

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; 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

REFERENCE:
UA EGY 11/2020

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; 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 42/22, 36/6, 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 **Mohammad Awsam Abdulaziz Ali Rashed**, a student at the Faculty of Engineering, Mechatronics Department and his father, **Awsam Abdulaziz Ali Rashed** who are allegedly both in detention in Burj Al Arab Prison following convictions by military and criminal courts respectively which reportedly did not follow due process. Their fate remains unknown since 1 March 2020 as they are being detained incommunicado. In view of this situation, we wish to recall the joint communication (OL EGY 4/2020) sent to your Government on 28 February 2020.

According to the information received:

Mr. Mohammad Rashed was arrested for the first time on 16 August 2013 during protests of Ramses Square. He was then detained for five months before being released. While in prison, he was infected with Hepatitis C.

He was arrested a second time, along with his father, Mr. Awsam Rashed, in the father's home, on the night of 21 April 2015, by officers dressed in military clothes, supervised by an officer in civilian clothes. No arrest warrant was presented to them and they were not given any reason for their arrests. Both were reportedly ill-treated, beaten, and insulted by the police officers. The officers violently searched the house and broke some of their belongings. One of the officers informed the family that they only wanted to question them for two hours and that they would release them afterwards.

Mr. Mohammad Rashed was taken to the State Security detention centre in 10th of Ramadan city, where he was kept for a total of 10 days and was reportedly

subjected to ill-treatment, while his father was taken to the 10th of Ramadan 2nd Police Department.

Mr. Mohammad Rashed was allegedly beaten on different parts of his body, particularly in his abdomen. On 1 May 2015, he was forced to confess that he took part in a bombing that occurred near his house on 10 March 2015. His interrogators also threatened to arrest his sisters and mother.

Mr. Mohammad and Mr. Awsam Rashed were later successively detained in the State Security detention in Zagazig, the Security Directorate of Alexandria, the State Security detention centre in Lazoghli, Cairo, and Port Said prison.

On 23 April 2015, Mr. Awsam Rashed was brought before the Prosecutor of the Court of 10th of Ramadan city and accused of manufacturing explosives, which he allegedly gave to his son. Although he provided evidence that at the time of the explosion on 10 March 2015, he was at work for 20 consecutive hours, these documents were apparently not taken into account.

On 2 May 2015, Mr. Mohammad Rashed appeared before the Terrorism Chamber of Belbes Criminal Court, Ash-Sharqia Governorate, and met his lawyer. After this, his family was able to meet him and noticed signs of abuse on his body. He told his family that the stent that was placed in his bile duct four years before during surgery was damaged due to the beatings he was subjected to and would likely need to undergo surgery again to replace it.

Mr. Mohammad Rashed was charged with “possession of explosives”. The prosecutor claimed that the explosives were the tools he had taken home from his Engineering University.

On 1 November 2015, the trial of Mr. Mohammad and Mr. Awsam Rashed commenced before the 5th Chamber of the Military Court in Zagazig. On 3 March 2016, the court sentenced Mr. Mohammad Rashed and Awsam Rashed respectively to 15 and 10 years’ imprisonment on terrorism charges. During the hearing, Mr. Mohammad Rashed stated that he was tortured by police officers and forced to make a self-incriminating statement. However, the court did not take this into account.

Mr. Mohammad Rashed was sentenced in another case to three years’ imprisonment by the Terrorism Chamber of Belbes Criminal Court in Ash-Sharqia Governorate while Mr. Awsam Rashed was sentenced following two other trials to 3 and 15 years’ imprisonment. These additional sentences were also related to the explosions that occurred on 10 March 2015.

After the sentencing, they were both sent to Burj Al Arab Prison in Alexandria. Both individuals appealed their sentences. Their appeals were rejected.

Their family were last able to visit them in prison on 1 March 2020, before the prison authorities suspended all family visits due to the COVID-19 outbreak. Since then, the family have not heard from them and are not able to communicate with them. There are concerns about the current health state of Mr. Mohammad Rashed as he is suffering from jaundice, which is particularly noticeable in his eyes. There are also concerns that he is not receiving regular treatment given the current situation in prison. He also suffers from an enlarged gallbladder causing severe infections. Moreover, Mr. Mohammad Rashed's condition has reportedly recently deteriorated and he required surgery. There has been no update on his condition.

