

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15, 42/22, 40/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the death in detention on 13 January 2020 of Mr. Mustafa Kassem, also known as Mostafa Qasem Abdallah Mohamed** (مصطفى قاسم عبدالله محمد), possibly due to his conditions of detention. Mr. Kassem is a dual citizen of the Arab Republic of Egypt and the United States of America. **It is alleged that he was diagnosed diabetic with a serious heart condition, but the relevant authorities failed to provide him with the medical care required to manage this condition during his seven years of imprisonment, following his unlawful arrest and prosecution under dubious charges. It is further alleged that Mr. Kassem's conditions of detention, denial of health care, the beatings he was subjected to, may have constituted torture or other cruel, inhuman or degrading treatment and may have caused his death, in combination with the hunger strike he entered into in protest for his detention.**

This is not the first time that Special Procedures mandate holders have raised allegations that conditions of detention have led to the death of inmates in Egypt. In a letter EGY 9/2019 from 28 October 2019, the mandate on extrajudicial, summary or arbitrary executions and the Working Group on Arbitrary Detention raised concern that conditions of detention and deliberate refusal to provide adequate medical aid had led to the death of Egypt's former President Dr. Mohamed Morsi Eissa El Ayyat. The letter further alleged that two other detainees, Dr. Essam El-Haddad and his son Mr. Gehad El-Haddad, as well as many other prisoners, were being deliberately denied medical aid and were kept in conditions that were threatening their lives. I thank your Excellency's Government for responding to the allegations on 26 December 2019.

Further, we raised these concerns in cases: 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, and are grateful for replies received.

We regret to have not yet received a reply from your Excellency's Government in cases: Case 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, and EGY 12/2019 of 13 November 2019.

According to the information received:

Mustafa Kassem was a citizen of the Arab Republic of Egypt and the United States of America. He was born on 11 February 1965. Mr. Kassem was a permanent resident of the State of New York where he operated a taxicab and sold auto parts. Twice a year, he traveled to Egypt to visit his wife and two children residing in Cairo.

Arrest and Detention

On 23 June 2013, Mr. Kassem travelled to Cairo to visit his family. He was scheduled to return to New York on 17 August 2013. On 14 August 2013, sometime between 13:00 and 14:00, Mr. Kassem and his brother-in-law were on their way home after leaving the Abas Al Kaad shopping mall where Mr. Kassem had exchanged some currency. At the time, the Egyptian Army established a wide security presence in the area, beyond Rabaa Al-Adaweya Square, because of mass protests in support of the ousted President Mohamed Morsi.

Mr. Kassem and his brother-in-law approached a checkpoint set-up by the Egyptian Army approximately one kilometre from Rabaa Al-Adaweya Square and near the shopping mall where Mr. Kassem had just exchanged currency. A soldier requested them to present their identification cards. Mr. Kassem's brother-in-law, also a dual citizen of the United States and Egypt, presented his Egyptian identification document and was let through. Mr. Kassem presented his United States passport. Upon seeing an American passport, the soldier allegedly accused Mr. Kassem of being an American spy and struck him in the head with a helmet. Multiple soldiers and police officers proceeded to beat Mr. Kassem until he lost consciousness. They then arrested him without providing justification or a warrant and took him to an unidentified military facility in Cairo. That same day, the Egyptian Army allegedly violently dispersed protesters, which resulted in hundreds of dead and thousands injured. The Army also arrested thousands of persons both inside and outside Rabaa Al-Adaweya Square.

On or about 17 August 2013, Mr. Kassem was transferred from the army camp to Abu Zaabal Prison in North Cairo. There, officers of the Ministry of Interior allegedly accused him of having ties to the Muslim Brotherhood and beat him while interrogating him about these alleged ties. As Mr. Kassem was neither a member of, nor associated with the Muslim Brotherhood, he had no information for the officers.

The Egyptian authorities did not notify Mr. Kassem's family of his arrest. Some two weeks later, Mr. Kassem's family members managed to locate him in Abu Zaabal Prison. They were allowed to briefly see him and had a hard time recognizing him because his face was swollen and red from beatings. Mr. Kassem also appeared to have had a broken arm and a broken leg and could move only with the assistance of two other men.

