

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers; 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 7/2021

16 July 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the independence of judges and lawyers; 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 44/5, 45/3, 43/4, 41/12, 44/8, 40/16 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 reportedly imminent execution of 12 individuals following a mass trial, which failed to meet due process and fair trial standards, marred by allegations of enforced disappearances, torture and other cruel, inhuman or degrading treatment or punishment and arbitrary detention.

According to the information received:

On 14 June 2021, the Court of Cassation of Egypt upheld the convictions and death sentences against 12 men in a case known as the "Rabaa dispersal" case, related to the dispersal, on 14 August 2013, by security forces of a sit-in held in Rabaa al-Adawiya square in Cairo to protest against the ousting of former President Mohamed Morsi. The events reportedly led to the killing of at least 900 people.

The 12 individuals alleged to be at imminent risk of execution are:

- 1) Mr. Abdelrahman Abdelhamid el-Bar, born in 1963, member of the Muslim Brotherhood's Guidance Council;
- 2) Mr. Mohamed Mohamed Ibrahim el-Beltagy, born in 1963, former member of Parliament for the Freedom and Justice Party;
- 3) Mr. Safwat Mohamed Hamouda Higazy, born in 1963, Islamic preacher;

- 4) Mr. Osama Yassin, born in 1964, former Minister of Youth and Sports under former President Mohamed Morsi;
- 5) Mr. Ahmed Mohamed Aref, born in 1985, dentist, spokesperson of the Muslim Brotherhood;
- 6) Mr. Ihab Wagdi Mohamed, born in 1983, computer engineer;
- 7) Mr. Mohamed Abdelhai Hussein al-Faramawy, born in 1980, accountant;
- 8) Mr. Mostafa Abdelhai Hussein al-Faramawy, born in 1990, computer engineer;
- 9) Mr. Ahmed Farouk Kamel, born in 1948, lawyer;
- 10) Mr. Haytham al-Sayed al-Araby, born in 1985, contractor;
- 11) Mr. Mohamed Mahmoud Ali Zanati, born in 1963, former Secretary-General of the Freedom and Justice Party in New Cairo;
- 12) Mr. Abdelazim Ibrahim Attiya, born in 1975, doctor.

According to reports, following the dispersal of the sit-in, a total of 739 individuals were brought to trial, on a range of charges including participation in illegal protests, murder of members of the security forces, murder and attempted murder.

Arrests and prosecutions were mainly based on Law no. 10/1914 on assembly. This law attributes individual criminal responsibility to participants of a gathering of more than 5 people, held with a purpose of “committing a crime, or obstructing or delaying the implementation of laws and regulations” or seeking to “influence the authorities” for any crime committed during the gathering, as long as participants were aware of its aim (articles 2 and 3). They also arose from article 32 of the Egyptian penal code, which allows for the application of the most severe penalty if a single act amounted to multiple crimes, or if multiple crimes were committed for a single criminal purpose.

On 8 September 2018, a terrorism-circuit criminal court in Cairo handed down 75 death sentences, 47 life sentences, and prison terms ranging from 15 to 5 years to 612 people. Five defendants died during the course of the trial. Those in custody filed an appeal with the Court of Cassation. The Court upheld the death sentences against 12 men, commuted the death sentences of 31 men and upheld the prison sentences.

The judicial proceedings did not meet due process and fair trial standards, particularly with regard to the right to time and facilities for the preparation of the defence and to communicate with the counsel of one’s choice; the right to

be tried by a competent, impartial and independent tribunal; the right to cross examine witnesses, and the right to a judicial review.

The Courts failed to investigate allegations raised by the defendants of enforced disappearance and torture and other cruel, inhuman or degrading treatment or punishment.

The verdicts were not adequately motivated and the judge presiding over the initial trial publicly expressed his criticism of the Rabaa Al-Adawiya sit-in and of the members and supporters of the Muslim Brotherhood, while the trial was still ongoing, and in a verdict related to another case.

