

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Working Group on Arbitrary Detention

REFERENCE:
AL EGY 9/2019

28 October 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; and Working Group on Arbitrary Detention, pursuant to Human Rights Council resolutions 35/15 and 33/30.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning conditions that appear to have led to the death of the former president of Egypt Mr. Mohamed Morsi Eissa El-Ayyat (Dr. Morsi) on 17 June 2019 and that appear to be currently endangering the lives of Dr. Essam El-Haddad, his son Mr. Gehad El-Haddad, and many other prisoners.**

Specifically, we bring to the attention of Your Excellency's Government allegations that Dr. Morsi's conditions of detention, insufficient access to lawyers and family, deliberate denial of health care, and other acts potentially constituting torture or cruel, inhuman or degrading treatment by the state of the Arab Republic of Egypt during Dr. Morsi's nearly six years in custody may have caused his death.

These same conditions and acts appear to be immediately threatening the lives of Dr. Essam El-Haddad and Mr. Gehad El-Haddad, as well as many other prisoners. The alleged facts constitute severe infringements of the right to life, the right not to be subjected to arbitrary detention, the right not to be subjected to torture or ill-treatment, the right to due process and a fair trial, and the right to health.

Concerns that the detention of Dr. Morsi, Dr. Essam El-Haddad and other members of his cabinet was arbitrary as it contravened international norms regarding the right to a fair trial have already been expressed in Opinion No. 39/2013 adopted by the Working Group on Arbitrary Detention during their sixty-eighth session, 13–22 November 2013. We regret that the Working Group on Arbitrary Detention (WGAD) has not received a response from your Excellency's Government prior to the adoption of its Opinion. We also wish to refer to Opinion No. 42/2019 concerning the detention of Messrs. Gehad and Essam El-Haddad, in which the WGAD found that their detention was arbitrary.

Concerns relating to Dr. Morsi and 105 other individuals have also been sent in an urgent appeal (EGY 7/2015) on 29 May 2015. We are grateful for your Excellency's response to this communication. However, we regret that the information that served as

the basis for the urgent appeal was considered by Your Government false or inaccurate. We also regret that the Government has not informed us as to whether any investigation was initiated into the allegations submitted and that did not take steps to improve the conditions of detention of Dr. Morsi and others, and guarantee their fair trial rights.

Concerns about conditions in Egypt's prisons, and concerns that the repeated denial of health care was causing serious injury and endangering life of detainees, have been the subject of repeated communications to your Excellency's Government, including: EGY 12/2014 on 9 September 2014, EGY 6/2015 of 1 June 2015, EGY 12/2015 of 14 August 2015, EGY 15/2015 of 28 October 2015, EGY 7/2016 of 29 July 2016, EGY 7/2017 of 7 June 2017, EGY 15/2017 of 12 October 2017. We are grateful for replies from your Excellency's Government to these communications.

We regret to not have yet received a reply from your Excellency's Government in cases: EGY 6/2014 of 16 May 2014, EGY 4/2018 of 21 February 2018, EGY 6/2018 of 26 April 2018, EGY 3/2019 of 7 March 2019, EGY 5/2019 of 6 May 2019.

According to the information received:

Background

Dr. Mohamed Morsi Eissa El-Ayyat, PhD (Dr. Morsi), aged 67 at his death, was born in Al-Sharqiya Governorate on 20 August 1951. Prior to becoming president, Dr. Morsi had worked with NASA in the early 1980s on space shuttle engines. In 1985, Dr. Morsi became a professor at Egypt's Zagazig University where he was later appointed Head of the Engineering Department.

In 2000, Dr. Morsi was elected to Parliament, where he served until 2005. Later, Dr. Morsi was appointed President of the Freedom and Justice Party.

On 28 January 2011, Dr. Morsi was arrested along with 24 Muslim Brotherhood leaders and detained in Wadi el-Natrun Prison. During the Egyptian upheaval that led to a change in Government, Dr. Morsi escaped from the prison as a riot broke out.

In 2012, Dr. Morsi participated in the presidential elections as the Freedom and Justice Party candidate. On 24 June 2012, Dr. Morsi became the first democratically elected president in Egypt, with 51.73% of the vote. He served as President from 30 June 2012 to 3 July 2013.

On 1 July 2013, the Egyptian Armed Forces issued a 48-hour ultimatum threatening to enforce "the will of the people" and remove the President. The following day, having publicly rejected the Egyptian Army's ultimatum, President Morsi announced his plans for national reconciliation and resolving the political crisis.

On 3 July 2013, General Abdel Fattah el-Sisi announced a roadmap for the future of Egypt and deposed by force President Morsi and much of his government from office, in what was a military coup d'Etat. General Abdel Fattah el-Sisi then appointed Adly Mansour as the interim President of Egypt. General el-Sisi became President of Egypt in June of 2014.

Dr. Morsi's Arrest and Detention

In July 2013, Republican Guards arrested Dr. Morsi, along with Dr. Essam and nine other government officials. Dr. Morsi was apparently held in a military holding centre in Alexandria, for four months, apart from the other officials. During this period he disappeared and his family did not know where he was. Dr. Morsi was then transferred to Burj Al Arab prison in Alexandria for five months. After that, he was transferred to the Tora prison complex, where he remained until his death.

During the almost six years that Dr. Morsi was in prison, he was allowed to see members of his family only three times, for a total time of approximately an hour and a half. In November 2013, he was permitted to see only some members of his family and his lawyer in the presence of five prison guards. That visit lasted approximately half an hour. In June 2017, he was allowed to see some members of his family, but the authorities barred other relatives from visiting. This second visit also lasted only about a half an hour. The family was denied the permission to give Dr. Morsi food or clothes. A security agent was present the whole time. On that occasion, Dr. Morsi was also allowed to see his lawyer for ten minutes, for the first time since June 2015. The third visit was on September 19, 2018 and three members of security agencies accompanied the family the entire time and took notes of their conversation. His family was otherwise completely denied the ability to visit him.

We understand that in Egypt families are expected to provide food and medicine for prisoners and this is the primary source of these necessities. Despite repeated requests from his family, Dr. Morsi was denied this life-saving and sustaining care.

During his time in the Tora Prison Complex, a period of approximately five years, Dr. Morsi was held in solitary confinement for 23 hours a day, only allowing for one hour of exercise. He was not allowed to see other prisoners, even during exercise. He was not allowed access to books, journals, writing materials or radio. He was forced to sleep on the concrete floor, with nothing more than one or two blankets.

Prior to his arrest, Dr. Morsi had certain pre-existing medical conditions that were being properly managed and that were not endangering his life. Dr. Morsi was using insulin twice daily to control diabetes and he had achieved good control of the condition; he required daily insulin, and continued monitoring of his blood sugar, to control his blood sugar levels and to prevent life-threatening progression

of the disease. Dr. Morsi had hypertension, with a blood pressure of 170/105 at the time of diagnosis. He required anti-hypertensive medication to maintain his blood pressure within healthy limits and to prevent risks associated with hypertension, such as stroke. He had cirrhosis of the liver from a hepatitis C infection, and required an appropriate diet for his liver disease, as well as for control of his diabetes. Although these were all serious conditions, none posed a serious threat to his life at the time of his arrest because of his ongoing medical treatment and diet control.

Following his arrest, Dr. Morsi was repeatedly denied appropriate medical care despite multiple requests that he and his lawyers made to officials and the court regarding his deteriorating health. Dr. Morsi progressively lost vision in his left eye, a possible sign of uncontrolled diabetes. He had recurrent diabetic comas. He had significant tooth decay and gum infections. He fainted repeatedly. He had bone and muscular pain, including an injury to the neck and spine, as a consequence of being forced to sleep on a cement floor.

