

Mandates of 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 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 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 alleged arbitrary killing of **Rafael José Rangel, Vanessa Ramírez Letechipia, Israel González Delgadillo, María Elena Cruz Muñoz, María de Lourdes, Fernández Rubio, Lilia Gabriela Chávez Overhage, Rosa Marisela Rangel Dávalos, Gretel Overhage Chávez,** and **severe injury of Juan Pablo García Chávez,** as a result of action taken during a counterterrorism operation in Bahariya Oasis. In addition, we bring to your Excellency's attention deficits in investigation of these deaths, as well as a lack of independent and sufficient judicial proceedings capable of ascertaining legal responsibility for these deaths, which do not appear to have fulfilled the most stringent guarantees of fair trial and due process standards.

According to the information received:

According to the information received, on 13 September 2015, 10 tourists **Rafael José Rangel, Vanessa Ramírez Letechipia, Israel González Delgadillo, María Elena Cruz Muñoz, María de Lourdes, Fernández Rubio, Lilia Gabriela Chávez Overhage, Rosa Marisela Rangel Dávalos, Gretel Overhage Chávez,** and **Juan Pablo García Chávez** travelled towards Bahariya Oasis, in western Egypt as part of an organized tour to the area. Other individuals of Mexican, Egyptian and U.S nationality were also present in the tourist group. A registered private company, *Windows of Egypt*, with authorization issued by the Ministry of Tourism, organized the tour.

According to information received, the group was going to be transported in a bus. However, due to a mechanical breakdown the group had to change the logistics and means of mobilization, opting for four vehicles (three off-road trucks and a "Hummer"). Reportedly, the Egyptian authorities were duly notified of the change. The group was accompanied by a member of the Egyptian Tourist Police.

On the same day, the Ministry of the Interior informed the Armed Forces about the presence of alleged terrorists and a deposit of weapons, ammunition, and explosives in the area of the Al-Wahat Oasis.

On their way to Bahariya, the tourists went through at least one checkpoint of the Military Forces. At 3.15 p.m., the victims stopped for lunch in an open space, 2 km away from km 265 of the route Cairo - Bahariya Oasis. Without warning, from information conveyed it appears that Egyptian military forces saw the group, activated an air strike with bombs and machine guns, against the group.

The victims tried to find shelter behind and underneath the vehicles. Military helicopters flew over the camp, shooting several bursts of ammunitions, while the bombs from the airplanes continued dropping, until the vehicles protecting the survivors exploded. The tactic of the air strike appears to have involved attacking the tourist convoy of the four squared-form-parked vehicles to force the victims to flee from their improvised shelter. In parallel, the Army launched rockets or missiles against the vehicles, then, the helicopter passed by with machine-guns, shooting people running out of the vehicle shelters. The attack lasted for a total of approximately one hour, with three rounds of strikes that, according to information received, repeated the same tactic. Nonetheless, after the second strike, the Army apparently also released toxic chemical gases that deeply burned the victims' skin, producing sustained itching, as well as a reported sensation of internal burning of the organs.

Six of the victims were killed with massive injuries, including dismemberments, multiple gunshot wounds to their vital organs, complete carbonization among other physical affectations as a direct consequence of the armed attack by Egyptian forces. Likewise, the four surviving victims presented burns, fractures and organ perforation, and were found lying in the sand, unable to move.

At no time did the tourist group evidence any resistance or threat to the Egyptian military forces. They made gestures indicating that they required help, but the attacks continued regardless.

One of the group's drivers managed to escape the attack in order to seek help and warned the nearest police officers. Following the attack, no medical aid or support was provided to the dead or injured for at least three hours. Due to the delay in arriving at the hospital, one of the victims died on route.

On the same day of the attack, the Egyptian Ministry of Interior released a letter reporting that a tourist convoy had been mistakenly targeted during a joint police and armed forces operation against "some terrorist elements" in the oases located in the west part of the Sahara Desert.¹ The Egyptian Minister of Foreign affairs

¹ Statement by the Egyptian Ministry of Interior, 13 September 2015 - <https://www.facebook.com/moiegy/photos/a.181676241876047.36036.181662475210757/958325770877753/?type=1&theater>

released an open letter that stated that an anti-terrorist operation was taking place in the area at the same time as the convoy was passing through it. This letter also indicated that it was unknown whether the tourist convoy had the necessary permits, whether it had taken a detour into a restricted area, and whether the use of 4 wheel drives rather than a tourist bus had increased the risk of mistaken identification.²

The Egyptian General Prosecutor of the Military opened an investigation to examine the causes and circumstances of the incident, apparently to ascertain why a tourist convoy was allegedly travelling in a “no-go” zone. The Prosecutor of the Military apparently made inquiries to agents of the Armed Forces, the Department of Intelligence and Border Security as well as the General Directorate of the Tourism Police. He also interviewed survivors, employees and owners of the tourism company. From the investigation and the autopsies carried out, it appears that the Prosecutor demonstrated a causal relationship between the attack by the Egyptian military forces and the deaths of the victims, injuries and harm caused to the survivors. Even though state authorities acknowledged that there was a coordination problem among Egyptian officials that led to the attack, the Prosecutor concluded the officers were not individually legally liable because they were following superior orders, and decided to send the case to the Office of the Egyptian General Prosecutor in order to determine the responsibility of the owner of the tourism agency.

The Office of the Egyptian General Prosecutor subsequently opened a criminal proceeding against the owner of the tourism agency and one of the drivers who was part of the convoy. On 6 June 2017, the Court for Minor Crimes of the Bahariya Oasis issued a ruling deciding that the owners of the tourism agency had no criminal responsibility for the deaths and injuries. This decision was appealed and concluded with the decision of dismissal of the case by the Al Haram Criminal Court of Appeals. Participation of the victims or their families in the process was not permitted, because in accordance with the Egyptian legal system, foreign citizens cannot be considered as parties to domestic legal proceedings. The prosecution's accusation focused exclusively on the violation of Military Order No. 5 of 1984 by tourism companies, which refers to the presence of foreigners in some areas of the country. In addition, at a hearing on 7 March 2017, the judge in charge denied the request to incorporate new defendants, as well as the entire military investigation.

Without making a judgment as to the accuracy of the information made available to us, we would like to express our most serious concern about the deadly attack which extinguished and endangered the lives of the above-mentioned individuals, mistaken as alleged ‘terrorist(s)’ by your Excellency’s Government. Based on the information received, there is no evidence that the State took any measures to verify, prior to the attack, the identities of the persons they were targeting, with a subsequent failure to identify the civilian status of the victims, and with a lack of due diligence in operation

² <https://www.facebook.com/MFAEgyptEnglish/posts/1482533588740892>

planning. Moreover, during the course of an apparently lengthy and deadly assault in which no resistance or action was taken by those targeted, the use of force continued excessively and without restraint, which would imply that there was no attempt to bring persons (mistakenly) suspected of criminal activity into custody and subject them to a rule of law based process. Thus, the conduct of the operation would appear to have proceeded without due regard for the protection of the right to life of those targeted, and thus constitute arbitrary deprivation of life.³ We also express concerns as to the adequacy of investigative, trial and remedial processes for the victims especially considering that the investigation did not yield information on which agency holds responsibility,⁴ nor seek to address if there was excessive use of force by individuals during the course of the operation. We also wish to express concern regarding attempts to deny the victims a fair compensation, until the present date, for the acts undertaken by state actors, leaving victims without access to justice for the violations they suffered, in an attempt to block other legal remedies to the victims. Should this information be proven accurate, these attacks may amount to arbitrary executions and cruel, inhuman and degrading treatment under international law.

We appeal to your Excellency's Government to act in accordance with international standards and take full responsibility for the above-mentioned military action.

We would also like to underline that a purely security-based approach to counterterrorism is inadequate and sometimes counterproductive. This position has been confirmed by the United Nations Security Council in *inter alia* UN Security Council Resolution 1373⁵. The protection of human rights and particularly the right to life must be central to any effective counter-terrorism strategy and the United Nations as a whole is now formally committed to mainstreaming human rights protections throughout its counter-terrorism initiatives. As the General Assembly noted in resolution 72/284 adopting the United Nations Global Counter-Terrorism Strategy, effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing. Moreover, as Egypt is a party to the International Covenant on Civil and Political Rights and the Convention against Torture, actions taken by the military and police must be in conformity with its treaty obligations.

³ Human Rights Committee, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCRP/C/GC/36 para 12, "The notion of "arbitrariness" is not to be fully 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 ... as well as elements of reasonableness, necessity, and proportionality "

⁴ Human Rights Committee, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCRP/C/GC/36 para 27 "An important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute such incidents including allegations of excessive use of force with lethal consequences'.

⁵ Reaffirming its resolutions 1269 (1999), "Emphasizing the necessity to intensify the fight against terrorism at the national level and to strengthen, under the auspices of the United Nations, effective international cooperation in this field on the basis of the principles of the Charter of the United Nations and norms of international law, including respect for international humanitarian law and human rights."

In view of the importance of the matter, we would appreciate a response on the steps taken by the Government of Egypt to safeguard the rights of the above-mentioned persons, or their surviving relatives, in compliance with its obligations under international law.

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:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on each stage of the judicial proceedings against the officers responsible for the attacks on the above-mentioned individuals and indicate how they comply with Egyptian and international law standards in particular guarantees related to the right to fair trial and due process.
3. Please provide information about any military procedural training and effective measures in place to ensure these acts will not occur in the future, including adoption of measures of education for armed forces on the International Principles of the Use of Force. In addition, information regarding intent to develop mechanisms of coordination between relevant national and local institutions to avoid confusions that lead to further arbitrary killings.
4. Please provide detailed information and, where available, findings, of any investigation, judicial or otherwise, carried out in relation to the allegations that these above-mentioned individuals.
5. Please provide any information regarding a reparations program in which, together with the compensation, the four other major forms of reparation: restitution, rehabilitation, satisfaction measures and guarantees of non-repetition, noting that the reparation must be proportional to the seriousness of the violations and the damage suffered.
6. Please provide information in regard to Egypt's previous commitment to publicly recognise its international responsibility and assure the victims and their family members adequate and free medical and psychological treatment.

7. Please provide information about how all measures taken by your Excellency's government to combat "terrorism" and "violent extremism," including incitement of and support for "terrorist acts", comply with Egypt's obligations under international law, in particular international human rights law, refugee law, humanitarian law, and the relevant provisions of United Nations Security Council resolutions 1373 (2001), 1456(2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180.

We would appreciate receiving a response within 60 days. Passed this delay, 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.

A copy of this letter will be sent to Mexico.

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

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

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

Annex
Reference to international human rights law

The facts alleged indicate a prima facie violation of the rights to life and not to be arbitrarily be deprived of life, the right to liberty and security, the right to be free from cruel, inhuman and degrading treatment, and the right to a fair trial by an independent and competent court, as set forth in articles 6, 7, 9, and 14 of the International Covenant on Civil and Political Rights (ICCPR), as well as article 16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). Both treaties were ratified by Egypt on 14 January 1982 and 25 June 1986 respectively.

Even in the case where these persons may have been mistaken to have been terrorists, we remind your Excellency's Government that the lawful use of lethal force must be guided by and in full adherence of the use of force principles i.e. legality (any use of force must have a legal basis and pursue a lawful purpose), necessity (force must only be used when, and to the extent, strictly necessary for the achievement of a lawful purpose), proportionality (the harm likely to be inflicted by the use of force must not be excessive compared to the benefit of the lawful purpose pursued) and precaution (law enforcement operations must be planned, prepared and conducted so as to minimize, to the greatest extent possible, the resort to force and, whenever it becomes unavoidable, to minimize the resulting harm) in accordance with Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials.

The prohibition of cruel, inhuman or degrading treatment is absolute and non-derogable under international law. The prohibition includes any use of force that does not pursue a lawful purpose, or that causes unnecessary or disproportionate harm (A/72/178). The prohibition has also been included in article 3 common to the Geneva Conventions of 12 August 1949, which the International Court of Justice has held to reflect a general principle of law, namely "elementary considerations of humanity" (Nicaragua v. United States of America, ICJ Reports 1986, pp. 14).

We would like to further bring to the attention of your Excellency's Government the right to a remedy for victims pursuant to article 13 of the CAT. In this context, we would also like to draw the attention of your Excellency's Government to paragraph 7 b and e of Human Rights Council Resolution 16/23 adopted in April 2011, which urges States "(t)o take persistent, determined and effective measures to have all allegations of...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...; 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,” and “(t)o ensure that victims of...cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation.”