

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 11/2018

6 June 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, 36/6, 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 **imposition of the death sentence on four Egyptian nationals, including one child, and of life and other lengthy prison sentences on six others, including two children. These sentences were handed down by a court in Giza, in the so-called "Owseem cell" case, following a collective trial that appears to have violated the most basic fair trial and due process guarantees. Several of the defendants were reportedly subjected to enforced disappearance, torture and denial of access to legal representation during investigations. Eight of them were below the age of 18 at the time of the commission of the alleged crime for which they were convicted and sentenced.**

A similar case was brought to the attention of your Excellency's Government on 15 June 2017 through an Urgent Appeal with reference EGY 8/2017. This case concerned death sentences imposed on six individuals following trials that reportedly did not meet fair trial and due process guarantees, including allegations of enforced disappearance and confessions obtained under torture that were used as the main evidence for their convictions.

We thank your Excellency's Government for the response received on 23 August 2017, which set out, inter alia, the legal detention safeguards in place in Egypt and their compatibility with international law, including provisions that all defendants must be brought before the investigating authority within 24 hours of the time at which their freedom was restricted; that questioning of persons may only begin once their lawyer is present; that they may not be subjected to torture, intimidation or coercion, or to any

physical or mental abuse; and that any statement made under any such condition or threat thereof shall be considered null and void. We would appreciate to receive information on how these guarantees are upheld in practice.

Another similar case was brought to the attention of your Excellency's Government on 12 January 2018 through an Urgent Appeal with reference EGY 2/2018 (also referencing Urgent Appeal EGY 8/2017). This letter raised concerns over the execution of four individuals; the death sentence issued against one individual; and the possible death sentence against another individual, following trials that reportedly did not meet fair trial and due process guarantees, including allegations of enforced disappearance and confessions obtained under torture that were used as the main evidence for their convictions. We thank you for the response received on 23 May 2018, which is pending translation and will be given careful attention.

According to the information received:

On 19 February 2018, the Criminal Court of Northern Giza rendered judgement in the case known as the "Owseem terrorist cell" case following a six-month collective trial against 15 defendants. It found 10 defendants guilty, eight of whom were below the age of 18 at the time of the commission of the alleged crimes for which they were sentenced, and three are still children to date.

The Court sentenced four of those found guilty to death, including one child: [REDACTED] (age 17), Baker Mohamed El-Sayed Abo Gabal (age 33), Omar Ali Mahmoud Mansour ElGenedy (age 29) and Omer Mahmoud Gomaa Rizk (age 19). The Court sentenced a further three persons, including one child, to life in prison: [REDACTED] (age 17), Mohamed Hassan Abdellah (age 18) and Ahmed Hassan Abdellah (age 18). It sentenced the other three persons, including one child, to 15 year in prison: [REDACTED] (age 17), Khaled Ahmed Abdelhamid (age 18) and Ahmed Khaled Younis (age 18).

The majority of the accused persons had been arrested between February and July 2015, following several incidents in the Owseem area, city of Giza, including an explosion at the house of Counsellor Fathy Eiboumy, explosions of two containers in the garage of the Owseem police station and an attempted burning of the Owseem state council building. The Public Prosecution Service referred the cases to court on 13 August 2015 on charges of having participated in the above-mentioned incidents, affiliation to a banned organization and establishment of a terrorist cell.

All individuals were enforcedly disappeared upon apprehension for periods of one to six days without being brought in front of a competent judge. The dates of their

official arrests were allegedly falsified. It is further reported that at least some of the defendants were subsequently held incommunicado for a longer period, in one case for two months. Most of them were children at the time, ranging in ages between 14 and 16 years old.

During this period, the defendants reportedly underwent lengthy interrogations – in at least one case of more than one day without interruption – during which they were tortured to obtain forced confessions and denied access to legal representation. The defendants were reportedly, among others, blindfolded; forced to take off their cloths; hit with wooden sticks, metal rods and/or a leather lash or type of belt on their legs, thighs, chest, shoulders, arms, hands, head, face nose and ears; [REDACTED]. It is reported that the perpetrators were officers of the Owseem investigation unit.