Dr. Morsi repeatedly brought these conditions to the attention of the Court when provided with an opportunity to talk. In a video from a trial on 8 August 2015, Dr. Morsi detailed his conditions in prison, and in particular, the inedible food available to him. During one of his trials, he testified that he had fainted twice in one week. He further repeatedly told the court that he was being “killed in his cell,” being served food that “could lead to disaster” and that he was being threatened in his cell. In another oral statement recorded on video, Dr. Morsi testified in November 2017 about his deteriorating health and the continuous refusal on the part of prison officials to grant his requests to be visited by medical specialists. In addition, Dr. Morsi mentioned his complete isolation from the outside world and the failure of the prison guards to address any of his needs, including adequate legal counsel. He also denounced acts of psychological torture by prison guards such as waking him and threatening him with rifles at 3 o’clock in the morning. We are unaware of any action taken by any official or judge to address the serious allegations Dr. Morsi repeatedly made.

In 2018, the United Kingdom Detention Review Panel issued a petition to Your Excellency’s Government, requesting access to Dr. Morsi in Egypt to assess his medical status and his detention conditions. The Detention Review Panel is a privately constituted panel of Members of the UK parliament and senior lawyers.

The Panel warned Your Excellency’s Government that “if Dr. Morsi is not provided with urgent medical assistance, the damage to his health may be permanent and possibly terminal.” We have no evidence that Your Excellency’s Government took any action to address these life-threatening health concerns.

Failure to Afford Dr. Morsi Access to Legal Representation and Due Process:

For the first four months in detention, Dr. Morsi was not charged with any crime.

He was subsequently charged with several crimes, including the killing of protesters during demonstrations in 2012; espionage; jailbreak; insulting the judiciary; and involvement in terrorism. These charges entailed multiple hearings and trials, as well as appeals. During this entire 6-year process, Dr. Morsi was allowed only four visits with his lawyers, amounting to approximately two hours to prepare his defense. His lawyers were allowed to visit on November 2013, January 2014, September 2014, and November 2017. A lawyer accompanied the family to a visit on 4 June 2017, but was allowed to see Dr. Morsi for only ten minutes. Dr. Morsi complained to the court that lawyer visits the court ordered did not take place.

During hearings, from mid-2015 on, Dr. Morsi was held in a thick, soundproof glass enclosure during his court appearances, with a microphone controlled by the judge. This prevented him from exercising his right to meaningful participation in his trial proceedings and to communicate with his legal counsel. Detainees in these conditions, including Dr. Morsi, are forced to use a modified sign language to communicate with the court, their legal counsel, and their families. They are unable to hear witnesses, or even participate to their own legal proceedings including their defense team. As Dr. Morsi told the court, because of these conditions, the trial “is in absentia ... I am present and absent”.

Dr. Morsi’s Death:

According to the statement of the Prosecutor General, during a court hearing on 17 June 2019, Dr. Morsi “fainted and fell on the ground; he was immediately transported to the hospital and then he was found dead.”¹ However, witnesses claim that Dr. Morsi lay in the defendant’s cage for 20 minutes, with no medical attention. Dr. Morsi was declared dead at the hospital at 4.50 p.m.

According to the statement of the Prosecutor General “Cairo’s prosecution office” issued the burial permit “after receiving the forensic report on the causes of death.” A “high committee of forensic physicians was tasked to examine the body to prepare a forensic report on the causes of death for the burial permit”. “No recent injuries were found on the body of the deceased.”² However, it does not appear that a formal autopsy was done, nor was a toxicology test apparently done.

The authorities officially notified Dr. Morsi’s family of his death at 10.00 p.m., five hours after his passing. Only Dr. Morsi’s lawyers and two family members could attend the washing and burial ceremony. The family requested Dr. Morsi to be buried in his hometown near his father’s grave but the authorities reportedly refused. The family was allowed access to the Tora Prison at around 11.00 p.m. It is reported that before seeing Dr. Morsi’s body, one of his sons was forced to sign documents declaring that Dr. Morsi’s death was “normal” and that the son agreed

¹ <https://www.egypttoday.com/Article/1/71731/Prosecution-office-statement-on-Morsi-s-death>

² <https://www.egypttoday.com/Article/1/71730/Prosecution-office-issues-burial-permit-for-Morsi>

with the procedures followed by the authorities in relation to Dr. Morsi's death. It is further alleged that the authorities also denied the family's request to see the post-mortem autopsy results.

Early in the morning of 18 June, Dr. Morsi was buried in Cairo's Madinat Nasr with his family present.

The Arrests and Detention of Dr. Essam El-Haddad and Mr. Gehad El-Haddad:

Dr. Essam El-Haddad is a medical doctor and, prior to his government service, had been a philanthropist, businessman, and co-founder of Islamic Relief. He returned to Egypt in 2013 and became actively involved in the Freedom and Justice Party.

After Dr. Morsi's election, Dr. Essam El-Haddad became his advisor on foreign relations and international cooperation. He was arrested on 3 July, 2013.

Mr. Gehad El-Haddad, Dr. Essam El-Haddad's son, worked as the Cairo City Director at the Clinton Foundation's Climate Initiative from 2007 to 2012. He established the Foundation's office in Egypt and managed it for five years, developing a communication network with more than 50 public organizations. During the uprising against President Mubarak, Mr. Gehad El-Haddad was active in the Freedom and Justice Party, contributing to the planning of the "Renaissance Project," which focused on long-term economic recovery for Egypt. Following the forced removal of Dr. Morsi, Mr. Gehad El-Haddad acted as the Chief Media Spokesperson for the Muslim Brotherhood, until his arrest on 17 September 2013. He had been a prolific political commentator in the foreign press and active on social media platforms such as Twitter and Facebook.

Like Dr. Morsi, Dr. Essam El-Haddad was initially held incommunicado, with letters only allowed starting in mid-August 2013. His family did not know where he was held until 18 September 2013, when Dr. Essam El-Haddad told them in a letter that he was detained at the Communications Building of the Republican Guards Club in Masr Al-Gaeda. Allegedly, Dr. Essam El-Haddad was arrested by the Republican Guards under the direct command of General Mohamed Zaki (then head of that unit) and upon the order of General Abdel Fattah El Sisi. On or about 21 December 2013, Dr. Essam El-Haddad was transferred into the Interior Ministry and detained in the Al-Aqrab ward in Tora Prison, a maximum-security facility housing political prisoners. This facility has become known as the Scorpion prison.

Mr. Gehad El-Haddad was taken to Liman Tora prison (a maximum security ward) when he was arrested in September 2013 and was held in solitary confinement 24-hours a day for the first 18 days of his detention. Eventually, prison authorities allowed him an hour of daily exercise outside his cell. In January 2014, Mr. Gehad El-Haddad was also moved to indefinite solitary

confinement in El-Aqrab Prison, the "Scorpion" prison, where he is currently detained.

In support of a petition to the Working Group on Arbitrary Detention, another prisoner described the conditions he himself faced, and that he witnessed Dr. Essam El-Haddad facing, in the Scorpion prison:

"Al Aqrab prison had terrible conditions. Each detainee was placed in an individual cell (2 m by 2.5 m) made of concrete with poor hygiene, ventilation and no access to sunlight. The cells had blood stains on the walls, full of mosquitos and the water was visibly not clean. The sewage [flowed] one level under the cells and not in pipes. This was the primary reason for mosquitos and bad odor. For the first month we were not allowed to leave our cells. After one month we were allowed one hour outside the cell in the hallway (no sunlight) and sometimes we were allowed to go for half an hour in a closed space that has access to some sunlight. There were no indoor showers, the shower was outside therefore it was only used during the one-hour outside the cell time. Weather conditions were difficult, cells were damp and cold in the winter, and extremely hot, humid in the summer, one could not breath. Food rations were minimal and unclean and served at the cell without utensils or containers to take the food in."