Sometime between mid-February 2014 and mid-March 2014, Mr. Kassem was transferred to Tora Prison, where he was detained until his death in January 2020.

Although Mr. Kassem was not part of the protests in Rabaa Al-Adaweya Square, he was charged with: (1) protesting with intent to cause chaos and overthrow the Government, (2) collaborating with the Muslim Brotherhood and (3) spreading false news with the intent to shake the grandeur of the state. Mr. Kassem was prosecuted on those charges as part of a larger mass trial involving approximately 738 other persons also arrested in or around Rabaa Al-Adaweya Square on 14 August 2013. The prosecutor recommended the death penalty for all 738 defendants, including Mr. Kassem.

Despite the serious nature of the charges and the prosecution seeking the death penalty, no evidence was produced to establish that Mr. Kassem either committed any crime or participated in the protests. He was reportedly never afforded the opportunity to question the prosecution's witnesses and was given only a perfunctory opportunity to present an individualized defense in between hundreds of other defense cases.

On 28 July 2018, 75 of Mr. Kassem's co-defendants were convicted and referred to religious authorities for a final approval of a death penalty sentence. On 8 September 2018, Mr. Kassem was convicted in a mass trial that included over 700 co-defendants. He was sentenced to 15 years in prison.

Prison Conditions and Mr. Kassem's Health

Until Mr. Kassem was sentenced, his pre-trial detention in Tora Prison was extended approximately every 45 days over a period of five years citing "security concerns." Many of those extensions were issued in proceedings that occurred outside the presence of Mr. Kassem's lawyer.

In prison, Mr. Kassem shared a 3-meters by 3-meters cell with 15 other prisoners. He and his cell mates slept in shifts because there was not enough room for them all to lie down. There were no windows and no bathroom in the cell. Mr. Kassem saw sunlight once a day for only 30 minutes, when he and his cell mates were released to a small courtyard.

Mr. Kassem was a diagnosed diabetic with a serious heart condition, but the prison authorities failed to provide him with the medical care required to manage

this condition. His family members had to bring him the necessary medication, including insulin. However, even with insulin provided by his family, Mr. Kassem could not properly store it and keep it refrigerated. Further, on several occasions, prison official reportedly threw away Mr. Kassem's insulin. Since Mr. Kassem had no access to trained medical professionals, his medication was generally administered by his cell mates.

Mr. Kassem complained while in detention that his vision had substantially worsened, and he had experienced unusual tooth decay, frequent body tremors and at times lost control of extremities. His blood sugar levels spiked and the high levels of acetone in his blood indicated that he experienced diabetic emergencies. Mr. Kassem was taken to the prison hospital several times, including when he had lost consciousness, due to his health problems. His family made multiple requests to the Egyptian authorities to hospitalize Mr. Kassem to manage his deteriorating and dangerous health problems. The Egyptian authorities either ignored or denied those requests.

After Mr. Kassem was sentenced in September 2018, he began a liquid-only hunger strike, which he continued, uninterrupted until his death. The prison officials at times denied Mr. Kassem all nutritious liquids except for fruit juice with high sugar content, which could be deadly for a diabetic. Since Mr. Kassem's hunger strike, he was reportedly hospitalized several times for extended periods in the Tora prison's hospital.

On 9 January 2020, Mr. Kassem stopped taking liquids and was soon transferred to the Cairo University hospital where he died on 13 January. The authorities notified the family but did not provide reasons for the death. On 14 January, Egypt's chief prosecutor ordered an autopsy and said that officials were questioning all doctors who oversaw Kassem's care in prison and where he died.

On 15 January, in response to accusations of mistreatment and negligence, Egypt's Ministry of Interior issued a statement asserting that "Mr. Kassem was provided with all the required legal and medical procedures to prevent him from harming himself, with the follow-up and care of the embassy of the United States."

While we do not wish to prejudge the accuracy of this information, we express our grave concern that the conditions of detention in which Mr. Kassem was held, the reportedly deliberate denial of health care and other acts, which potentially amount to torture or other cruel, inhuman or degrading treatment, as well as the hunger strike he went into from his sentencing onwards, led to his death on 13 January 2020.