Most of the defendants who alleged torture were referred by the public prosecution to the department of forensic medicine for examination at their request. However, in two cases the prosecution neglected complaints of torture and did not refer the defendants to forensic examination. In several other cases there were delays in the referral process of around 10 to 12 days that impacted the ability to examine the physical marks of torture. In another case, it is unknown if the individual was sent to the department of forensic medicine as no report was produced.

The reports that were produced by the department of forensic medicine confirmed the allegations of torture. The Public Prosecution Service itself also observed and made note of the above-mentioned injuries sustained in the case files of some of the defendants. Despite the request by the defence council for nullification of the confessions on the basis that they were obtained under coercion and therefore inadmissible, the Court allowed them into record and to be used as the basis for their convictions.

The current appeals stage of the cases of the 10 above-mentioned individuals is unknown at the time of writing.

Without making a judgement as to the accuracy of the information made available to us, we would like to express grave concern at the imposition of the death penalty on the above-mentioned four individuals and the imposition of life and other lengthy prison sentences on the above-mentioned six others following a collective trial that failed to meet fair trial and due process guarantees. We express equal grave concern that most of the defendants were children at the time of the alleged commission of the crimes for which they were sentenced and that three of them still are children. Our concern in these cases is heightened by the reported enforced disappearance, incommunicado detention and torture of the defendants to obtain confessions, with most of them at the time

between 14 and 16 years old, and that these confessions were used by the court as the basis for their convictions.

In view of the irreversibility of the punishment of the death penalty, we respectfully urge your Excellency's Government to take all steps necessary to **halt the executions of all four individuals mentioned above. To proceed with their executions may constitute a violation of applicable international human rights law and standards, and thus amount to arbitrary executions.** We further appeal to your Excellency's Government to quash the death sentences against the aforementioned four individuals as well as life and other lengthy prison sentences against the six others and to ensure their re-trial in compliance with international human rights law and standards. Moreover, we reiterate our call to your Excellency's Government to establish an official moratorium on the death penalty, and to consider its complete abolition.

The above allegations, if confirmed, indicate a prima facie violation of the right of every individual to life, liberty and security, and not to be arbitrarily deprived 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 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.

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In this context, we would like to bring to the attention of your Excellency's Government article 1 of the United Nations Safeguards Protecting the Rights of those facing the Death Penalty (UN Safeguards), which provides that countries that have not abolished the death penalty may only impose it for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences. It was submitted in a report by the mandate on extrajudicial, summary or arbitrary executions to the Human Rights Council that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

Article 5 of the UN Safeguards further provides that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages of the proceedings. Only full respect for the most stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution.

Any judgment imposing the death sentence and execution of juvenile offenders is incompatible with the international legal obligations undertaken by your Excellency's Government under various instruments, including the CAT and the CRC, and amounts to cruel, inhuman and degrading punishment. Article 37(a) of the Convention on the Rights of the Child (CRC), ratified by Egypt in 1990, expressly prohibits the imposition of the death penalty for offences committed by persons below 18 years of age. In its General Comment No. 10, the Committee on the Rights of the Child stated that in case there is no proof of age the child should be given the benefit of the doubt.

The allegations also seem to indicate a *prima facie* violation of the absolute and non-derogable prohibition of torture and other cruel, inhuman and degrading treatment or punishment as set forth in articles 2 and 16 of the CAT. The prohibition is also contained in article 37(a) of the CRC. Furthermore, article 15 of the CAT prohibits the use of information obtained under torture as evidence in any proceedings. In this context, we would also like to recall paragraph 7c of resolution 16/23 of the Human Rights Council.

The United Nations Declaration on the Protection of All Persons from Enforced Disappearances, sets out the necessary protection by the State; in particular that no State shall practice, permit or tolerate enforced disappearances (article 2), that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3) that any person deprived of liberty shall be held in an officially recognized place of detention (article 10.1) and that an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention (article 10.3). Reference is also made to the General Comment on children and enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances, which states that the enforced disappearance of a child constitutes the exacerbation of the violation of the multiplicity of rights protected by the Declaration and an extreme form of violence against children.

Lastly, we would like to draw the attention of your Excellency's Government to the resolutions 1373 (2001), 1456(2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017) of the United Nations Security Council; as well as resolution 35/34 of the Human Rights Council; and, resolutions 49/60, 51/210, 72/123 and 72/180 of the General Assembly, 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 in the context of the above case, international human rights law.

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 clarify the charges that were brought against the defendants in the Owseem cell case, and how the offences they were convicted and sentenced for meet the threshold of “most serious crimes” for the death sentence to be lawful as required under article 6 of the ICCPR.
3. Please in addition clarify how the sentencing to death of the above-mentioned individuals who were below the age of 18 at the time of the alleged commission of the crimes for which they were sentenced is in line with the treaty obligations undertaken by Egypt under the ICCPR and CRC, as well as how this is in line with Egypt’s domestic legislation, including as indicated in your Excellency’s response dated 23 August 2017 to Urgent Appeal EGY 8/2017 that “It may not be imposed on persons who were under the age of 18 years when the crime was perpetrated”.
4. Please also explain why the defendants that were children at the time of the commission of the alleged crimes, and some of whom appear to still be below the age of 18, were not tried before a special children’s court pursuant to Egypt’s Children’s Act No. 12 of 1998, and if found guilty given lighter penalties as prescribed in the Act.
5. Please provide information about the arrest and detention of the defendants, including the dates, place(s) of detention, authority(ies) who detained them, conditions under which they were detained, their access to defence lawyers during that period, and when they were presented before a judge for the first time.

6. Please provide information about the investigation of the crimes the defendants were charged with; and, in particular, the conditions under which their confessions were obtained; the extent to which they were used in court as evidence against them; why, when there were allegations of torture, and medico-legal evidence supporting these claims, these confessions were not excluded from evidence in the trial by the Court; and how this is consistent with Egypt's international human rights obligations under the conventions it has ratified.
7. Please provide information on any measures taken to prevent the arbitrary executions of the above-mentioned four individuals, given that the charges for which they are sentenced to death appear not meet the threshold of "most serious crime", as required by international law; the court proceedings do not seem to have met the most stringent fair trial and due process guarantees; and, two of them were below the age of 18 at the time of the commission of the alleged crimes for which they were sentenced. If no measures have been taken, please explain why.
8. Please provide information on measures taken to ensure that juveniles at the time of the commission of the crimes they are accused of are protected against being subjected to capital punishment, as required under both Egyptian domestic and international law.
9. Please also provide information on how the detention safeguards in place in Egypt, as detailed in your letter dated 23 August 2017, are upheld in practice. In particular please indicate what safeguards are in place to prevent in practice arbitrary detention, enforced disappearances, incommunicado detention, denial of access to legal representation during interrogation and the use of torture to obtain confessions. What remedies exist for individuals deprived of their liberty to challenge their arrest and detention before a judge, and within which delays?
10. In connection with the above question, please in addition provide specific information on measures in place, and how they are upheld in practice, to ensure that allegations of torture are promptly and duly investigated and confessions obtained under torture are automatically and without exception excluded from any trial enforced by judges decision, and to ensure that the burden of proof in these cases is placed on the prosecution and not on the victim.
11. Please also provide information on any investigations undertaken with the aim of holding the perpetrators of torture, as well as those responsible for the enforced disappearance and arbitrary and incommunicado detention of

the defendants, to account. If no investigations have been undertaken, or if they have been inconclusive, please explain why.

12. Please provide information on the current status of this case, has any appeals been lodged against the judgment with the Court of Cassation by the Public Prosecution Service or by the convicted persons in line with article 46 of Act no. 57 of 1959 with the aim of annulling all convictions and sentences issued in this case? Or any request for review by the sentencing court been made? Has the judgment imposing the death penalties been submitted to the Supreme Court as required by Egyptian law? If the Public Prosecution Service has not lodged an appeal to have the sentences quashed or requested review by the court, in light of their knowledge of the torture by State officials of the defendants during the investigations phase to obtain confessions, please explain why. If the case has not been sent to the Supreme Court, please similarly explain why.

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.

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 consider to publicly express our concerns in the near future as, in our view, the information made available to us is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that, should the information be accurate, the wider public should be informed about the human rights implications of these violations. Any public statement 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
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
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