

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

Ref.: AL EGY 5/2022  
(Please use this reference in your reply)

29 July 2022

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 42/22, 45/3, 44/5 and 42/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of enforced disappearance, arbitrary detention and torture or cruel, inhuman and degrading treatment, and denial of access to timely and adequate medical care. These conditions reportedly lead to the death under State custody of Mr. Ayman Mohammed Ali Omar Hadhoud. We are also writing about what appears to be the failure to adequately investigate the causes and circumstances of this death in line with applicable international standards.** It is alleged that his death in custody forms part of an ongoing pattern of the use of arbitrary arrest, politically motivated prosecution, and inhumane conditions of detention, as well as torture against scholars and researchers in Egypt.

According to the information received:

*Circumstances of the alleged arbitrary arrest and enforced disappearance of Mr. Hadhoud*

Mr. Ayman Mohammed Ali Omar Hadhoud (أيمن محمد علي عمر هدهود), was a 48-year-old Egyptian citizen from El-Zeitoun, in the Cairo Governorate. Mr. Hadhoud was an economist, researcher and member of the Reform and Development Party, a liberal party with a small presence in parliament. Prior to his arrest, Mr. Hadhoud regularly spoke out against the Egyptian authorities' economic policies in his social media accounts. He was criticized for his role in investigating and challenging corruption among major officials of the Government.

On 5 February 2022, at around 10.30 p.m., Mr. Hadhoud was last seen in a restaurant in Doqqi in the Greater Cairo area. While at the time of his arrest, the location of this occurrence and his subsequent whereabouts were unknown, a statement by the National Public Prosecutor dated 12 April 2022, subsequently clarified that Mr. Hadhoud was arrested on 6 February 2022 in the Zamalek district of Cairo.

On 8 February 2022, an official from the National Security Agency (NSA), informed persons associated with Mr. Hadhoud of his detention at Al-

Amiriyya Police Station in the northwest of Cairo Governorate. Mr. Hadhoud was said to be held in an undisclosed area within this police station, which the NSA controls, and ill-treated during interrogation, throughout which he would not have had access to legal counsel. Simultaneously, officers of the NSA interrogated persons associated with Mr. Hadhoud about his work, political leanings and activities, raising concerns that his detention had been politically motivated. The officers also indicated to these persons that Mr Hadhoud would be released after the interrogation was completed.

On 11 February 2022, after having received no additional information on the fate of Mr. Hadhoud, persons associated with him travelled to the Al-Amiriyya Police Station to enquire about his whereabouts. The officers at the station denied having him in custody and told the persons concerned never to return to the police station.

*Circumstances surrounding the alleged arbitrary detention and death of Mr. Hadhoud*

On 14 February 2022, Mr. Hadhoud was officially admitted to the forensic medicine department of Abbasiyya Psychiatric Hospital, where he was placed in a special ward for detainees. Persons associated with Mr. Hadhoud only learned informally about his transfer to the Psychiatric Hospital four days later. The forensic unit reportedly functions as a detention centre controlled by the Ministry of Interior, where inmates are prevented from moving freely by security forces. In this facility, they would allegedly be at greater risk of being tortured or otherwise ill-treated by security officers, including through the use of electric shocks.

Simultaneously, persons associated with Mr. Hadhoud decided to contact the local media to inform them of his enforced disappearance and subsequent detention. Although these persons repeatedly attempted to visit him, the hospital staff either denied that he was detained on the premises or demanded a letter of approval of the visit from the Public Prosecutor, as Mr. Hadhoud was allegedly being held in connection with criminal proceedings. However, such approval could not be obtained, as the Public Prosecutor stated at the time that no such criminal proceedings had been initiated against Mr. Hadhoud.

On 19 February 2022, due to increasing public pressure, the director of Abbasiyya Psychiatric Hospital confirmed that Mr. Hadhoud had been arrested for allegedly attempting to steal a car in the town of Senbellawein in the Dakahlia Governorate. This account differs from the version given by the Ministry of Interior and the Public Prosecution, which accused Mr. Hadhoud of breaking into an apartment in Zamalek on 6 February 2022.

Throughout March 2022, persons associated with Mr. Hadhoud were repeatedly turned away by both the Public Prosecutor and the hospital director, who rejected their requests for further information about Mr. Hadhoud's fate.

On 7 April 2022, a complaint was filed with the National Human Rights Council requesting an investigation into the arbitrary detention and enforced disappearance of Mr. Hadhoud by the NSA.