This communication about Mr. Kassem's death is the sixteenth time that Special Procedure mandate holders have sent allegations to Your Excellency's Government about individuals arrested and prosecuted on dubious charges and kept in prison in conditions that have led to their death. We reiterate our fear and concern that unless your

Excellency's Government urgently change what appears to be an intentional disregard for lives of the thousands of detainees in its prisons, many more will die.

The inherent right of every person to life and not to be arbitrarily deprived of life is recognized by Article 6 of the International Covenant for Civil and Political Rights, ratified by the Arab Republic of Egypt in 1982. This right is also 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. Everyone is entitled to the protection of the right to life without distinction or discrimination of any kind. Every person shall be guaranteed equal and effective access to remedies for the violation of that right, in accordance with article 26 of the Covenant.

The circumstances of his detention suggest that the deprivation of Mr. Kassem's liberty was arbitrary. Mr. Kassem was beaten and detained on his way home after leaving a shopping mall allegedly because he just carried a US passport. His brother-in-law, with an Egyptian ID, on the other hand, was allowed through. Following his arrest, he was reportedly taken to a military facility and then to a prison, without his family knowing his whereabouts. In detention he was beaten for alleged ties to the Muslim Brotherhood, a charge that was not substantiated. He spent five years in prison waiting for his trial and was sentenced to fifteen years seemingly for being at the wrong place at the wrong time and swept up in a system of abuse. Once a State detains an individual, it has effective control over them. It imposes on the State a heightened duty of care to protect the lives of detainees. The State thus must provide detained individuals with necessary medical care and appropriately regular monitoring of their health. Moreover, the provision of health care is the responsibility of the State authorities and prisoners should enjoy the same standards of health care that are available in the community. Mr. Kassem was diagnosed diabetic and suffered from a heart condition, thus needing special attention and medication on a regular basis. According to the information received, this was known to the authorities who detained him. Regrettably, the authorities allegedly did not provide Mr. Kassem with the medical care he needed. Prison authorities did not provide him the vital medication, including insulin, on which his life depended. Although his family delivered him medicine, the detention facilities did not provide sufficient storage facilities nor medical personnel to administer the drugs. More worryingly, at times the prison authorities discarded Mr. Kassem's insulin. Furthermore, after Mr. Kassem began his hunger strike, the prison authorities did not provide him with the needed liquid nutrition, instead offering fruit juice high in sugar and damaging to diabetics as a substitute. Although Mr. Kassem was treated for some of these emergencies in the prison hospital, he needed more consistent medical attention, available only at hospitals, but his requests to be hospitalized were either ignored or denied.

The best way to respond to a hunger strike is to address the underlying human rights violations that are the basis of the protest, through good faith dialogue about the grievances, and to respect the rights of those who use this form of protest, as per the World Medical Association's Declaration of Malta on Hunger Strikes¹. Yet, at no point in

¹ Declaration on Hunger Strikers (Declaration of Malta) (1991, revised 1992), Declaration on Hunger Strikers (Declaration of Malta). Adopted by the 43rd World Medical Assembly, Malta, November 1991, and

time did the authorities sought to address Mr Kassem's legitimate concerns regarding his arbitrary detention and his conditions of detention. Instead, the same treatment continued for seven years, until Mr. Kassem's death, and could be considered as an act of torture or other cruel, inhuman or degrading treatment, which when seriously affecting the physical and mental health of the individual could provoke death. These allegations suggest that your Excellency's Government failed in its duty of care to protect the life of Mr. Kassem.

We wish to remind your Excellency's Government that superiors 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.

We therefore urge Your Excellency's Government to carry out an expeditious, independent and transparent inquiry into the circumstances of the death of Mr. Kassem with a view to establishing the reasons that caused his death, and taking appropriate disciplinary and judicial action to ensure accountability of any person found responsible for his death, as well as to compensate his family. In this regard, we welcomed the Prosecutor General's preliminary steps to investigate the circumstances of his death.

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 the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain the factual and legal grounds for the arrest and detention of Mr. Kassem and how they are compatible with Egypt's international human rights obligations. In particular, please comment on the allegations that Mr. Kassem was detained because he held a US passport, that he was beaten to obtain information on his ties to the Muslim Brotherhood, and that he was not afforded the opportunity to question the prosecution's witnesses and to present an individualized defense.