This prisoner saw Mr. Gehad El-Haddad by coincidence at the prison clinic. Mr. Gehad El-Haddad confirmed that his prison conditions were equally harsh.

According to the information received, both Dr. Essam El-Haddad and Mr. Gehad El-Haddad have been kept in almost complete solitary confinement for nearly six years. They are very rarely permitted to communicate with their family. Mr. Gehad El-Haddad was denied family visits for almost a year from September 2016 to August 2017. Family visits then resumed but were restricted to just ten minutes for each visit. Prison authorities have not allowed his family to see him since March 2018, more than 1,5 years ago. As previously described, family visits are critical in providing life-sustaining food, medicine and other necessities, and those without family visits are at particular risk.

According to the information received, the conditions under which both Dr. Essam El-Haddad and Mr. Gehad El-Haddad are detained have placed their lives at risk. Dr. Essam has reportedly suffered four heat attacks while in detention. His family doctor was able to examine him on 25 September 2017 and recommended him to undergo a cardiac catheterization operation and have a stent installed in his coronary artery. Dr. Essam El-Haddad has been denied this surgery three times. He also reportedly suffers from ischemic heart disease, an inguinal hernia, prostatic enlargement, rheumatoid arthritis and hypertension -- all of which remain untreated.

Mr. Gehad El-Haddad has allegedly lost much weight and, because of the conditions under which he has been held, he has severe pain and mobility issues. In January 2015, over three years ago, he had already reportedly developed

serious problems with his knees and was moving with great difficulty. He received laparoscopic surgery on his knees in 8 April 2018 but in May prison authorities removed him from the hospital and returned him to solitary confinement at Scorpion prison without access to any form of mobility assistance despite Mr. Gehad El-Haddad being unable to stand without help.

On 11 September 2019, a criminal court sentenced Dr. Essam to ten years in prison and acquitted Mr. Gehad El-Haddad of all charges. Despite the acquittal, Mr. Gehad El-Haddad remains in detention. The Prosecutor's Office notified him that on 12 September 2019, it opened a new case against him and he was being investigated for belonging to the Muslim Brotherhood.

We express our grave concern that the conditions in which Dr. Essam El-Haddad and Mr. Gehad El-Haddad are being held, as well as the reported denial of medical treatment, are undermining their health and endangering their lives.

Failure to Afford Dr. Essam El-Haddad and Mr. Gehad El-Haddad Access to Legal Representation and Due Process

According to the information received, both Dr. Essam El-Haddad and Mr. Gehad El-Haddad have experienced the same conditions in hearings described for Dr. Morsi: when they are allowed in court, they are held in soundproof cages and cannot effectively participate in their trials. They also have had inadequate access to their lawyers.

Communication between Dr. Essam El-Haddad and Mr. Gehad El-Haddad and their family has thus been limited to basic sign language, as the soundproof glass cages makes it almost impossible to see or hear them.

According to the information received, Dr. Essam El-Haddad, Mr. Gehad El-Haddad, and their counsel, have not seen any official documents or evidence from the prosecution explaining the reasons for their arrest and detention, or any formal charges against them prior to the trial held in September 2019. They have been unable to meaningfully challenge their detention, and are unable to even contemplate preparing a defense to any potential charges that may be leveled against them.

A Consistent Pattern and Practice:

The treatment of Dr. Morsi, Dr. Essam El-Haddad and Mr. Gehad El-Haddad is not unique but instead appears to be part of a consistent and intentional practice against political opponents and members of the Freedom and Justice Party and the Muslim Brotherhood.

In Communication AL EGY 7/2016, dated 29 July 2016, the WGAD and several Special Rapporteurs expressed concern about "widespread allegations of arbitrary

arrests and detentions including incommunicado detentions, lack of access to legal counsel and violations of fair trial and due process law guarantees, imposition of death penalty following unfair trials, torture and ill-treatment and lack of access to adequate health care during detention, coerced extraction of confessions, and targeting of human rights defenders and civil society organisations [...] since 2011.” This communication noted that particularly since July 2013, “there has been a heavy-handed government response to silence any dissenters to the current Government under President Adel-Fattah Al-Sisi and particularly those from the youth movement and the Muslim Brotherhood.” (p. 1) Tens of thousands of individuals have been detained, the majority being accused of being “alleged members or supporters of the Muslim Brotherhood, perceived supporters of former President Morsi, as well as journalists, human rights defenders and dissidents.” (p. 2) Conditions at detention facilities are poor, with significant overcrowding and inadequate ventilation.

As was communicated to your Excellency's Government three years ago, in Communication EGY 7/2016, “[n]umerous detainees do not have access to adequate health care and have allegedly suffered from medical negligence during their detention, which can include deliberate denial or refusal of urgent and specialized medical care; dismissing the seriousness of a medical problem; withholding essential medication; refusing temporary medical leave to undergo specialized treatment or release on compassionate grounds for health reasons; and requesting prisoners to pay for medical care when they cannot afford it. In addition, harsh prison conditions such as overcrowding, inadequate food and poor sanitation can have a detrimental impact on prisoners’ pre-existing medical conditions and create new health problems. **As a result of these practices and conditions, prisoners are at risk of death or irreparable damage to their health**” (p.4, emphasis. added). Reports further indicate that “denial of health care in detention is also being used as a punishment against political opponents or human rights defenders expressing dissenting views and claiming basic rights.” (p.5)

In 2015, 137 deaths of persons in detention were documented by an independent source, at least 81 of which occurred due to inadequate medical care. We are unaware of any actions of your Excellency's Government to address these concerns. In fact, these serious violations of human rights appear to have continued.

Thousands of individuals appear to be subjected to the same violations of their human rights as Dr. Morsi, Dr. Essam El-Haddad and Mr. Gehad El-Haddad have been facing:

- i. Families are not told where prisoners are held for prolonged periods, resulting in enforced disappearances.³
- ii. Excessive time passes before they are told of the charges they face.⁴
- iii. Once their location is known, they are denied visits from their families, and thus, in addition to losing needed family contact, are denied the food and medicine families typically provide under the Egyptian prison system.⁵
- iv. Their detention conditions are extremely poor, with unhygienic facilities, little space, unclean water and food, and poor ventilation.⁶
- v. The prisons does not to provide them with adequate medical attention, including hospitalization and treatment when necessary, whether for pre-existing medical conditions or for conditions and injuries that they suffer as a result of their detention.⁷
- vi. Prisoners are afforded inadequate access to lawyers or to a judge.⁸
- vii. When at trial, prisoners may be held in soundproof cages so that they cannot participate in their defense or are not allowed to appear before the judge.⁹

³ See Opinion No.82/2018, para. 28; Opinion No.87/2018, para. 54; Opinion No. 78/2017, para.80; Opinion No.57/2011, para.15; Opinion No. 83/2017, para.89; Opinion No. 60/2016, para. 21.

⁴ See Opinion No. 78/ 2017, paras. 61, 62, 66, 74; Opinion No. 30/ 2017, paras. 58, 59, 62; Opinion No. 54/ 2016, para. 17; Opinion No. 60/ 2016, para. 23; Opinion No. 82/2018, para. 30; Opinion No. 27/ 2018, para. 69; Opinion No. 7/2016, para. 51; Opinion No. 49/2015, para. 42; Opinion No. 39/2013, para. 23; Opinion No. 11/2012, para. 17; Opinion No. 12/2012, para. 18; Opinion No. 87/2018, paras. 56, 68, Opinion No. 42/ 2016, para. 24 ; Opinion No. 6/2016, para. 51.

⁵ See Opinion No. 26/ 2018, para. 61; Opinion No. 28/2018, paras. 77, 83, 84; Opinion No. 17/2015 paras. 29, 30; Opinion No. 39/2013, para. 23; Opinion No. 57/2011, paras. 11, 15.

