

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL EGY 4/2021

12 May 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5 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 execution of seventeen death sentences, in April 2021, following a trial which reportedly failed to meet basic due process and fair trial standards, coupled with allegations of torture and other cruel, inhuman or degrading treatment or punishment.

According to the information received:

On 26 and 28 April 2021, a total number of seventeen individuals, who had been sentenced to death in connection with the case of the so-called "Kerdasa Police Station storming" (no. 12749 of 2013, Giza Felonies)<sup>1</sup>, were executed.

It is alleged that they were all deprived of due process and a fair trial following their arbitrary arrest; they did not have access to their lawyers during the investigation and throughout the proceedings; were subjected to torture and other cruel, inhuman and degrading treatment or punishment, including for the purpose of extracting confessions; their claims that they had been tortured were never investigated; and they were sentenced to death based solely on elements collected by the national security and their statements obtained under duress.

Furthermore, the executions would have taken place in total secrecy, without any prior information provided to the lawyers of the defendants or their families. The latter were only informed after the executions had taken place, when they also learned that the bodies of their relatives were at the morgue.

The use of capital punishment in Egypt appears to have escalated at an unprecedented rate in the past two years. The seventeen executions referred to above would bring the number of death sentences enforced in the country to a total of fifty-four since the beginning of 2021. In March 2021, thirty defendants were executed in at least fourteen criminal cases; in February 2021, the death penalty was carried out against six accused in four criminal cases; and in January 2021, the death penalty was carried out against one person

<sup>1</sup> The case was addressed by the Special Procedures in different communications sent to your Excellency's Government including UA EGY 2/2018: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23567>; Government's reply: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34051>; and UA EGY 14/2014: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=16456>; Government's reply: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=32821>.

accused in a criminal case<sup>2</sup>. In the year 2020, at least one hundred and seven death sentences were enforced, representing a more than three-fold increase from the thirty-two sentences carried out in 2019<sup>3</sup>.

Death sentences are regularly issued following proceedings that do not always comply with due process and fair trial standards, including mass trials and defendants are routinely subjected to torture and other cruel inhuman or degrading treatment or punishment, including for the purpose of forcing defendants to confess guilt.

While we do not wish to prejudge the accuracy of the information received, we wish to express our gravest concern about the allegations received which, if confirmed, would amount to violations of the right to the right to life, as set forth in article 3 of the Universal Declaration of Human Rights (UDHR), and in article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt since 1982; the rights to liberty and security of the person, protected by articles 9 of the (UDHR) and the (ICCPR); and the right to due process and fair trial, guaranteed in article 10 of the UDHR and in article 14 of the ICCPR. They could also be in violation of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, established in article 5 of UDHR, article 7 of the ICCPR, and article 1 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment, ratified by Egypt in 1986.

We also wish to express alarm at the reported surge in executions in the country and note that, in spite of having repeatedly brought to the attention of your Excellency's Government cases of death sentences carried out following what seem to be unfair trials, including instances of torture and forced confessions, we continue to receive allegations of a similar nature on a regular basis.

We therefore respectfully reiterate our call to your Excellency's Government to consider establishing an official moratorium on pending executions with a view to ensuring that all death sentences are properly reviewed. Where convictions are based on unfair trials, individuals must be retried in full compliance with international human rights law and standards<sup>4</sup>.

We stand ready to support your Excellency's Government efforts in this regard and remain available for any assistance we may be able to provide to the authorities concerned.

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

<sup>2</sup> Egypt: Geneva Council condemns the execution of 17 people after an unfair trial: <https://genevacouncil.com/en/2021/04/27/%D9%85%D8%B5%D8%B1-%D9%85%D8%AC%D9%84%D8%B3-%D8%AC%D9%86%D9%8A%D9%81-%D9%8A%D8%AF%D9%8A%D9%86-%D8%AA%D9%86%D9%81%D9%8A%D8%B0-%D8%AD%D9%83%D9%85-%D8%A7%D9%84%D8%A5%D8%B9%D8%AF%D8%A7%D9%85-%D9%81%D9%8A/#:~:text=Statements-.Egypt%3A%20Geneva%20Council%20condemns%20the%20execution%20of,people%20after%20an%20unfair%20trial&text=GENEVA%20%20E2%80%93%20The%20Geneva%20Council%20for, politicized%20trials%20that%20lack%20justice.>

<sup>3</sup> Ibid.