On 9 April 2022, 123 days after Mr. Hadhoud's arrest, persons associated with him were officially informed of his death in custody on 5 March 2022, more than a month before they were notified. According to the Public Prosecutor, Mr. Hadhoud died of “a sharp drop in blood pressure and cardiac arrest” during his transfer from Abassiyya Psychiatric Hospital to a Government-run hospital, and would also have been possibly infected with COVID-19 at the time of his death. The police officer who provided that information claimed that he had been trying to contact them for over a month.

During his detention at the psychiatric hospital, Mr. Hadhoud appears to have been denied timely and appropriate medical care, which may have caused or contributed to his death. On 5 March 2022, the nurse on duty contacted a doctor to report the deterioration of Mr. Hadhoud's health condition. The doctor prescribed medication remotely without examining the patient. Although the director of the hospital was informed at 15:30 on the same day that Mr. Hadhoud's health condition had deteriorated, it was not until five hours later, at around 20:30 that Mr. Hadhoud was transferred to a hospital adequately equipped to treat him. Furthermore, Mr. Hadhoud's medical file was found to be empty, suggesting that he was admitted to the forensic medicine department without undergoing a physical examination, as required by the admission procedures for patients in hospitals affiliated to the Egyptian General Secretariat of Mental Health. This raised serious concerns that the decision to admit Mr. Hadhoud to Abassiyya Psychiatric Hospital was not made on medical grounds.

On 10 April 2022, persons associated with Mr. Hadhoud identified his body at the morgue of Abassiyya Psychiatric Hospital and obtained a death certificate indicating that he had died on 5 March 2022. The management of the Abassiyya Psychiatric Hospital warned its staff against speaking about the case and threatened to refer them to NSA if they did so.

*Alleged lack of adequate forensic and criminal investigations into the death of Mr. Hadhoud*

On 11 April 2022, more than a month after Mr. Hadhoud's death in custody, an autopsy was performed following mounting public pressure. His body was not properly stored while in the hospital morgue. These circumstances may have led to the loss of evidence, which rendered the identification of traces of torture and ill-treatment considerably more difficult.

On 12 April 2022, a statement of the Public Prosecution formally announced the opening of an investigation but claimed the death to be criminally unsuspecting. It also revealed that the requested court order to place Mr. Hadhoud in a government psychiatric hospital had been aimed at preparing a report on the stability of his mental state, as two members of the tripartite committee in charge of his examination concluded that he was suffering from schizophrenia at the time of the alleged crime. The prosecutor reportedly deemed him unfit for interrogation and ordered his transfer to Abassiyya Psychiatric Hospital.

On 18 April 2022, the prosecution released a second statement outlining the results of the autopsy, indicating that no injuries had been found on

Mr. Hadhoud's body that could have been indicative of “criminal violence or resistance” and that he had died of a chronic heart condition caused by blood and respiratory failure. The statement further noted that no criminal suspicion had been established in relation to the circumstances of his death and that, as a result, the investigation into Mr. Hadhoud's death had been discontinued.

According to sources, this official autopsy report failed to provide information on a detailed external examination of the body or on Mr. Hadhoud's medical history and pre-existing health conditions and, moreover, would not assist in clarifying the circumstances of his death.

An independent forensic medical report and leaked photographs of Mr. Hadhoud's body taken at the morgue following the autopsy suggest that, prior to his death, Mr. Hadhoud was subjected to ill-treatment, possibly amounting to torture, which may have caused his death due to a pre-existing heart condition. Photographs reveal marks on his forearms and the left side of his face, indicating that he had suffered repeated burns and beatings prior to his death. These marks could not be explained by the natural processes that occur when corpses decompose. When persons associated with Mr. Hadhoud received his body, they were also able to observe cuts and other injuries on his body, as well as skeletal damage and burn marks. In this context, an independent forensic medical expert concluded that the cause of death should be considered unexplained based on the information available in the official autopsy report.

In addition, concerns about the independence and impartiality of the Public Prosecution's investigation reportedly stem from the same actor's alleged involvement in the circumstances of Mr. Hadhoud's enforced disappearance.

On 20 April 2022, a request for access to a copy of Mr. Hadhoud's file and forensic medical report was submitted to the Prosecution (case number 672 of 2022, Qasr El Nil), which was denied without justification.