We express our grave concern about the allegations of arbitrary arrest and detention, ill-treatment which may amount to torture, the use of forced confession as evidence to convict them, and the incommunicado detentions with no information on the fates of Messrs. Mohammad and Awsam Rashed. We are also seriously concerned at the alleged deteriorating health condition of Mr. Mohammad Rashed, especially with the current COVID-19 outbreak in Egypt.

While we do not wish to prejudge the accuracy of these allegations, we are appealing to your Excellency's Government to take all necessary measures to guarantee to all the rights they are entitled to under the International Covenant on Civil and Political Rights (the "Covenant") that Egypt ratified on 14 January 1982, including the right not to be deprived arbitrarily of liberty; the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment; the right to fair proceedings before an independent and impartial tribunal. These rights are protected by articles 7, 9, 10, and 14 of the Covenant.

Article 9 (1) of the Covenant establishes that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law. Article 9 (2) and (3) and (4) specify that anyone who is arrested shall be promptly informed of the reasons for such arrest and be brought promptly before a judge for the purpose of legal review and challenge of the detention. We would like to refer your Excellency's Government to the 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). These principles and guidelines, elaborated by the Working Group on Arbitrary Detention at the request of Member States of the Human Rights Council, provide universal guidance applicable to persons deprived of their liberty. Article 14 (3) stipulates that, in the determination of any criminal charge, everyone should have adequate time and means to communicate freely with counsel of choice and to effectively prepare their defense. The right to have access to a lawyer without delay and in full

confidentiality is also enshrined in the Basic Principles on the Role of Lawyers (Principles 7 and 8).

We would also like to refer your Excellency's Government to the absolute and non-derogable prohibition of torture and other ill-treatment as codified in article 7 of the Covenant and articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Egypt acceded to on 25 June 1986. We further recall that torture also undermines minimum guarantees necessary for one's defense, especially in the light of the right not to be compelled to testify against oneself or to confess guilt under article 11 (1) of the Universal Declaration. The use of a confession extracted through torture is also contrary to article 14 3) g) of the Covenant and article 15 of the Convention against Torture and principle 21 of the Body of Principles

We would also like to recall article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Egypt in 1982, which recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".

Moreover, as outlined by the UN Standard Minimum Rules for the Treatment of Prisoners (see the revised version adopted on 5 November 2015 and renamed "Mandela Rules"), 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 (Rule 24(1)). Rule 27(1) furthermore provides that all prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.

Similarly, we would like to stress the call made by the Human Rights Council in Resolution 7/12 for States to ensure the protection of human rights defenders acting against enforced disappearances.

We would like to stress once again that the Declaration on the Protection of all Persons from Enforced Disappearance proclaims that no State shall practice, permit or tolerate enforced disappearance (article 2); the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention and the obligation to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest (article 10); that persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured (article 11); that no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance (article 6); that no circumstances whatsoever, whether a

threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7); and the obligation to maintain in every place of detention an official up-to-date register of detained persons (article 12).

As stressed in earlier communications, we refer to article 13 (3) and (5) of the Declaration, which requires that “[s]teps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal”; and that “[s]teps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished”.

Lastly, we are referring to 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 articles 1, 2, 9 (4) and 12.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

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 any comment you may have on the above-mentioned allegations.
2. Please explain how the factual and legal grounds for the arrest and detention of Messrs. Mohammad and Awsam Rashed are compatible with Egypt’s international human rights obligations.
3. Please provide factual and legal information on why charges related to terrorism have been levied against Messrs. Mohammad and Awsan Rashed and indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).

4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the allegations of torture and/or cruel, inhuman or degrading treatment during arrest and while custody. If no inquiries have been initiated, please explain why and how this is compatible with the international human rights obligations of Egypt.
5. Please provide details concerning the fate of Messrs. Mohammad Rashed and Awsam Rashed and their health situation.

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 responsible of the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal 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 appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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.

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

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Luciano Hazan
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