<sup>4</sup> See, for instance: Egypt must halt executions, say UN human rights experts: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22613>

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 indicate whether the case referred to above concerning the latest execution of seventeen individuals in connection with the so-called “Kerdasa Police Station storming” proceeded in compliance with the requirements of due process and fair trial at all stages of the proceedings, including since their arrest, the pre-trial, trial and sentencing phases.
3. Please indicate whether any investigation was conducted into the allegations of torture and other cruel, inhuman or degrading treatment or punishment reportedly suffered by the defendants. If not, please indicate the reasons why, and how this is consistent with the international human rights obligations of Egypt under the treaties it has ratified.
4. Please indicate what remedies are available to the relatives of the alleged victims (or next of kin) to seek and obtain redress, including adequate compensation, as appropriate, in line with Egypt’s international human rights obligations.

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.

Your Excellency,

The concerns expressed in this letter have been repeatedly brought by our and other United Nations special procedures mandates to the attention of Your Government, with recommendations. These communications, based upon Egypt international human rights obligations, encourage the State to scrupulously uphold in law and in practice the rights to life, liberty, personal security, and fair trial of persons suspected of offences punishable by death. We acknowledge that the Government has been responding regularly to our communications; but we regret that the same unchanged policies and practices have not only continued unabated, but seem to be increasing in disregard of what the state of Egypt has formally committed to.

Imposing the death penalty and depriving anyone of his life is a very serious act that engages the penal responsibility of the State under international law. Although

the death penalty is not prohibited as such under international law, the ICCPR, which Egypt has formally ratified, requires that sentences of death may be imposed only for the most serious crimes and pursuant to a final judgment rendered by an independent, impartial and competent court applying the most stringent criteria for fair trial, short of which the execution may amount to an arbitrary execution by the state.

Against this backdrop, we will continue to monitor the imposition of the death penalty and its execution in Egypt, to bring our concerns in this respect to the Government, and to ascertain the quality of the information received to establish reliable facts. At the same time, we reserve the right to publicly express our concerns in this regard in the near future, since we believe that the general public should be informed about what appears to be a continued and increasing pattern of arbitrary execution of the death penalty in Egypt, following what appears to be unfair trials, a matter which has significant implications for the enjoyment of the right to life in Egypt. Any public expression of concern in this regard, 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.

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

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, concerns, we would like to refer your Excellency's Government to: articles 9 of the Universal Declaration of Human Rights (UDHR) and of the International Covenant on Civil and Political Rights (ICCPR) which respectively state that "No one shall be subjected to arbitrary arrest, detention or exile", and that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. (...)"; article 10 of the UDHR and article 14 of the ICCPR which establish the right of everyone to due process and fair trial; and article 3 of the UDHR, as well as article 6 of the ICCPR which protect the right to life.

Furthermore, we wish to refer to paragraphs 2, 4, 5 and 6 of article 6 of the Covenant which set out specific safeguards to ensure that in States parties that have not yet abolished the death penalty, death sentences are not applied except for the most serious crimes, and then only in the most exceptional cases and under the strictest limits.

The term "the most serious crimes" must be read restrictively and appertain only to crimes of extreme gravity involving intentional killing. Crimes not resulting directly and intentionally in death can never serve as the basis for the imposition of the death penalty. In the same vein, a limited degree of involvement or of complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder, cannot justify the imposition of the death penalty. States parties are under an obligation to review their criminal laws so as to ensure that the death penalty is not imposed for crimes that do not qualify as the most serious crimes. They should also revoke death sentences issued for crimes not qualifying as the most serious crimes and pursue the necessary legal procedures to resentence those convicted for such crimes<sup>5</sup>.

States parties that have not abolished the death penalty must respect article 7 of the Covenant, which prohibits certain methods of execution. Failure to respect article 7 would inevitably render the execution arbitrary in nature and thus also in violation of article 6. Failure to provide individuals on death row with timely notification about the date of their execution constitutes, as a rule, a form of ill-treatment, which renders the subsequent execution contrary to article 7 of the Covenant<sup>6</sup>.

Violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of article 6 of the Covenant. Such violations might involve the use of forced confessions; the inability of the accused to question relevant witnesses; lack of effective representation involving confidential attorney-client meetings during all stages of the criminal proceedings, including criminal interrogation, preliminary hearings, trial and appeal; failure to respect the presumption of innocence; lack of an effective right of appeal; lack of adequate time

<sup>5</sup> Human Rights Committee, General comment No. 36, article 6: right to life (CCPR/C/GC/36): <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H115979OVGG B%2bWPAXhNI9e0rX3cJImWwe%2fGBLmVrGmT01On6KBOqgmXPNjrrLLdefuuQjjiN19BgOr%2fS93rKPWb CbgoJ4dRgDoh%2fXgwn>

<sup>6</sup> Ibid.

and facilities for the preparation of the defence, including the inability to access legal documents essential for conducting the legal defence or appeal, such as official prosecutorial applications to the court, the court's judgment or the trial transcript; lack of suitable interpretation; failure to provide accessible documents and procedural accommodation for persons with disabilities; excessive and unjustified delays in the trial or the appeal process; and general lack of fairness of the criminal process, or lack of independence or impartiality of the trial or appeal court. In addition, the death penalty must not be imposed in a discriminatory manner contrary to the requirements of articles 2 (1) and 26 of the Covenant<sup>7</sup>.

In this regard, we also wish to recall that, pursuant to article 5 of the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council resolution 1984/50 of 25 May 1984, "(c)apital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the [ICCPR], including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings"<sup>8</sup>.

According to article 6 (2), the death penalty can only be carried out pursuant to a judgment of a competent court. Such a court must be established by law within the judiciary, be independent of the executive and legislative branches and be impartial. It should be established before the commission of the offence. Any penalty of death can be carried out only pursuant to a final judgment, after an opportunity to resort to all judicial appeal procedures has been provided to the sentenced person, and after petitions to all other available non-judicial avenues have been resolved, including supervisory review by prosecutors or courts, and consideration of requests for official or private pardon<sup>9</sup>.

States parties are required pursuant to article 6 (4) to allow individuals sentenced to death to seek pardon or commutation, to ensure that amnesties, pardons and commutation can be granted to them in appropriate circumstances, and to ensure that sentences are not carried out before requests for pardon or commutation have been meaningfully considered and conclusively decided upon according to applicable procedures<sup>10</sup>.

Article 6 (6) reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights<sup>11</sup>.

Although the allusion to the conditions for application of the death penalty in article 6 (2) suggests that when drafting the Covenant, the States parties did not universally regard the death penalty as a cruel, inhuman or degrading punishment per se, subsequent agreements by the States parties or subsequent practice establishing

<sup>7</sup> Ibid.

<sup>8</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>

<sup>9</sup> GC no. 36, op cit.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

such agreements may ultimately lead to the conclusion that the death penalty is contrary to article 7 of the Covenant under all circumstances. The increasing number of States parties to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, other international instruments prohibiting the imposition or carrying out of the death penalty, and the growing number of non-abolitionist States that have nonetheless introduced a de facto moratorium on the exercise of the death penalty, suggest that considerable progress may have been made towards establishing an agreement among the States parties to consider the death penalty as a cruel, inhuman or degrading form of punishment. Such a legal development is consistent with the pro-abolitionist spirit of the Covenant, which manifests itself, inter alia, in the texts of article 6 (6) and the Second Optional Protocol<sup>12</sup>.

We also wish to refer to article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>13</sup> states that: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever (...) may be invoked as a justification of torture (...)”.

Article 7 of the CAT also states that: “The State Party (...) shall (...) submit the case [of torture] to its competent authorities for the purpose of prosecution (...)”.

Article 12 of the CAT further provides that: “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”.

Article 14 of the CAT states that:” Each State Party shall ensure (...) that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. (...)”.

Article 15 of the CAT provides that: “(...) any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings (...)”.

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<sup>12</sup> Ibid.

<sup>13</sup> <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>