On 24 April 2022, a complaint, Case No. 738 of 2022, was filed with the Nasr City Prosecution against the director of Abbasiyya Psychiatric Hospital and the head of the forensic medicine department for concealing the whereabouts and fate of Mr. Hadhoud and denying him timely and appropriate medical care while in detention. The prosecution has not responded to this request to date.

On 19 May 2022, persons associated with Mr. Hadhoud filed two further requests with the Nasr City Prosecutor's Office to reopen the investigation into Case No. 738 of 2022 and to obtain and examine key evidence, including video footage from 15 Maraashly Street in Zamalek, Cairo, from 5 February 2022 from 10.30 p.m. until Mr. Hadhoud's alleged arrest at midnight on 6 February 2022; video footage from Qasr el-Nil and Amiriya police stations, where Mr. Hadhoud was allegedly detained between 6 and 17 February 2022; and video footage from Abassiya Psychiatric Hospital from 13 February 2022 until his death on 5 March 2022.

On 1 June 2022, persons associated with Mr. Hadhoud were informally notified that their requests had been rejected, without any reasons. Their appeal is still pending.

At the time of writing, State authorities have not provided persons associated with Mr. Hadhoud with a copy of the file detailing the legal basis for his arrest and detention and the nature of the charges against him, or a copy of his official autopsy report.

At least 56 individuals died in detention in Egypt in 2021 under similar circumstances, in cases where the Public Prosecution and senior medical personnel seem to be complicit in criminal activities committed by Egyptian security forces and where detainees are often held in National Security Agency facilities such as the one to which Mr. Hadhoud was taken. In these cases, the prosecution would have systematically failed to conduct full, impartial, independent and prompt investigations into the causes and circumstances of these deaths in custody.

Without prejudging the accuracy of the received information, we express our grave concern at the detailed allegations received concerning the death of Mr. Hadhoud while in State custody after being subjected to enforced disappearance, arbitrary detention and lack of due process, as well as, possibly, torture and other cruel, inhuman or degrading treatment or punishment. We are alarmed by the lack of prompt, effective and transparent investigations into these alleged violations in full compliance with applicable international standards and that no person or entity has yet been held accountable for any of these.

If confirmed, these allegations would amount to repeated violations of the right to life, as set forth in Article 3 of the Universal Declaration of Human Rights and in Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which Egypt ratified on 14 January 1982. They would violate the right to liberty and security of the person, protected by Article 9 of the ICCPR, the right to be treated with dignity during detention (Article 10 of the ICCPR), the right to due process and fair trial (Article 14 of the ICCPR), the right to recognition as a person before the law (Article 16 of the ICCPR), the right to be free of arbitrary interference with family life (Article 17 of the ICCPR), the right to seek information (Article 19 (2) of the ICCPR), the right to an effective remedy (Article 2(3) of the ICCPR). They would also violate the absolute prohibition of enforced disappearance, as set forth in the 1992 Declaration on the Protection of all Persons from Enforced Disappearance, and of torture and other cruel, inhuman or degrading treatment or punishment, established in Article 7 of the ICCPR, 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. They would further violate article 12, coupled with article 2.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Egypt 14 August 1982, which protects the right of everyone, including people prisoners and detainees, to the enjoyment of the highest attainable standard of physical and mental health.

We also note with serious concern what appears to be a pattern of retention of information about the detention of Mr. Hadhoud, as well as of threats by security, judicial and medical officials against family members and others enquiring about his fate and whereabouts, to dissuade them to enquire.

The allegations concerning detention conditions that led to the death in custody in this case are similar to those raised in several previous communications

addressed to your Excellency's Government, including most recently [AL EGY 18/2020](#) dated 21 December 2020, [AL EGY 8/2020](#) sent on 18 June 2020 and [AL EGY 2/2020](#) sent on 3 February 2020.

We underscore that the prohibition of enforced disappearance, the prohibition of torture, and the corresponding obligation to investigate and punish perpetrators of these crimes have attained the status in international law of *jus cogens*.