⁶ See Opinion No. 21/2019, para. 48; Opinion No. 27/2018, para. 72; Opinion No. 7/2016 para. 53; Opinion No. 26/ 2018, para. 58; Opinion No. 28/ 2018, para. 85;

⁷ See Opinion No. 78/2017, para. 84; Opinion No. 30/2017, para. 71; Opinion No. 27/2018, para. 72; Opinion No. 28/2018, para. 87; Opinion No. 7/2016, para. 53; Opinion No. 17/2015, para. 30; Opinion No. 26/2018, para. 58; Opinion No. 42/2016, para. 22, 25. See also Opinion No. 21/2019, para. 45.

⁸ See Opinion No. 21/ 2019, paras. 37, 45; Opinion No. 26/ 2018, para. 61; Opinion No. 78/ 2017, paras. 64, 74, 75, 78; Opinion No. 30/ 2017, para. 63; Opinion No. 60/ 2016, paras. 24, 25; Opinion No. 42/ 2016, paras. 22, 25; Opinion No. 41/ 2016, para. 27; Opinion No. 82/ 2018, paras. 31, 43; Opinion No. 27/ 2018, paras. 70, 72, 76; Opinion No. 28/ 2018, paras. 77, 79, 80, 81, 87; Opinion No. 6/2016, para. 51; Opinion No. 14/2015 para. 28; Opinion No. 17/2015 para. 25, 27; Opinion No. 49/2015, para. 43; Opinion No. 52/2015, para. 46, 47; Opinion No. 53/2015, para. 32; Opinion No. 35/2014, para. 15; Opinion No. 39/2013, para. 23; Opinion No. 57/2011, paras. 11, 15; Opinion No. 12/2012, paras. 18, 19, 20.

⁹ See Opinion No 87/ 2018, para.71; Opinion No. 41/2016, para. 27; Opinion No. 49/2015, para. 46; Opinion No. 12/2012, paras. 18, 20; Opinion No. 17/2015, paras. 27, 28; Opinion No. 7/2016, para. 51.

- viii. Mass prosecutions have occurred without evidence of individual guilt.¹⁰
- ix. Individuals face death penalty following trials that did not comply with international standards of fair trial and due process.¹¹

We do not wish to prejudge the accuracy of these allegations. However, the consistency of the patterns of violations, the number of allegations received concerning a vast range of prisoners, the absence of steps taken to address the concerns raised by the United Nations Special Procedures, and a number of other actors for several years, and the large number of deaths in custody, indicate that these sub-humane detention conditions are deliberate and part of a concerted denial by the Government of the basic human rights of those detained. The legal implication is that any death resulting from such prison conditions would be considered as an arbitrary killing for which the State is directly responsible.

Egypt has been repeatedly informed that its prison conditions and denial of appropriate health care was endangering lives, including specifically the lives of Dr. Morsi, Dr. Essam El-Haddad and Mr. Gehad El-Haddad. The allegations set forth in this Communication, if true, indicate more than isolated homicides or wrongful deaths. They appear to reflect a systematic pattern of targeting political opponents, members of the Freedom and Justice Party and the Muslim Brotherhood, as well as human rights defenders and journalists, including through arbitrary detention in violation of fundamental rules of international law and other inhumane acts intentionally causing great suffering, or serious injury to body or to mental or physical health. The patterns suggest the deliberate denial of potable water, appropriate food, adequate ventilation, clean clothes, showers, space, and health care either intentionally to cause death or in reckless disregard of the risk to life. If true, the facts alleged constitute a gross violation of human rights.

According to the information received, Dr. Morsi was in solitary confinement for six years, Dr. Essam El-Haddad has been in solitary confinement since December 2013, and Mr. Gehad El-Haddad has been in solitary confinement since September 2013. From the allegations, it appears that the practice of solitary confinement is pervasive in Egypt's prisons, at least with respect to political prisoners. In this context, we would like to draw the attention of your Excellency's Government to Rule 43 of the UN Standard Minimum Rules on the Treatment of Prisoners (Mandela Rules) that prohibits indefinite and prolonged solitary confinement. Additionally, Rule 45 prohibits prisoners being placed even briefly in solitary confinement if doing so may exacerbate their physical or mental disabilities. Furthermore, article 12 of the Convention Against Torture (CAT) requires the competent authorities to undertake a prompt and impartial investigation wherever there

¹⁰ See Opinion No. 87/ 2018, paras. 72, 78; Opinion No. 78/2017, para. 86; Opinion No. 41/ 2016, para. 27; Opinion No. 27/ 2018, para. 77; Opinion No. 87/2018, paras. 72, 78, 80.

¹¹ See Opinion No. 87/2018, para. 72; Opinion No. 42/2016, para. 22; Opinion No. 27/2018, paras. 77, 79.

are reasonable grounds to believe that torture has been committed, and article 7 of the CAT requires State parties to prosecute suspected perpetrators of torture.

We wish to remind your Excellency's Government that high-ranking officials in the government can be held criminally responsible if they (i) knew, or consciously disregarded, information which clearly indicated that subordinates under his or her effective authority and control were committing or about to commit such a gross violation of human rights; (ii) exercised effective responsibility for and control over activities which were concerned with the violation; and (iii) failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of the violation or to submit the matter to the competent authorities for investigation and prosecution.¹² We therefore urge your Government to carry out an expeditious, independent and transparent inquiry into the circumstances surrounding the death of Dr. Morsi, with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate his or her family. We urge similar investigations of the deaths of all other prisoners since 2012. We also urge your Excellency's Government to take immediate steps to protect the lives of Dr. Essam El-Haddad, Mr. Gehad El-Haddad, and all other prisoners subject to the conditions described in this report.

Furthermore, we would like to remind your Excellency's Government of its obligations under international human rights law, in particular the right to life and security of the person (art. 6 of International Covenant on Civil and Political Rights (the Covenant)¹³), as well as the absolute prohibition of torture and other forms of ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,¹⁴ and in article 7 of the Covenant. Egypt is a party to the ICCPR since 14 January 1982. It ratified CAT on 25 June 1986.

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 be grateful for your observations on the following matters:

With regard to Dr. Morsi:

¹² See, e.g., Article 6(1) of the International Convention for the Protection of All Persons from Enforced Disappearances; see also Article 28 of the Rome Statute of the International Criminal Court, entered into force 1 July 2002, UN Doc. A/CONF. 183/9 (1998) ("Rome Statute).

¹³ Egypt is a party to the Convention and ratified it on 14 January 1982.

¹⁴ Egypt ratified this Convention on June 25, 1986.

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. What health care, including medical treatment for his chronic health conditions, diabetes-appropriate diet, and medical tests, was Dr. Morsi provided during the course of his incarceration? Please provide details, and where available the results of any medical examinations and tests. If Dr. Morsi did not receive medical treatment, please explain why. Who made this decision?
3. What food was he provided in light of his diabetes and liver condition? Who decided what food he would receive?
4. Was he provided with daily insulin? Was he provided with the means to test his blood sugar? If not, why not, and who made the decision?
5. Were blood tests performed on Dr. Morsi on a regular basis to monitor his diabetes and liver condition? Please provide the dates and locations when these were done.
6. What investigations, if any, were performed to address allegations of mistreatment and the lack of appropriate food, with respect to Dr. Morsi? If no investigation was performed, please explain the reasons why.
7. Was Dr. Morsi held in solitary confinement and for how long? Who ordered this solitary confinement and on what grounds?
8. When was Dr. Morsi allowed to see his family and, if the allegations are correct, why was he prevented from having more frequent visits?
9. When was Dr. Morsi allowed to meet with his lawyers, and were those meetings monitored by prison officials? If they were monitored, please state the legal basis for this monitoring. If he was not allowed regular meetings with his lawyers, please explain why and on whose orders.
10. Please provide information about Dr. Morsi's conditions of detention. If there was poor ventilation, no mattress, foul air, lack of hygienic facilities, lack of clean clothes, and lack of adequate space, why was he kept under these conditions? What prevented these conditions from being remedied?
11. Why was Dr. Morsi put in a soundproof cage and prevented from participating in his defense? Was this the least restrictive measure the government could take in light of any concerns that prompted this action?
12. When Dr. Morsi collapsed in trial on 17 June 2019, how long was it before he was given medical attention? Please provide the trial tapes confirming this information.

