

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

REFERENCE:  
AL EGY 8/2020

19 June 2020

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; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 35/15, 42/22 and 34/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. Shady (Shadi) Habash, a filmmaker who was arbitrarily detained and died in prison because of a lack of adequate medical attention.

Mr. Habash had been arrested for directing a music video critical of the government and kept in pre-trial detention for over two years, exceeding the duration permitted by Egyptian law.

Concerns regarding the denial of health care in Egypt's prisons and how it could cause serious injury and endanger life, have been the subject of many previous communications to your Excellency's Government.

In this regard we are grateful for replies from your Excellency's Government to the following communications: EGY 12/2014 of 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, EGY 9/2019 of 28 October 2019, EGY 2/2020 of 3 February 2020.

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

According to the information received:

At the end of February 2018, "Balaha"<sup>1</sup> a song that was critical of Egyptian President Abdul Fattah El-Sisi, the state of the Egyptian economy and alleged government corruption, was released. Mr. Habash had remotely worked on the

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<sup>1</sup> [https://www.youtube.com/watch?v=FjBd\\_rvZr4U](https://www.youtube.com/watch?v=FjBd_rvZr4U)

song and had been listed in the song's credits for directing, editing, and engaging in post-production. However, Mr. Habash was not involved in or associated with the content of the lyrics. Just days after the song's release, on 1 March 2020, Mr. Habash was arrested. He was brought to the Supreme State Security Prosecution four days later and was initially accused of belonging to a terrorist group, spreading false news, abuse of social-media networks, blasphemy, contempt of religion, and insulting the military, under Case No. 480 of 2018. However, he was never sentenced and his case was never referred to trial. Along with Mr. Habash, six other persons were arrested in relation to the song Balaha. Although five of the original seven defendants were ultimately released, Mr. Habash and another individual were kept in pretrial detention. One other individual continues to be held in pretrial detention today without charge.

On 10 March 2020, Egyptian authorities also suspended in-person prison visits as part of its emergency measures to combat COVID-19. No alternative was provided and this reportedly had an adverse effect on Mr. Habash's mental and physical health.

On 1 May 2020, Mr. Habash died in the Tora Prison in Cairo.

On 2 May 2020, at 2.00 a.m., Mr. Habash's family was informed that Mr. Habash was sick and that they should come to the prison the next morning. Within hours, they learned that Mr. Habash had passed away.

The next day, Mr. Habash's cellmates launched a hunger strike to protest the neglect that they alleged had led to his death. In response, the prison administration reportedly revoked their exercise time. The detainees then decided to suspend the strike.

According to the information received, Mr. Habash was reportedly not provided adequate medical assistance on 1 May. It is alleged that Mr. Habash was admitted to the prison's infirmary once for severe pains and returned to his cell a few minutes later. Allegedly, he was not kept under medical watch, and continued to experience a state of agony for two hours, during which time his cellmates continuously cried for help and made noise attempting to draw the attention of the prison guards in order to have Mr. Habash taken to hospital for treatment. The guards did not approach the cell to assess the situation. Mr. Habash allegedly died in his cell several hours later.

On 5 May 2020, the Public Prosecution issued a first statement on Mr. Habash's death alleging that he accidentally drank alcohol mixed with carbonated water and that he died in a prison clinic on 1 May. The statement referred to methyl alcohol (which is a poisonous substance that is not allowed into Egyptian jails), rather than ethyl alcohol (which can be used as a disinfectant).

In contrast to the information received, according to the Prosecutor's statement, Mr. Habash was repeatedly brought to the prison infirmary throughout 1 May. On the first occasion, he was brought back to his cell 20 minutes after receiving antiseptic and antispasmodic drugs. On the second occasion, at around 10.00 a.m., he was taken to the prison infirmary where he was kept for two hours during which time he was given an anti-nausea injection. He was then returned to his cell to wait for a prison doctor who was not present in the facility at the time. At around 2.00 p.m., he was moved back to the infirmary, examined, and returned to his cell. In the evening, Mr. Habash awoke in pain and delirium. His cellmates alerted the prison's medical staff who again transferred Mr. Habash to the infirmary. At that point, the medical officer-in-charge ordered that Mr. Habash be moved to the prison's clinic. There, the public prosecutor alleges that Mr. Habash informed the clinic's doctor about having ingested the alcohol-based sanitizer. Mr. Habash's condition did not improve. He developed a fever and fell in and out of consciousness as his blood pressure dropped. He was given first-aid treatment in preparation for transport to a hospital outside the prison, but his condition deteriorated rapidly, and he died in the prison hospital. Following his death, the Public Prosecutor ordered a full investigation into the death of Mr. Habash's.

On 10 May, 2020, the Public Prosecution issued a second statement on Mr. Habash's death in which it referred to a forensic medical report that reportedly affirmed what was claimed in the first statement. The statement also warned readers about "false news and rumors" around Mr. Habash's death "intended to disturb public security and cause harm to the public interest." It stated that these rumors would be "sternly" dealt with per the law.

Further, the official statements suggest that the doctors prescribed Mr. Habash with antiseptic, antispasmodic, and medication for vomiting, and failed to transfer him to an external hospital over a period of two days despite his deteriorating state.

At the time of his death, Mr. Habash had spent two years and two months in illegal pretrial detention, in violation of Egypt's Criminal Procedures Code, which sets forth a two year maximum pretrial detention period for crimes that could potentially carry a life or death sentence and are being heard by a court of first review.

In accordance with the law, Mr. Habash's pretrial detention was to be reviewed by a court every 45 days. However, in early March 2020, Egyptian authorities suspended court hearings as an emergency measure to combat COVID-19. This suspension continued until around 5 May 2020. During that period, no alternative court review was provided.