3. What health care, including medical treatment for his chronic health conditions, diabetes-appropriate diet, and medical tests, was Mr. Kassem provided during the course of his incarceration? Please provide details as to when Mr. Kassem was able to receive insulin, and where available the results of any medical examinations and tests. Were blood tests performed on Mr. Kassem on a regular basis to monitor his diabetes and heart condition? Please provide the dates and locations when these tests were done.
4. During his time as a detainee, was Mr. Kassem's family allowed to bring him insulin? If not, please provide reasons why he was not allowed to receive the insulin from his family. If he received the insulin, please provide information on storage facilities and medical help to administer the insulin. If there were no storage facilities and/or medical help, please explain why.
5. Please comment on the allegation that Mr. Kassem's requests to be hospitalized were ignored or denied, including who made decisions on his requests?
6. What food was Mr. Kassem provided in light of his diabetes and heart condition? Who decided what food he would receive?
7. After Mr. Kassem entered into his liquid-only hunger strike, what kind of liquids was he provided with? Who decided on the content of the liquids provided to him?
8. Could you provide details as to the steps taken by the Egyptian medical authorities to implement the World Medical Association's Declaration of Malta on Hunger Strikes?
9. What medical attention did Mr. Kassem receive in the Cairo's University hospital after his admission on 9 January 2020? Please provide results of medical examinations and tests and all medical records from his time at the hospital until his death.
10. Was a post-mortem report and an autopsy of Mr. Kassem's body conducted after his death? If not, why not? Was the report shared with Mr. Kassem's family? If not, why not? Please provide a copy of any autopsy or other post-mortem investigation.
11. What steps has your Excellency's Government taken to investigate Mr. Kassem's death and to remedy any conditions that contributed to his death?

12. What steps has your Excellency's Government taken to ensure non-repetition of similar incidents?

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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 as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to Article 7 of the International Covenant on Civil and Political Rights, to which Egypt is a party, provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Furthermore, Article 6, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility.

In this respect we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2): “While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermit committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant.”

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. The Council added that this includes the obligations “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions”.

These obligations to investigate, identify those responsible and bring them to justice arise also under articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this respect we also note that Human Rights Council Resolution 16/23, paragraph 7(b), urges States to hold responsible not only those who perpetrate torture, but also those “who encourage, order, tolerate or perpetrate such acts [...], 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.”

We also further recall that the right to liberty and security of the person and to freedom from arbitrary arrest is enshrined in the international and regional human rights treaties, in particular in article 9 of the ICCPR, in article 11 CAT, article 3 and 9 of the UDHR. A person may only be arrested in accordance with the law and with procedural safeguards governing arrest, detention and fair trial, and where the arrest is not otherwise arbitrary. Furthermore, the right to liberty and security of the person also includes freedom from arbitrary and unlawful detention. A person may only be deprived of his/her liberty in accordance with national laws and procedural safeguards governing detention, and where the detention is not otherwise arbitrary. A detention is in violation of international human rights law if it is a) not in accordance with national laws (unlawful), because it is not properly based on grounds established in a pre-existing law; or not in accordance with the procedures established by law; or otherwise arbitrary in the sense of being inappropriate, unjust, unreasonable, or unnecessary in the circumstances.² We recall that a detention without any legal basis will be regarded as both unlawful and arbitrary.³

We draw your Excellency's Government's attention to the relevant provisions of international law, including the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174 which require that States must ensure that any measures taken to combat "terrorism" and "violent extremism", including incitement of and support for "terrorist acts", comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law contained therein.

² Since there is no exhaustive list of criteria of arbitrariness; in the view of the Working Group on Arbitrary Detention "arbitrariness must be assessed in the light of all the relevant circumstances of a given detention." (see Working Group on Arbitrary Detention, deliberation No. 7, para. 54(b)).

³ See, e.g., Communication No. 856/1999, *Chambala v Zambia*, Views adopted by the Human Rights Committee on 15 July 2003, para. 7.3. In this case, the author's being held for two months after a court determination that there was no legal basis for the detention was found to be both arbitrary and unlawful.