13. What medical attention did he receive in court that day, on the way to the hospital, and in the hospital? Please provide all medical records from that day.
14. What forensic investigation was performed following his death? Why was Dr. Morsi's family denied a review of his medical records? Please provide a copy of any autopsy or other post-mortem investigation. We respectfully request that your Excellency's Government exhume Dr. Morsi's body and allow an autopsy by independent experts.
15. Why was Dr. Morsi's family given little notice of his burial and why were they forbidden from performing a public burial in a location of their choosing?
16. What steps has your Excellency's Government taken to investigate Dr. Morsi's death and to remedy any conditions that contributed to his death?

With Regard to Dr. Essam El-Haddad and Mr. Gehad El-Haddad:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. What health care, including medical treatment, appropriate diet and medical tests, have Dr. Essam El-Haddad and Mr. Gehad El-Haddad received during their detention? Please provide details, and where available the results of any medical examinations and tests. If they have not received requested medical treatment, why not? Who made these decisions?
3. What food are they being provided in light of their medical conditions?
4. Has Dr. Essam El-Haddad been denied cardiac surgery and if so, why and who is responsible for that decision?
5. Has Mr. Gehad El-Haddad lost significant weight and, if so, what steps are being taken to ascertain why and to make sure he has clean and edible food?
6. What steps are being taken to address Mr. Gehad El-Haddad's mobility problems and other medical conditions? If none is being taken, who made that decision?
7. Are Dr. Essam El-Haddad and Mr. Gehad El-Haddad in solitary confinement and if so, for how long has this confinement persisted? Why has it been ordered and by whom?

8. On what dates have Dr. Essam El-Haddad and Mr. Gehad El-Haddad been allowed family visits. If they have not been allowed regular visits, why not and on whose orders?
9. On what dates have Dr. Essam El-Haddad and Mr. Gehad El-Haddad met with their lawyers and are those meetings monitored by prison officials? If they are monitored, please state the legal basis for this monitoring. If they are not allowed regular visits with their lawyers, please explain why and on whose orders.
10. What are the physical conditions under which Dr. Essam El-Haddad and Mr. Gehad El-Haddad are kept? If there is poor ventilation, no mattress, foul air, lack of hygienic facilities, lack of clean clothes, and lack of adequate space, why are they kept under these conditions? What has prevented these conditions from being remedied?
11. Why have Dr. Essam El-Haddad and Mr. Gehad El-Haddad been kept in detention without a conviction?
12. Why is Mr. Gehad El-Haddad still detained despite his September 2019 acquittal?

With regard to all prisoners within Egypt's prison system:

1. Please provide information on measures taken in the judicial system to prevent arbitrary arrest and detention and to guarantee the right of everyone to a fair trial and the right to access to a lawyer.
2. Please provide information on any measures taken to ensure the physical and psychological integrity of detained individuals. What steps have been taken to provide adequate ventilation, mattresses, hygienic facilities, clean clothes and adequate space? If the allegations with respect to conditions are correct, what has prevented poor conditions in the prison from being remedied?
3. Please provide the details, and where available, the results of any investigation, judicial or other inquiries carried out as a result of the above-mentioned allegations, and indicate what kind of measures are being taken to ensure that any public actors are being investigated and prosecuted to ensure accountability.
4. Please provide information about the existing framework to guarantee access to adequate health care in Egyptian prisons.
5. Please provide information about any human rights' standards training for security forces. If none, please explain why.

6. Please indicate the measures adopted to ensure that human rights obligations are being met and that individuals are able to exercise their democratic rights in Egypt in a safe and enabling environment without fear of reprisals, violence or harassment of any sort.
7. Please indicate whether Your Excellency plans to ratify the Optional Protocol of the Convention Against Torture. If not, what steps has Your Excellency's Government taken or plans to take to ensure that torture does not take place in Egyptian prisons.

We would appreciate receiving a response within 60 days. Following this period, this communication and any response received from your Excellency's Government will be made public via the communications-reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 may publicly express our concerns in the near future and would appreciate a detailed response to the queries raised in this letter at your earliest convenience. We consider that the information at our disposal is sufficiently concerning to indicate a matter warranting undivided attention, and that its disclosure is in the public interest. We believe that the wider public should be alerted to the potential human rights implications of these allegations. Any public expression of concern from our part will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Annex
Reference to international human rights law

“Breaking the cycle of impunity is an absolute necessity”¹⁵

In its prior responses to communications, Your Excellency’s government has unequivocally affirmed the principles, set forth below, that detainees and prisoners are entitled to human dignity, the right to health, the right to due process, the right to be free from arbitrary detention, the right to be free from torture and inhumane treatment, and the right to life. It has also affirmed the need and obligation to investigate any violation of these rights and to punish those responsible. See, e.g., HRC/NONE/2018/37. We welcome these affirmations. Accordingly, we look forward to receiving, in response to this communication, the details of all investigations into the detention and death of Dr. Morsi, the detention of Dr. Essam El-Haddad and Mr. Gehad El-Haddad, and the detention conditions and alleged violations of rights generally of all prisoners in Egypt. The rights detailed below require such investigations to be conducted impartially by those not alleged to be involved in the underlying offense. To ensure impartiality, the use of international experts is encouraged, including possible country visits by Special Procedures. We remind Your Excellency’s Government that failure to investigate and, should violations be found, to punish and remedy violations is itself a violation of international law and can result in personal responsibility for those responsible.

Right to Human Dignity:

Article 10(1) of the International Covenant on Civil and Political Rights (“ICCPR”)¹⁶ provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” This is established as the first and core principle in the Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment (“Body of Principles”).¹⁷ Egypt has enshrined the equal dignity of all people in its Constitution: Article 51 states that “[d]ignity is a right for every person that may not be infringed upon. The state shall respect, guarantee and protect it.” Egypt’s Constitution further provides that “[a]ll persons who are arrested or detained or whose freedom is restricted shall be treated in a manner that preserves their dignity.” Article 55.

Right to Life:

Article 6 of the ICCPR recognizes the inherent right of every person to life and not to be arbitrarily deprived of life:

¹⁵ A/HRC/38/44/Add.2, para. 36.

¹⁶ Egypt is a party to the ICCPR and ratified it on 14 January 1982.

¹⁷ *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, GA Res. 47/173, 43 U.N. GAOR Supp. (No. 49) 298, A/43/49, Dec. 9, 1998.

It is "the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies which threatens the life of the nation. The right to life has crucial importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed by other human rights." GC 36, ¶2.

In accordance with articles 2 of the Universal Declaration of Human Rights and 26 of the ICCPR, everyone is entitled to the protection of the right to life without distinction or discrimination of any kind, and all persons shall be guaranteed equal and effective access to remedies for the violation of that right. The right not to be arbitrarily deprived of one's life is recognized as part of customary international law and the general principles of law, and is also recognized as a *jus cogens* norm, universally binding at all times. A/HRC/35/23, paras 25-26.