In light of these grave allegations, we recall that the right to life constitutes an international customary and *jus cogens* norm, universally binding at all times (A/HRC/35/23, paras 25-26). 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 (CCPR/C/GC/36, para. 25). 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." If the deprivation of life of persons results from acts or omissions that violate provisions of the Covenant other than Article 6, it should be considered arbitrary. 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. 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). Therefore, in case of a death of a person in custody, there exists a presumption of State responsibility "which can only be rebutted on the basis of a proper investigation which establishes the State's compliance with its obligations under Article 6."<sup>1</sup>

We are alarmed by the 56 reported cases of death in custody in circumstances allegedly similar to those in Mr. Hadhoub's case, in which State authorities appear to have systematically failed to conduct effective investigations. Investigations of all instances of death in custody must be thorough, prompt, independent and impartial and in compliance with international standards, in particular the *UN Principles for the Effective Prevention and Investigation of Extra-Legal, Summary and Arbitrary Executions*, and the *Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016))*. According to the Minnesota Protocol, "investigators and investigative mechanisms must be, and must be seen to be, independent of undue influence" at all stages and must be "independent of any suspected perpetrators and the units, institutions or agencies to which they belong" (para.28). The Minnesota Protocol further highlights that investigations "must be transparent, including through openness to the scrutiny of the general public and of victims' families" who have the right to take part in the investigations, and to obtain available information on the causes of death (para. 32); family members should be entitled to have a representative present during the autopsy (para.37); and cardio-respiratory arrest or respiratory failure are examples of modes of death but cannot conclude the immediate cause of death (para. 267 (c)). Failure to investigate violations of the Covenant and to bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR (CCPR /C/21/Rev.1/Add.13, paras. 15).

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<sup>1</sup> *Dermit Barbato v Uruguay, Communication No. 84/1981, Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40), annex IX; CCPR/C/GC/36 para. 29.*

We further reiterate references to the CAT, in particular Article 12, which requires States ensure a prompt and impartial investigation is carried out wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. The Committee against Torture<sup>2</sup> and the UN Human Rights Committee<sup>3</sup> have repeatedly concluded that enforced disappearances may amount to torture and other forms of ill-treatment both with regard to the disappeared and with regard to their family members, due to the anguish and uncertainty concerning the fate and whereabouts of loved-ones.

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 provide detailed information about the factual and legal grounds for the arrest and detention of Mr. Hadhoud; the details of the charges and the judicial proceedings initiated against him; as well as the various places of detention in which he was held from the time of his arrest to this death in detention.
3. Please explain in detail why he was held incommunicado and thus effectively was disappeared for the entire period between his arrest on 5 or 6 February and his death (presumably) on 5 March 2022; and why it was not before a month after his death, or 123 days after his arrest, that his death was notified to his family. Please explain how these developments are compatible with Egypt's domestic legislation and human rights obligations under the treaties it has ratified.
4. Please provide detailed information about the conditions of detention which Mr. Hadhoud was subjected to in the various places of detention where he was held until his death; and why neither his family nor his lawyer were allowed to access to him during that period. How is this compatible with are compatible with Egypt's domestic legislation and international human rights obligations?
5. Bearing in mind that a deprivation of liberty followed by the denial that such a deprivation of liberty has taken place or the concealment of the fate and whereabouts of the person concerned, amount to an enforced disappearance, please provide information on the steps taken to investigate the enforced disappearance of Mr. Hadhoud, identify those responsible, prosecute and, if appropriate, sanction them.

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<sup>2</sup> See conclusions and recommendations on the second periodic report of Algeria, A/52/44, para. 79, on the initial report of Namibia, A/52/44, para. 247 and on the initial report of Sri Lanka, A/53/44, paras. 249 and 251.

<sup>3</sup> CCPR/C/50/D/440/1990 (24 March 1994), para. 5.4; Communications Nos. 107/1981, *Almeida de Quinteros v Uruguay*, Views adopted by the Human Rights Committee on 21 July 1983, para. 14.

6. Please provide information on the steps your Excellency's Government has taken to investigate the death in custody of Mr. Hadhoud. Please include information on the extent to which these investigations complied with international standards including the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)). Please also include a full copy of the forensic report and raw autopsy data; medical files from the Abassiya Psychiatric Hospital and an examination of CCTV footage between 5 February 2022 and 5 March 2022 at relevant locations as requested by persons associated with Mr. Hadhoud.
7. Please explain why persons associated with Mr. Hadhoud have not been informed of his death until more than a month after his passing.
8. Please also provide information related to the provision and the type of medical health care provided to him while deprived of his liberty and prior to his death.
9. Please provide details on the results of any investigation and judicial proceedings or other inquiry undertaken in relation to the allegations of torture, arbitrary detention and enforced disappearance. 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. In this regard, please explain why the requests made in relation to Case No. 738 of 2022 have been dismissed.
10. Please provide information about existing oversight mechanisms for the situation in prisons and for the investigation of deaths in prison.