Six of the 12 men sentenced to death were already in police or security custody in July 2013, and thus could not have been involved in the violent dispersal of the Rabaa Al-Adawiya square, which took place in August.

The 12 men have been held in conditions which may amount to torture and other cruel, inhuman or degrading treatment or punishment. Five of them, held in Tora prison 1 (also known as Scorpion prison), have been barred from family visits and have been held in solitary confinement since their arrest. Other prisoners complained about having no or insufficient access to fresh air, sunlight or time outside their cells and the prison authorities' refusal to provide them with basic necessities including sufficient food, clothes and items for personal hygiene, even when costs were covered by prisoners or their families. Five others were beaten and insulted by guards, and eight were denied access to adequate medical care, including in relation to conditions they had been suffering from before their detention.

The execution of death penalties in Egypt escalated since 2020, during which at least 107 individuals were executed. To date, since the beginning of 2021, 58 death sentences were executed, making Egypt the third top executioner globally.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that, if confirmed, they would amount to violations of the right to life, as set forth in article 3 of the Universal Declaration of Human Rights (UDHR) and article 6 of the International Covenant on Civil and Political Rights (ICCPR); the right 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 (article 10 of the UDHR and 14 of the ICCPR). Egypt ratified the ICCPR in 2001. This ratification constitutes a formal commitment of the State, irrespective of the political colour of successive governments, to implement its provisions in domestic law, procedures and practices; and to investigate and sanction any breach thereof.

These 12 executions may also violate the absolute prohibition of enforced disappearance, as set forth in the Declaration on the Protection of all Persons from Enforced Disappearance; and 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 (CAT). Egypt ratified the CAT

in 1986, and as the legal obligation, which is not optional, under international and domestic law, to implement scrupulously its spirit and letter.

When not legally prohibited, the death penalty may be imposed only following compliance with a strict set of substantive and procedural requirements. It may only be imposed pursuant to a final judgment rendered by a competent and independent court, after a legal process which affords to the person tried the most stringent safeguards to ensure a fair trial. This includes, among others, the right to be presumed innocent until proven guilty by such a court and the right to adequate legal assistance at all stages of the proceedings.

A mass trial can hardly meet the minimum standard required for a fair trial, given that it would make it impossible to ensure an individual determination of responsibility for the acts under trial; which is a fundamental principle of international human rights and criminal law. In the present case, the consistent allegations that the 12 individuals could not properly consult with their lawyers during the trial and therefore had no access to adequate legal representation, not to mention that several of them could not have been present during the August event because they were already in detention, or the fact that the court seem to have been ignoring the allegations of torture, of disappearance and of arbitrary detention, cast serious doubts about the fairness of the trial.

We reiterate our concerns - expressed in our letter of 2 October 2020 (EGY 13/2020) - about Egypt's Terrorism Circuit Courts and allegations of their incompatibility with international due process guarantees; and our related concern about Egypt's counter-terrorism legislation, communicated in the letter dated 28 February 2020 (EGY 4/2020), specifically in relation to the broad and conflated definition of terrorism contained within it and its application to a wide range of actors and activities. We thank the Government for its initial reply of 8 April 2020 and in particular for the comprehensive reply of 11 March 2021 to EGY 4/2020, and look forward to continue a substantive engagement in this regard. We, however, regret that the Government has not replied to EGY 13/2020 and look forward to its response.

The imposition of a death sentence, and its execution, upon the conclusion of a trial in which all the strict guarantees of due process and fair trial standards have not been respected constitutes an arbitrary killing, which is prohibited under international law, and for which the State is responsible (CCPR/C/CG/32, paragraph 59).

If carried out in the present circumstances, the execution of the 12 individuals mentioned above may amount to an arbitrary deprivation of life. We emphasize that when carried out in a widespread and systematic manner, arbitrary executions may well amount to crimes against humanity and may entail universal criminal responsibility for any official involved in such acts.