The right to life entitles all individuals "to be free from acts or omissions that are intended or may be expected to cause their unnatural or premature death". GC 36, ¶3. A death is by definition arbitrary if it is caused by a violation of international or domestic law, including international human rights law. GC 36, ¶12. The facts alleged suggest multiple violations of human rights, including enforced disappearances, torture or inhumane treatment, the violation of the right to health, the lack of due process and arbitrary detention, all of which may be contributing to, and thus resulting in, arbitrary killings. Death resulting in whole or in part from the denial of potable water, safe and sufficient food, sanitation, adequate space, proper ventilation, or medical care is by definition an arbitrary death for which the State is responsible.

When the State detains an individual, it has "a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their life and bodily integrity, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility." GC 36, ¶ 25. The State "becomes the guarantor of their fundamental rights". A/HRC/38/44, para 62. The "duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriately regular monitoring of their health, shielding them from inter-prisoner violence, preventing suicides and providing reasonable accommodation for persons with disabilities." GC 36, ¶25.

When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In order to overcome this presumption, the State must investigate and this investigation must be (i) prompt; (ii) effective and thorough; (iii) independent and impartial; and (iv) transparent. A/HRC/41/CRP.1, para. 246. In 1989, the U.N. Economic and Social Council adopted the well-regarded Principles on the Effective Prevention and Investigation of Extra-legal,

Arbitrary and Summary Executions (“1989 U.N. Principles”).¹⁸ The United Nations adopted the Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions¹⁹ (“1991 U.N. Manual”) to complement the 1989 Principles. In 2016, the United Nations published the Minnesota Protocol on the Investigation of Potentially Unlawful Death (“Minnesota Protocol”) to reaffirm and extend the principles contained in the 1991 U.N. Manual. A/HRC/41/CRP.1, paras. 270-71. The 1989 U.N. Principles, the 1991 U.N. Manual, and the Minnesota Protocol outline the procedures that should be followed in any investigation of a detainee in Egypt’s prison, including, as addressed in this Communication, that of Dr. Morsi.

In cases involving a death while in detention, an autopsy should be performed, and if it is not done, the reason should be justified in writing and subject to judicial review. See Minnesota Protocol, ¶25. In performing this autopsy, the Minnesota Protocol’s detailed guidelines on autopsies should be followed. See *id.*, ¶¶ 250-73. The timing of Dr. Morsi’s death and his subsequent burial suggests that these guidelines might not have been followed. According to the information received, Dr. Morsi was pronounced dead at 16:50 on June 17, 2019 and he was buried in the morning of June 18, 2019. The Minnesota Protocol provides that “the body should be made available to the forensic doctor for a reasonable minimum period (e.g. 12 hours) that is sufficient to ensure an adequate and unhurried examination.” Minnesota Protocol, ¶155. If the examination of Dr. Morsi’s body did not meet the standards set forth in the Minnesota Protocol, his body should be exhumed and re-examined by impartial, independent experts to obtain the information required for a thorough investigation.

In addition to an autopsy, an effective and thorough investigation would require the collection of “all testimonial, documentary and physical evidence.” Minnesota Protocol ¶ 24. Investigations must “seek to identify not only direct perpetrators but also all others who were responsible for the death, including, for example, officials in the chain of command who were complicit in the death. The investigation should seek to identify any failure to take reasonable measures which could have had a real prospect of preventing the death. It should also seek to identify policies and systemic failures that may have contributed to a death, and identify patterns where they exist.” *Id.*, ¶ 26.

This duty to investigate is “central to upholding the right to life. It asserts the inviolability and inherent value of the right to life through mechanisms of accountability, while simultaneously promoting remedies where violations have occurred. To this end, the duty gives practical effect and worth to a State’s obligations to respect and protect life.” A/HRC/41/CRP.1, para. 258.²⁰ The “consequences of non-investigation are

¹⁸ U.N. Doc. E/RES/1989/65 (May 24, 1989)

¹⁹ U.N. Doc. E/ST/CSDHA/12 (1991)

²⁰ See also ECtHR, *McCann and others v. United Kingdom*, Judgment (Grand Chamber), 27 September 1995, para. 161; IACtHR, *Montero-Aranguren and others (Detention Center of Catia) v. Venezuela*, Judgment, 5 July 2006, para. 66; African Commission on Human and Peoples’ Rights (ACHPR), General Comment No. 3 on the Right to Life, November 2015, paras. 2, 15; Human Rights Committee, General Comment No. 31, paras. 15 and 18; The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017.

extremely serious, including the violation of the right to life; the continuation of policies and practices which may impact on the right to life; and the perpetuation of a range of violations and bad practices because of the veil of ignorance or secrecy surrounding them.” *Id.*, para. 261.

Arbitrary Detention:

The “prohibition of arbitrary deprivation of liberty is recognized in all major international and regional instruments for the promotion and protection of human rights.” A/HRC/22/44, para. 42. Article 9 of the Universal Declaration of Human Rights provides that “no one shall be subjected to arbitrary arrest, detention or exile”. Article 9(1) of the ICCPR provides that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” The prohibition against arbitrary detentions is contained in article 6 of the African Charter of Human and Peoples’ Rights (African Charter), which Egypt ratified on March 20, 1984, and article 14 of the Arab Charter on Human Rights (Arab Charter).

The prohibition against arbitrary deprivation of liberty is non-derogable under both treaty law and customary international law. A State “can never claim that illegal, unjust, or unpredictable deprivation of liberty is necessary for the protection of a vital interest or proportionate to that end.” A/HRC/22/44, para. 48. Moreover, the duty to comply with the prohibition of arbitrary detention “rests on all bodies and representatives of the State, all officials, including judges, prosecutors, police and security officers, and prison officers with relevant responsibilities”. A/HRC/WGAD/2017/83, para. 90.

Arbitrariness in this context is “not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law”. A/HRC/22/44, para. 61. The notion of “arbitrary detention” “can arise from the law itself or from the particular conduct of Government officials. A detention, even if it is authorized by law, may still be considered arbitrary if it is premised upon an arbitrary piece of legislation or is inherently unjust, relying for instance on discriminatory grounds.” *Id.*, para. 63.

The Working Group on Arbitrary Detentions has identified five categories of deprivations of liberty that are arbitrary under customary international law:²¹

- (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty, as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her (category I);
- (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal

²¹ A/HRC/36/38.

Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights (category II);

- (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
- (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
- (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Category I Arbitrary Detention:

When a detainee is subject to pretrial detention without legal basis, that detention is arbitrary under Category I. At the time of arrest, a detainee must promptly be informed of the reason for his arrest, any charges against him, an explanation of his or her rights, and the means for availing himself or herself of those rights. A/HRC/WGAD/2017/83, para. 66; see Articles 3 and 9 of the Universal Declaration of Human Rights; articles 9 (2) and 14 (3) (a) of the ICCPR; Principles 10 and 13 of the Body of Principles; article 54 of the Egyptian Constitution. Any deprivation of liberty without a valid arrest warrant issued by a competent, independent and impartial judicial authority is arbitrary and lacks any legal basis, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant. A/HRC/WGAD/2017/83, para. 65. The Working Group on Arbitrary Detentions has previously expressed the opinion that article 134 of Egypt's Criminal Procedure Code "provides for overly broad and vague grounds for pretrial detention, such as the catch-all 'harming national security or the public order', and thus "does not establish a sufficient legal basis for deprivation of liberty for the purpose of article 9 (1) of the Covenant." Id., para. 68. Ex post facto laws likewise cannot form the legal basis for detention. ICCPR, Article 15.

Pretrial detention is to be used in exceptional circumstances: "It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial." ICCPR, Article 9(3).

A particularly egregious practice, also falling within Category I, is secret and incommunicado detention, a form of arbitrary detention alleged in the cases of Dr. Morsi, Dr. Essam El-Haddad and Mr. Gehad El-Haddad. This constitutes "the most heinous violation of the norm protecting the right to liberty of human being under customary

international law,” as the individual is “left outside the cloak of any legal protection.” A/HRC/22/44, para. 60. Incommunicado detention “effectively nullifie[s]” the “right to be brought promptly before a judge or other officer authorized by law to exercise judicial power, as established under article 9 (3) of the Covenant,” and the right to challenge the lawfulness of the detention before that court. A/HRC/WGAD/2017/83, para. 67. Paragraph 27 of General Assembly Resolution 68/156 “[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished.”

Article 54 of the Egyptian Constitution itself mandates against this practice: "All those whose freedoms have been restricted shall ... be allowed to immediately contact their family and lawyer." The practice is further proscribed by the Body of Principles. Principle 19 provides that "a detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family." Principle 15 states that "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days."

Category II Arbitrary Detention:

Under Category II, the detention of an individual is arbitrary when it is based on the exercise of fundamental rights, including an individual’s exercise of freedom of expression and freedom of assembly. Article 19 of the ICCPR guarantees the right to hold opinions without interference. It further states that everyone shall have the right to freedom of expression, including the freedom to seek, receive and impart information through any media of one's choice. Articles 21 and 22 of the ICCPR guarantee the right of peaceful assembly and the right to freedom of association. Any restrictions on these rights must be "prescribed by law" and must be "necessary in a democratic society in the interests of national security or public safety, public order ..., the protection of public health or morals or the protection of the rights and freedoms of others." The Universal Declaration of Human Rights provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 19.

The United Nations Declaration on Human Rights Defenders provides in Article 5(b) that everyone has the right, individually and in association with others, to form, join and participate in non-governmental organisations, associations or groups. Article 6(b) of the Declaration safeguards the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms. Article 9(3)(c) of the Declaration provides that everyone has the right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

General Comment No. 34 of the Human Rights Committee urges States to protect against attacks aimed at silencing those exercising their right to freedom of expression. CCPR/C/CG/34, para. 23. In public debate concerning public figures and institutions, the value placed by the ICCPR on uninhibited expression is particularly high and the fact that forms of expression are considered to be critical of public figures is not considered sufficient to justify the imposition of penalties. *Id.*, para. 38.

The Human Rights Council reminded “States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights of freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.” A/HRC/RES/24/5, para. 2. The Human Rights Council has condemned “unequivocally all attacks against journalists and media workers, such as torture, extrajudicial killings, enforced disappearances and arbitrary detention,” and has urged “States to promote a safe and enabling environment for journalists to perform their work independently and without undue interference”. A/HRC/RES/27/5, paras. 1, 3.

Detention based on the exercise of these rights constitutes an arbitrary detention. Pursuant to peremptory norms of customary international law, the Government must “respect, protect and fulfil the right to freedom of opinion and expression even if the rights-holder is not to its liking”. A/HRC/WGAD/2017/83, para. 70.

Category III Arbitrary Detention:

The Working Group on Arbitrary Detentions considers a deprivation of liberty to be arbitrary under Category III “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”²²

Among the core elements of a fair trial is the right to “have adequate time and facilities” for the preparation of a defense. ICCPR, Article 14(3). The right to legal assistance undergirds “the right to a fair and public hearing by a competent, independent and impartial tribunal, as established by law under articles 3 and 9 of the Universal Declaration of Human Rights and articles 9 (1) and 14 (1) of the Covenant.” A/HRC/WGAD/2017/83, para. 63. All persons have the right to have adequate time and facilities for the preparation of their defense and to communicate with counsel, pursuant to article 14 (3) (b) and (d) of the Covenant and principles 17 and 18 of the Body of

²² UNGWAD, Individual Complaints and Urgent Appeals I(C), <https://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

Principles. A/HRC/WGAD/2017/83, para. 80. For the purpose of the right to a fair trial, “adequate facilities” must include access to documents and other evidence, and that “access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory.” *Id.* Meetings with counsel cannot occur subject to the eavesdropping and monitoring of prison officials. The right to communicate with counsel requires that counsel should “be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.” *Id.* Interviews between a detained or imprisoned person and his legal counsel “may be within sight, but not within the hearing, of a law enforcement official.” Principle 18.4 of the Body of Principles. Detention without regular meaningful access to counsel under conditions that permit a confidential preparation of a defense constitutes arbitrary detention.

Another core element is the ability to participate meaningfully in the trial. A defendant has the right “to be tried in his presence and to defend himself in person” and to “examine witnesses”. ICCPR, Article 14(3). These rights contemplate, at a minimum, being able to hear what is said and to communicate with the defense attorney during the trial. The soundproof cages in which defendants are allegedly placed appears to make exercising these rights impossible.

A fair trial also affords individuals “the right to be presumed innocent until proved guilty according to law.” ICCPR, Article 14(2); UDHR Article 11. Article 96 of the Egyptian Constitution provides this right as well. The prolonged pretrial detention of prisoners may call into question whether this presumption is being afforded to all prisoners, particularly if they are publicly branded as enemies of the state.

The extensive prolonged use of solitary confinement within the prisons is “of such gravity” that it may also render the detentions at issue “arbitrary.” See A/HRC/WGAD/2017/83, para. 83. The Working Group on Arbitrary Detentions has found the prolonged use of solitary detention to be “cruel, inhuman and degrading treatment that may amount to torture.”²³ Paragraph 6 of General Comment No. 20 of the Human Rights Committee states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 of the ICCPR, and the article 1 of the CAT. Article 7 of the Basic Principles for the Treatment of Prisoners provides that ‘efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.’”

The Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment states that “[g]iven its severe adverse health effects, the use of solitary confinement itself can amount to acts prohibited by article 7 of the International Covenant on Civil and Political Rights, torture as defined in article 1 of the Convention against Torture or cruel, inhuman or degrading punishment as defined in article 16 of the

²³ See, e.g., Opinions adopted by the Working Group on Arbitrary Detention at its eightieth session, 20-24 November 2017, U.N. Doc. A/HRC/WGAD/2017/83 ¶ 38(h)(Jan. 15, 2018); Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17-26 April 2018, U.N. Doc. A/HRC/WGAD/2018/10 ¶ 75 (July 4, 2018).

Convention." A/66/268, para. 70. Certain circumstances, among others, make it clearly torture: when it is used as punishment, including for purposes of prison discipline (depending on the severity of the punishment and suffering); when it is designed to put psychological pressure on the detainee to force confessions or implicate others; and when "the physical conditions of solitary confinement are so poor and the regime so strict that they lead to severe mental and physical pain or suffering of individuals who are subjected to the confinement ". A/66/268, paras. 71-74. The facts alleged suggest prolonged detention, under severe conditions causing intense physical and mental distress.

Category V Arbitrary Detention

Collective punishment of organizations, such as media groups or political parties, for purported political opinions can also constitute arbitrary deprivations, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. A/HRC/WGAD/2017/83, para. 87. The facts alleged suggest that Your Excellency's Government may be penalizing individuals collectively solely for peacefully exercising their right to freedom of expression or assembly in a political context. The allegations suggest a potentially unlawful and concerted campaign against members of the political opposition, the Freedom and Justice Party, and the Muslim Brotherhood.

Right to Health:

The right to the enjoyment of the highest attainable standard of physical and mental health is reflected, inter alia, in article 12 of the International Covenant of Economic, Social and Cultural Rights ("ICESCR"), acceded to by Egypt on 14 January 1982. This includes an obligation on the part of all State Parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. Article 55 of the Egyptian Constitution confirms this obligation: it requires that all detainees be held in locations that "comply with humanitarian and health standards." It further provides that prisons and detention facilities "shall be subject to judicial oversight. Actions that undermine human dignity or endanger a person's health are prohibited."

