

Mandates of 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; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

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24 August 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 35/15, 34/18, 32/32, 34/19 and 36/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a draft law approved by the House of Representatives of Egypt that would grant amnesties to a designated cadre of high-ranking military officers.

According to the information received:

On 3 July 2018, members of the Egyptian House of Representatives approved the draft articles of the "Law Governing the Treatment of Certain Senior Commanders of the Armed Forces".

The draft law, which was presented as a law to "honour the armed forces", was reportedly sped through the parliamentary process and approved on 16 July. The draft must go through another round of approval in parliament and will come into force after it is signed by the President and published in the official gazette.

The draft law empowers the President to designate a group of high-ranking military officers with lifelong reserve status, granting them the benefits and rights afforded to a sitting minister. Other privileges or allowances may be granted to them by presidential decree and maybe combined with privileges established under other laws.

The bill does not specify who is eligible for designation or the frequency with which the President can announce a designation.

Article 5 of the draft law establishes that a designated group of military officers will be protected from any investigation or judicial action initiated against them

for any acts committed in the discharge of their duty or as a result of it, during the period of time between the suspension of the Egyptian Constitution (in July 2013) and the first convening of the House of Representatives (in January 2016).

Once the designation of the group of officers is complete, they will enjoy immunity from prosecution for the violations that they may have committed during the aforementioned period.

The officers will also be shielded from international prosecution. Article 6 stipulates that when traveling abroad, the designated military officers will be afforded the immunity enjoyed by heads and members of diplomatic missions, throughout the duration of their service and the duration of their summons.

The draft law effectively establishes a blanket amnesty for the violations committed by officers designated by the President, and does not introduce exceptions in its application when the violations constitute serious crimes or other gross human rights violations.

The term for which the law applies affects a period of transition and social unrest in Egypt. The period includes a series of events that have raised concerns about gross human rights violations, such as the dispersals of sit-ins in Cairo's Raba'a al-Adaweya and Giza's Nahda Squares, which led to hundreds of deaths and thousands injured.

We would like to express our deep concern about the implications of the approval of the "Law Governing the Treatment of Certain Senior Commanders of the Armed Forces", which seeks to establish a general amnesty and extinction of criminal responsibility for high-ranking military officers for any crimes committed between the suspension of the Egyptian Constitution (in July 2013) and the first convening of the House of Representatives (in January 2016). We are further concerned that the law does not exempt gross human rights violations from this general amnesty, even though it will apply to acts committed during a period of social unrest in Egypt that included serious allegations of human rights violations by military officials. The adoption of such a bill would constitute serious affront to the rights of victims, the rule of law, the right to information about gross human rights violations, and the fight against impunity for human rights violations in Egypt.

Without wishing to comment in advance on the alleged facts, we would like to refer to the obligation to investigate and punish human rights violations and to combat impunity for such crimes. In this regard, we would like to recall that, as established by the Human Rights Committee in its General Comment No. 31 (paragraph 18) States have an obligation to investigate and punish gross human rights violations, including summary or arbitrary killings, torture and other cruel, inhuman or degrading treatment, and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties. Impunity for such violations can be an important element contributing to the recurrence of violations.

In addition, regarding the dispersals of sit-ins, the Special Rapporteur on the rights to freedom of peaceful assembly and of association recalls the 10 principles for the proper management of assemblies, according to which: “States must establish effective reporting and review procedures to address any incident in relation to an assembly during which a potentially unlawful use of force occurs” (Guiding Principle 5).

As noted by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, we would like to emphasize that from a human rights perspective, the obligation to investigate and prosecute arises from the right to an effective remedy. It is also part of the right of the victim, his or her immediate family members and, in certain cases, society as a whole to know the truth. The administration of justice in the face of gross human rights violations is a central element in preventing the recurrence of such violations. Promoting a culture of impunity contributes to vicious cycles of violence.

The updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of February 2005 states that impunity constitutes a violation of the obligations of States to investigate violations, to take appropriate measures with regard to perpetrators, especially in the field of justice, to ensure that persons suspected of criminal responsibility are prosecuted, tried and sentenced to appropriate penalties, to guarantee victims effective remedies and to make reparation for the harm suffered, to guarantee the inalienable right to know the truth and to take all necessary measures to prevent the recurrence of such violations (principle 1).

We would also like to recall that international law sets limits to the adoption of amnesties insofar as they foster impunity and prevent States from complying with their international obligations to investigate and prosecute those responsible for human rights violations. Amnesties are particularly incompatible with crimes that represent gross human rights violations, such as torture, summary executions, enforced disappearances and genocide, among others.

The Human Rights Committee ruled that all impediments to establishing the legal responsibility of persons who have committed gross human rights violations must be removed. In its General Comment No. 31, the Committee also established that in cases where violations such as torture, summary and arbitrary deprivation of life and enforced disappearances have been committed by a public official or State agent, the States concerned may not exempt the perpetrators from their personal legal responsibility through amnesties and former immunities (para. 18).

In accordance with the mandates given to us by the Human Rights Council, we urge your Excellency's Government that all necessary measures be taken to bring this law and its application into compliance with Egypt's international human rights obligations, and to take all necessary measures to guarantee the right to justice for all victims of human rights violations. In this regard, we would be very grateful for your cooperation and comments on this communication.

We would appreciate receiving a response within 60 days.

Finally, we would like to inform your Excellency's Government that this communication, as a comment on pending or recently adopted legislation, regulations or policies, will be made available to the public and posted on the website page of the mandate of the Special Rapporteur promotion of truth, justice, reparation and guarantees of non-recurrence: <https://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/Index.aspx>, as we believe that the public should be informed of the potential implications of the forthcoming decisions of the Congress on the matter. It will also be posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>.

Your Excellency's Government's response will be made available on the same website as well as in a report to be presented to the Human Rights Council for its consideration.

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

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye

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