The UN Human Rights Committee, which the highest and most authoritative body in the United Nations to interpret the provisions of the ICCPR and to define the scope of implementation, has determined that the deprivation of liberty of an individual for exercising their rights to freedom of expression and of peaceful assembly constitutes an arbitrary deprivation of liberty contrary to article 9 of the

ICCPR (See CCPR/C/GC/35 para. 17), and a concurrent violation of articles 19 and 21 of the ICCPR.

Lastly, we recall that allegations of enforced disappearances shall be promptly and effectively investigated. Likewise, victims of torture and other ill-treatment must have a right to lodge a complaint about their treatment while held in custody. Any allegation in this regard must be promptly followed by an impartial examination by a body that is independent of the alleged perpetrator. Whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed, article 12 of the CAT imposes an obligation on the State to investigate. The Government must ensure that complainants are not subject to reprisals and that victims of torture or ill-treatment receive adequate reparation.

Given the irreversible nature of the execution of a death penalty, we respectfully urge your Excellency's Government to **stop the order to execute the 12 persons concerned; to take all the necessary steps to address any allegation of enforced disappearance, torture, arbitrary detention and violation of fair trial and due process guarantees that they may have suffered; and to ensure, at a minimum, that they are retried in full compliance with international legal standards – which we underscore again, are binding on Egypt.**

Last but not least, we raise alarm at what appears a quickly increasing number of execution of death sentences in the country and respectfully reiterate our call to your Excellency's Government to consider establishing an official moratorium on pending executions and future death sentences with a view to ensuring that instances of capital punishment are properly reviewed. Where convictions are based on unfair trials, individuals must be retried in full compliance with international human rights law and standards¹.

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.

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 prompt response on the urgent steps taken, or to be taken, by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with Egypt's human rights obligations under the treaties it has ratified.

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.

¹ See, for instance: Egypt must halt executions, say UN human rights experts: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22613>

2. Please provide detailed information on the factual and legal grounds of the arrest, detention and trial of the 12 defendants, and in particular the charges that have led to the imposition of their sentence of death;
3. Please provide updated and detailed information on the present state of physical and mental integrity of the 12 individuals mentioned above and on their current health status. Within this context, please provide information on measures taken, or envisaged to be adopted, to protect their life and preserve their safety and well-being, including access to adequate medical care, as appropriate.
4. Please provide updated information on any investigation undertaken, or being conducted, with regards to the allegations of enforced disappearance, torture and/or other cruel, inhuman or degrading treatment or punishment and arbitrary detention reportedly suffered by the 12 individuals, with a view to ensuring accountability of those responsible. Please also provide information on measures taken to ensure access of the victims/their families to adequate reparation, as appropriate. If no investigation was or is being conducted, and no reparation afforded, please explain the reasons why.
5. Please provide updated information on the conduct of the proceedings brought against the above-mentioned 12 individuals, including on the legal basis for their arrest and detention. Please explain how the legal process was compatible with applicable international human rights standards, particularly with regard to due process and fair trial requirements. Please explain whether the 12 persons concerned could seek pardon or commutation of their death sentences.
6. Please explain whether, at present, the above-mentioned 12 individuals can be visited by their families and lawyers. If not, please explain the reasons why and how this would be compatible with applicable international human rights standards.
7. Please explain whether their detention is compatible with Egypt's international human rights obligations.

While awaiting a reply, we respectfully urge again Your Excellency's Government to suspend any order to execute the death sentences of these 12 men, to order that their cases be reviewed thoroughly by a new and independent court. In the event that the investigations support or suggest that the allegations of arbitrary arrest and detention, enforced disappearance, incommunicado detention in solitary confinement, torture or ill-treatment and unfair trials prove to be correct, to ensure the accountability of any person responsible of the alleged violations.

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.

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

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