In 1957, the United Nations Economic and Social Council adopted comprehensive guidelines governing the treatment of those deprived of their liberty, the United Nations Standard Minimum Rules for the Treatment of Prisoners.²⁴ In 1988, the United Nations General Assembly adopted the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment("Body of Principles").²⁵ Two years later, the General Assembly adopted the Basic Principles for the Treatment of Prisoners.²⁶ In December 2015, the United Nations General Assembly adopted Revised Standard

²⁴ Adopted August 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

²⁵ GA Res. A/43/173 (Dec. 9, 1988).

²⁶ GA Res. A/RES/45/111 (

Minimum Rules for the Treatment of Prisoners, named the Mandela Rules in honor of Nelson Mandela ("Standard Minimum Rules" or "Mandela Rules"). All of these guidelines affirm the core principle that detainees and prisoners retain their fundamental freedoms. As the Human Rights Council explained:

[N]ot only may persons deprived of their liberty not be subjected to [torture or other cruel, inhuman or degrading treatment or punishment], including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the [ICCPR], subject to the restrictions that are unavoidable in a closed environment.²⁷

The Basic Principles for the Treatment of Prisoners provide that prisoners should have access to the health services available in the country without discrimination on the grounds of their legal situation. Principle 9. The Body of Principles provide, in addition, that a "proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary." Principle 24. It permits a second opinion, providing that a "detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion." Principle 25. It requires that records be kept of all examinations, with access to these records by the prisoner. Principle 26.

The Mandela Rules reiterates that the provision of health care is the responsibility of the state authorities, and that prisoners should enjoy the same standards of health care that are available in the community, and it extends and defines these protections. (Rule 24.1). The Mandela Rules mandates that prison medical services should ensure continuity of treatment and care, including for drug dependence disease (Rule 24); "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals" (Rule 27); a medical officer at the prison "should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed" (Rule 25(1)); and clinical decisions may only be taken by the responsible healthcare professionals and may not be overruled or ignored by non-medical prison staff. (Rule 27).

The allegations in this Communication, suggesting repeated denials of essential care, constitute violations of these obligations and the right to health, if true. Detention under these conditions constitutes an arbitrary detention. Death resulting from these conditions constitutes an arbitrary death, for which the State is responsible.

Torture:

²⁷ U.N. Human Rights Committee, General Comment 21, paragraph 3.

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Egypt ratified on 25, June 1986, contains the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment. (Article 2) The Egyptian Constitution affirms these principles. Article 55 provides that all persons who are arrested or detained “may not be tortured, intimidated or coerced. They may not be physically or mentally harmed, and they may not be arrested or confined save in designated locations that comply with humanitarian and health standards.” The Constitution further requires the prosecution of anyone who violates these provisions. Article 55.

The Human Rights Council has condemned "any action or attempt by States to legalize, authorize or acquiesce to torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions, and urges States to ensure accountability for all such acts."²⁸ It urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."²⁹

Furthermore, Rule 43(1) of the Mandela Rules states that “In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment.” To this end, Rule 43 prohibits indefinite solitary confinement and prolonged solitary confinement. Rule 45(1) of the Mandela Rules permits the use of solitary confinement “only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. Rule 45(2), however, prohibits the imposition of solitary confinement “in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.”

Many of the conditions alleged, if true, would constitute torture or cruel, inhuman treatment, including the conditions of solitary confinement.

Enforced Disappearance:

²⁸ A/HRC/RES/16/23, para. 2.

²⁹ A/HRC/RES/16/23, para. 7b

“There is no time limit, no matter how short, for an enforced disappearance to occur. Every minute counts when a person is put outside the protection of the law. And when a person is disappeared, every anguished minute spent by his or her relatives without news of that person is a minute too long.”³⁰

In connection with the above alleged facts and concerns, we would like to remind Your Excellency’s Government of that enforced disappearances are absolutely forbidden and can be considered a crime against humanity. See Rome Statute of the Criminal Court, Article 7(i).³¹ The Declaration on the Protection of All Persons from Enforced Disappearances expressed deep concern about persons being detained against their will by officials of the Government, “followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.” It condemned any “act of enforced disappearance “as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights”. Article 1.1. “No State shall practice, permit or tolerate enforced disappearances.” Article 2.1. Article 54 of the Egyptian Constitution itself seeks to prevent enforced disappearances, by providing that all who have their freedom restricted “be allowed to immediately contact their family and lawyer.”

We note the concern reported by the Working Group on Enforced Disappearances of the apparent “systemic problem relating to short-term enforced disappearances” in Egypt, and the apparent use of enforced disappearance, arrest and detention as reprisal against lawyers and family protecting these disappearances. A/HRC/39/46, paras. 95-96. We remind Your Excellency’s Government that an enforced disappearance can occur in the context of a legal arrest or detention, and is “not ... limited to cases of illegitimate deprivations of liberty.” In other words, an “enforced disappearance may be initiated by an illegal detention or an initially legal arrest or detention.” A/HRC/16/48/Add.3, para. 22.

Enforced disappearances must be investigated and prosecuted. The key components of such an investigation are: (a) investigative authorities should have access to any place of detention, official or not, (b) the investigation should be undertaken without delay, even ex officio, without formal complaint, (c) those suspected of having been involved in the disappearance should not have the possibility of influencing the investigation through pressure, acts of intimidation or reprisals; (d) State agencies the members of which could be involved in the disappearance should not participate in the investigations; (e) authorities should have the necessary powers to compel the attendance of witnesses and the production of the relevant documents, including military, police and intelligence files.” A/HRC/39/46, para. 62.

³⁰ Press Release, Committee on Enforced Disappearances and Working Group on Enforced or Involuntary Disappearances, August 26, 2016.

The possible involvement of superiors in the disappearances must be part of the investigation. These superiors can be held responsible if they (i) knew or consciously disregarded information which clearly indicated that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance; (ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and (iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution. Article 6(1) of the International Convention for the Protection of All Persons from Enforced Disappearances; see also Article 28 of the Rome Statute of the International Criminal Court, entered into force 1 July 2002, UN Doc. A/CONF. 183/9 (1998) (“Rome Statute”).

“There exists a vicious circle between the commission of enforced disappearance and impunity. As noted by the Working Group and the Commission on Human Rights, impunity is simultaneously one of the underlying causes of enforced disappearance and one of the major obstacles to the elucidation of the cases thereof.” A/HRC/16/48/Add.3, para. 47.

The Imposition of the Death Penalty

The death penalty “may only be imposed for the ‘most serious crimes’, which has been interpreted to mean ‘intentional killing’. A/HRC/38/44/Add.3, para. 39. “[V]ictimless offences [...] including treason, espionage or other vaguely defined acts usually described as ‘crimes against the State’ do not meet the ‘most serious crimes’ threshold.” Id.

Further, a “necessary requirement” for the lawful imposition of the death penalty is compliance with international standards of fair trial and due process. A/HRC/38/44/Add.3, para. 35. We wish to remind Your Excellency’s Government that “the death penalty may only be carried out following a legal process that provides all possible safeguards to ensure a fair trial, and that only full respect of these guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution.” Id. We further note that the implementation of the death penalty may amount to an arbitrary execution if “it was imposed as a result of systemic biases in the judicial process”. Id. The allegations of widespread violations of due process raise significant issues as to whether the imposition of the death penalty in Egypt is compatible with the country's obligations to respect the right to life under the ICCPR.

Widespread Attack against Civilian Population

We note the allegations of a campaign against individuals affiliated with the Freedom and Justice Party and members of the Muslim Brotherhood. We wish to remind Your Excellency’s Government of the seriousness of these allegations, and the possibility that it could be construed as a widespread or systematic attack directed against a civilian population, with the attack comprised of torture, enforced disappearance, and other

inhumane acts intentionally causing great suffering or serious injury to body or to mental or physical health.