family to have the remains of their loved one returned to them, and to dispose of those remains according to their own tradition, religion or culture.

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 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.