Without prejudging the accuracy of the information made available to us, we express grave concern that Mr. Habash's death was arbitrary as it may have resulted from the denial of adequate health care. Notwithstanding the different factual accounts, they

both point to a failure on the part of the prison authorities to provide Mr. Habash with the required medical assistance.

Furthermore, we are concerned that his arrest and detention may have been in violation of his right to freedom of expression and opinion and the right to the liberty and security of persons.

We first would like to remind Your Excellency's Government that 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 (ICCPR), ratified by the Arab Republic of Egypt in 1982. 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.

This fundamental human right entitles "individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death." (CCPR/C/GC/36, para. 3). In assessing violations of the right to life, the Human Rights Committee found that a "death in any type of custody should be regarded as prima facie a summary or arbitrary execution." Furthermore, "the deprivation of life of individuals through acts or omissions that violate provisions of the Covenant other than article 6 is, as a rule, arbitrary in nature."

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." (Human Rights Committee, General Comment No. 36, para. 25). In the report A/HRC/38/44, the Special Rapporteur on extrajudicial, summary or arbitrary executions underscored that the State "is the guarantor of the fundamental rights of detainees". (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."

The facts alleged suggest multiple violations of human rights, including 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 deprivation of life. Death resulting in whole or in part from the denial of medical care is by definition an arbitrary death for which the State is responsible.

Article 19 of the ICCPR provides that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Restrictions to this right must be provided by law, necessary for a legitimate purpose, and proportionate. Speech critical of the State and its institutions should not be prohibited. (CCPR/C/GC/34, para, 38) Moreover, the Human Rights Committee as well as the Special Rapporteur on freedom of expression and opinion have both called for the decriminalization of defamation, suggesting that criminal penalties are incompatible with States obligations under article 19. Mr. Habash’s arrest and detention seem to have been in punishment for directing a music video critical of the state of Egypt’s economy and alleged government corruption. On its face, his detention was in violation of his article 19 right to freedom of expression and opinion.

Article 9 of the ICCPR provides that everyone has the right to liberty and security of persons, and that “anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.” The Human Rights Committee further explained that “States parties also need to show that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited,” and that any confinement beyond the legally allowed period is arbitrary. Mr. Habash was arrested on 1 March 2018 and his detention had been repeatedly extended in excess of two years. Even disregarding that the prolonged pre-trial detention may not have been necessary, the fact that Mr. Habash’s detention exceeded the legally allowed maximum duration makes it arbitrary on its face.

To overcome the presumption that Mr. Habash’s death is arbitrary and did not result from acts or omissions attributable to it the onus is on the State. To rebut the presumption and to meet international norms and standards, the investigation must be thorough, prompt, impartial and transparent. (The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) and the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989)).

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 explain the legal or any other reasons and circumstances for the detention of Mr. Habash.

3. Please explain the legal or any other reasons for why Mr. Habash was kept in pre-trial detention for over two years, seemingly in violation of Egyptian law.
4. Please explain why the prison authorities, despite being informed of Mr. Habash's alleged alcohol poisoning, have not administered adequate antidotal treatment (e.g., as appropriate, hemodialysis or ethanol infusion), and allegedly continued to repeatedly administer anti-nausea treatment, despite the evident lack of improvement.
5. Why was Mr. Habash returned to his cell instead of being kept on watch in the prison infirmary or immediately transferred to hospital?
6. In connection with the above questions, why did the prison authorities delay the decision to transfer Mr. Habash to a hospital?
7. Please indicate what broader steps, if any, are being taken to respond to the many concerns about inadequate health and other conditions in Egypt's prisons.
8. What was the chemical composition of the hand sanitizer ingested by Mr. Habash? Has the same hand sanitizer been also distributed to other inmates of Tora prison? Were the prisoners warned against using it beyond its intended purposes?
9. Please provide the details, and where available, the results, of any investigation, medical examination and judicial or other inquiries which may have been carried out in relation to the death of Mr. Habash.

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 would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

Given the importance of the issue raised in this letter; the number of past exchanges with Your Excellency's Government on the same subject of the death of detainees or prisoners in custody; and the continued threats to the life of detainees in Egypt, we believe that this matter requires the prompt and thorough attention of the relevant authorities at the highest level. For the same reasons, we are considering to publicly express our concerns in this case in the near future, as we believe that the public should be informed about the human rights implications of these allegations.

Against this background, we would appreciate a response from the Government at its earliest convenience. Any public expression of concern on our part 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

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns,

In connection with above alleged facts and concerns, we would like to refer to article 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right not to be arbitrarily deprived of liberty and to fair proceedings before an independent and impartial tribunal. We wish to highlight that, according to the criteria applied by the Working Group on Arbitrary Detention, deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR is arbitrary.

Article 9 establishes in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law, and that anyone who is arrested shall be informed, at the time of arrest, of the reasons behind such arrest and be brought promptly before a judge to determine the lawfulness of the detention.

We recall that article 9(3) of the ICCPR requires that detention in custody of persons awaiting trial shall be the exception rather than the rule. It should not be the general practice to subject defendants to pre-trial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Pre-trial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances (Human Rights Committee, General Comment No. 35, para. 38).

Article 14 stipulates that, in the determination of any criminal charge, everyone shall be entitled to adequate time to communicate with counsel of choice. Article 14 also guarantees the right to be tried without undue delay. The right to have access to a lawyer without delay and in full confidentiality is also enshrined in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), and the Basic Principles on the Role of Lawyers (Principles 7 and 8).

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international



levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government article 6 (b) which guarantees the right to impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms