

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL EGY 18/2020

21 December 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; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5, 42/22, 45/3, 42/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the denial of adequate and timely health care in custody leading to the deaths of Mr. Ibrahim Hassan Abdel-Ghany Al-Batea, Mr. Magdy Taha Mohamed El-Qalawy and Mr. Tony Hasan Khalifa Farghal.**

Special Procedures mandate holders have previously raised concerns about conditions of detention that have led to the death of prisoners in Egypt. Most recently, in a communication under reference, AL EGY 8/2020 sent on 18 June 2020 regarding the case of Mr. Shady (Shadi) Habash, a filmmaker who was allegedly arbitrarily detained and died in prison because of a lack of adequate medical attention. We regret that a reply has yet to be received from your Excellency's Government. Similarly, we also raised concerns in another communication, under reference EGY 2/2020 sent on 3 February 2020, regarding the detention conditions and alleged failure to provide adequate medical care to Mr. Mustafa Kassem, a dual citizen of the Arab Republic of Egypt and the United States of America, that may have led to his death on 13 January 2019. We thank your Excellency's Government for the reply received on 1 July 2020.

Further, we raised these concerns in various other cases, in the following referenced communications: 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 EGY 9/2019 of 28 October 2019 and are grateful for the respective replies received.

We regret to have not yet received a reply from your Excellency's Government in the following referenced communications: 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:

#### Case of Ibrahim Hassan Abdel-Ghany Al-Batea

Mr. Al-Batea, who resided in Al-Zagazig district, Al-Sharqia governorate, was arrested on 11 June 2019 at 5 a.m. by police officers in uniforms and National Security agents in plainclothes. No warrant was shown for his arrest. On the same day, he was brought before the Emergency State Security Prosecution, in the presence of his lawyer, in case No. 1137/2019. He was charged with belonging to a banned group and remanded to Al-Zagazig Security Centre.

Prior to his arrest, Mr. Al-Batea had a persistent cough but no other medical conditions. His health gradually deteriorated throughout his pre-trial detention, particularly after being moved to Kafr Saqr Police Station. Despite this, the Police station wardens refused to allow him to be examined by a doctor. Persons associated with him made several appeals to the Prosecution to allow him to be admitted to hospital and to have x-rays. However, their requests were not granted.

On 28 January 2020, Mr. Al-Batea fractured his [REDACTED] bone in his cell whilst changing clothes. He was transferred to Al-Zagazig Public Hospital. A [REDACTED] was discovered. He was transferred to the hospital's intensive care unit, as the hospital did not have an [REDACTED] department. Over the following two days, he was not provided with any medical follow up and lost the ability to move. Persons associated with him were unable to visit and he was taken to a private room at the hospital under maximum security. The requests from persons associated with him to assign a medical specialist to examine Mr. Al-Batea at their own expense were initially not granted.

On 2 February 2020, the request for treatment was eventually granted and Mr. Al-Batea's case was transmitted to the Cancer division at the University Hospital. The Hospital initially refused to receive him due to administrative procedures and persons associated with him were informed they should return the next day to complete the entry form for his admission.

On 3 February 2020, persons associated with Mr. Al-Batea returned to the hospital but the hospital again refused to admit him until he had undergone various scans, which were not provided in the hospital. Persons associated with Mr. Al-Batea decided to transfer him to a private medical center at their own expense.

On 5 February 2020, Mr. Al-Batea underwent the required scans. However, his condition quickly deteriorated.

On 9 February 2020, with the administrative requirements for admission to the Cancer division at the University Hospital still unfinished, Mr. Al-Batea passed away at Al-Zagazig Public Hospital while still awaiting trial.

#### Case of Magdy Taha Mohamed El-Qalawy

Mr. El-Qalawy, an Elementary School director who resided in Menya El-Qamh centre, El- Sharqia governorate was arrested on 16 January 2019 at 2.30 a.m. Police officers in uniform and National Security agents in plainclothes raided and searched his house and arrested him without showing an arrest warrant. On the same day, he was brought before the State Security Prosecution in the presence of his lawyer under Case No. 108/2019. He was charged with organizing an assembly of more than five persons with the objective of endangering the general peace, using of force, and protesting without an authorization. He was taken to Menya El-Qamh Police station.

On 19 October 2019, a court found him innocent on the charge of use of force. However, he was found guilty on the charges of assembly of more than five persons with the objective of endangering the general peace, and protesting without an authorization and was sentenced to two years of imprisonment, and fined 50,000 EGP.

Prior to his arrest, Mr. El-Qalawy had undergone surgery to [REDACTED] [REDACTED] and was seeing a [REDACTED] specialist. Whilst detained at Menya El-Qamh Police station Mr.El-Qalawy was experiencing severe pain. However, the station's doctor told him it was fatigue. Persons associated with him noticed he had extreme fatigue during a visit in October 2019 and submitted appeals to the prison administration to allow a blood sample to be taken from Mr. El-Qalawy and for him to be examined in a medical center at their expense.

After submitting several requests, permission for Mr. El-Qalawy to be examined was finally granted. The tests showed a serious problem with his [REDACTED] [REDACTED] and probable [REDACTED] [REDACTED] [REDACTED] [REDACTED]. The results were provided to a consultant who advised that x-rays be carried out urgently. Persons associated with Mr. El-Qalawy requested permission from the prison administration but this was denied. The doctors at the prison hospital carried out their own examination of Mr. El-Qalawy and requested that he be transferred to the [REDACTED] Institute as his case was becoming critical. However, before this could be approved, on 25 October 2019, he was transferred to Wadi-Al Natroun Prison.

Whilst detained at Wadi-Al Natroun Prison, Mr. El-Qalawy was allowed to take one medicine but was not allowed to access other prescriptions. After 20 days, he was transferred to the Liver Institute. However, he was not admitted, as the Institute required examination by a specialist prior to providing treatment. The Institute indicated that there would be a several day wait until a specialist could be assigned.

As a result, on 21 November 2019, he was transferred again to Shebin Al-Qoum Prison. He was examined by the prison doctor but was not allowed to take required medication.

His condition further deteriorated and on 9 December 2019, Mr. El-Qalawy was taken to the Liver Institute again and on 12 January 2020 underwent medical examinations. He was diagnosed with [REDACTED]

█████ for which close follow up and medication was needed. Despite this, he was returned to prison and was not admitted to hospital.

Persons associated with him submitted a request for a medical amnesty to allow them to care for him.

On 8 February 2020, Mr. El-Qalawy passed away in his place of detention. The forensic examination found that he died due to ██████████

#### Case of Tony Hasan Khalifa Farghal

Mr. Farghal, a former employee of the National Post, who resided at Minya Governorate, Mallawi Center was arrested on 2 March 2017. Police officers and National Security agents in uniforms and plainclothes raided his residence, searched it, threatened persons associated with him and arrested Mr. Farghal. No warrant was shown. His fate and whereabouts were unknown for two days.

On 4 March 2017, Mr. Farghal was brought before the Prosecution under three cases (222/2015, 311/2015, 267/2015) relating to the storming of the Mallawi Court, storming the Mallawi Museum, and storming the Mallawi City Council and was able to see his lawyer for the first time. It is believed he was falsely accused of the crimes. His lawyer was not allowed to visit him in prison and was only able to see his client during the hearing sessions. Mr. Farghal was tried and sentenced to 5 years in each of the first two cases and was found innocent in the third case.

Mr. Farghal was detained in Liman Minya Prison. He was held in a cell with 40 other people, with no ventilation or bathroom. He was denied the right to daily exercise and persons associated with him were unable to deliver him food, medicine or hygiene products, and were instead only able to provide money to buy necessities in prison.

Prior to his detention Mr. Farghal suffered from ██████████. While in prison his health condition gradually deteriorated.

On 18 November 2018, his pain intensified and Mr. Farghal started experiencing multiple ██████████, which quickly developed into ██████████.

In December 2018, persons associated with him requested that he be allowed to undergo a medical examination. However, he was only examined by the general practitioner who served as the prison doctor.

In July 2018, after several appeals from persons associated with him, Mr. Farghal was transferred to Asyout Public Prison so that he could be assigned a medical specialist. However, this did not occur and Mr. Farghal was later returned to Liman Minya Prison. He was provided no further medical follow up or treatment.

On 13 March 2020, Mr. Farghal died in Liman Minya Prison.

While we do not wish to prejudge the accuracy of this information, we express our grave concern regarding the alleged denial of appropriate and timely medical care whilst in custody and deaths of Ibrahim Hassan Abdel-Ghany Al-Batea, Magdy Taha Mohamed El-Qalawy and Tony Hasan Khalifa Farghal. 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 appropriate and timely medical care is by definition an arbitrary death for which the State is responsible.

The deliberate denial of appropriate and timely health care and other neglectful acts, potentially amount to a violation of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in 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. In addition, such denial can also adversely impact the ability to fully exercise the right to a fair trial and defense, under articles 9 and 14 of the International Covenant on Civil and Political Rights, which Egypt ratified on 14 January 1982.

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. 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.

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 has 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. 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.”

This communication is at least the seventeenth 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 deaths. We reiterate our fear and concern that unless your Excellency’s Government urgently change what appears to be an intentional disregard for the lives of the thousands of detainees in its prisons, many more will die.

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 factual and legal grounds for the arrest and detention of Mr. Ibrahim Hassan Abdel-Ghany Al-Batea, Mr. Magdy Taha Mohamed El-Qalawy and Mr. Tony Hasan Khalifa Farghal and details of the legal proceedings taken against them, including the legal assistance provided. Please include information on how they are compatible with Egypt’s international human rights obligations.
3. Please provide information on the medical care provided to the aforementioned individuals. Please include information on each request made by persons associated with them or the individuals themselves for tests, treatment or examinations, whether each request was granted or denied, the time taken for the decision to be made and the reasons for the decision.
4. Please provide information on the steps your Excellency’s Government has taken to investigate the deaths of Mr. Ibrahim Hassan Abdel-Ghany Al-Batea, Mr. Magdy Taha Mohamed El-Qalawy and Mr. Tony Hasan Khalifa Farghal. Please include information on any disciplinary and judicial action taken to ensure accountability of any person found responsible, as well as any compensation provided to their families.
5. Please provide information on the steps taken by your Excellency’s Government taken to ensure non-repetition of similar incidents, particularly in light of the apparent pattern of deaths due to denial of medical care in Egyptian places of detention.

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 Your Excellency's Government to carry out expeditious, independent and transparent inquiries into the circumstances of the deaths of Mr. Ibrahim Hassan Abdel-Ghany Al-Batea, Mr. Magdy Taha Mohamed El-Qalawy and Mr. Tony Hasan Khalifa Farghal with a view to establishing the causes of their deaths, and taking appropriate disciplinary and judicial action to ensure accountability of any person found responsible for their deaths, as well as to compensate their families.

We would like to inform your Excellency's Government that after having transmitted these allegations 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. This communication in no way prejudge any opinion the Working Group may render. The Government is required to respond separately to this letter of allegations and the regular procedure.

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

Tae-Ung Baik  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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 6, of the International Covenant on Civil and Political Rights (ICCPR), to which Egypt is a party which 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. Furthermore article 7 of the ICCPR, provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

States parties also have 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. 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 (Human Rights Committee, General Comment 36).

Loss of life occurring in custody, in unnatural circumstances, creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation which establishes the State’s compliance with its obligations under article 6 (ibid). 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 and in article 3 and 9 of the Universal Declaration of Human Rights. A person may only be arrested in accordance with the law and with procedural safeguards governing arrest, detention and fair trial, Furthermore, the right to liberty and security of the person also includes freedom from arbitrary and unlawful detention. We also highlight that, under article 9.4 of the ICCPR, anyone deprived of liberty shall be entitled to challenge the legality of

the detention before a court and, in order to preserve such right, it is essential that the authorities guarantee a timely and adequate access to legal assistance (A/HRC/45/16, para. 51). Moreover, under article 14 of the ICCPR, anyone charged with a criminal offence must be allowed the adequate time and facilities for the preparation of his defence, to communicate with counsel of his own choosing and to defend himself in person or through legal assistance.

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 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).

We would like to further refer to article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), ratified by Egypt in January 1982, which protects the right to health. General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR) further highlights States' obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services (para. 34).

In this connection, the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), adopted unanimously by the UN General Assembly (A/Res/70/175), establish States' responsibility to provide health care for prisoners (Rules 24 to 35). Rule 24 indicates that prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status. Regarding the standards of health care for the general community, we would like to refer to ICESCR Article 12.2 (d) that indicates "The creation of conditions which would assure to all medical service and medical attention in the event of sickness." This "includes the provision of equal and timely access to health services (... such as) appropriate treatment of prevalent diseases, illnesses, injuries and disabilities." (CESCR General Comment No. 14, para 17).

Furthermore, Rule 27 establishes that prisoner shall have prompt access to medical attention in urgent cases and those requiring specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals; where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.