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

While awaiting a reply, we urge that the alleged enforced disappearance, arbitrary detention, torture and death in custody of Mr. Hadhoud are independently and effectively investigated, and that effective measures be taken to prevent the re-occurrence such violations. In the event that the investigations support the allegations to be correct, we urge the Government of Egypt to hold accountable any person(s), found responsible.

Given the widespread pattern of serious human rights violations in Egypt recorded over a long period of time, including politically-motivated arbitrary arrest and detention, incommunicado detention and enforced disappearance, torture and ill-treatment, death in detention, lack of proper investigation of these violations and the related impunity and recurrence of these violations that prevails - and this in spite of the numerous communications to that effect from United Nations Human Rights mechanisms, including from our respective mandates – and in the absence of any tangible measure to seriously address this situation, we may publicly express our concerns about these and numerous other previous cases brought to the attention of Your Excellency’s Government.

While the information in our possession may contain inaccuracies, for which we are seeking your clarifications, read against the backdrop of numerous past similar allegations, the current allegations warrant serious attention and urgent corrective action to prevent their recurrence. In the absence of such corrective measures, we believe that the wider public should be alerted to the implications of these allegations for the enjoyment and exercise of civil and political rights in Egypt. For these reasons, we would appreciate a prompt and detailed response to this communication. Any public expression of our concerns will indicate that we have been in contact with your Excellency’s Government’s to seek clarification of the issue/s in question.

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

Mumba Malila  
Vice-Chair of the Working Group on Arbitrary Detention

Luciano Hazan  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

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

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer to Articles 3, 5, 6, 9, 10 and 12 of the Universal declaration of Human Rights and Articles 2 (3), 6 (1), 7, 9, 10, 14, 16, 17 and 19 (2) of the International Covenant on Civil and Political Rights (ICCPR), which Egypt ratified on 14 January 1982, which provides that every individual has the right to an effective remedy, the right to life, the right not to be arbitrarily deprived of his or her life, the right to be free from torture or cruel, inhuman or degrading treatment or punishment, the right to liberty and security of a person, the right to recognition everywhere as a person before the law, the right to be free from arbitrary or unlawful interference into family life and the right to seek information.

We refer to General Comment No. 36 of the Human Rights Committee, which states that the right to life is “the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies which threatens the life of the nation. The right to life has crucial importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed by other human rights (para. 2).” The right to life further entitles all individuals “to be free from acts or omissions that are intended or may be expected to cause their unnatural or premature death” (para. 3). A death is by definition arbitrary if it is caused by a violation of international or domestic law, including international human rights law (para. 12).

In light of the allegations of death in custody, the General Comment No. 36 highlights that 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.” Furthermore, the duty to protect the life of all detained individuals includes providing detainees with the necessary medical care and appropriately regular monitoring of their health (para. 25)

When an individual dies due to unnatural circumstances while in State custody, there is a presumption of State responsibility. In order to overcome this presumption, the State must investigate and this investigation must be (i) prompt; (ii) effective and thorough; (iii) independent and impartial; and (iv) transparent. We refer to the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. This principle was reiterated by the Human Rights Council in Resolution 17/5 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4) and is also retained in General Comment No. 36 para. 28.

We further refer your Excellency’s Government to the *Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and*

*Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016))*. In cases involving a death while in detention, an autopsy should be performed, and if it is not done, the reason should be justified in writing and subject to judicial review (see Minnesota Protocol, para. 25). In performing this autopsy, the Minnesota Protocol's detailed guidelines on autopsies should be followed (see paras. 73-250). In addition to an autopsy, an effective and thorough investigation would require the collection of "all testimonial, documentary and physical evidence" (para. 24). Moreover, investigations must "seek to identify not only direct perpetrators but also all others who were responsible for the death, including, for example, officials in the chain of command who were complicit in the death. The investigation should seek to identify any failure to take reasonable measures which could have had a real prospect of preventing the death. It should also seek to identify policies and systemic failures that may have contributed to a death, and identify patterns where they exist" (para. 26).

This duty to investigate is "central to upholding the right to life. It asserts the inviolability and inherent value of the right to life through mechanisms of accountability, while simultaneously promoting remedies where violations have occurred. To this end, the duty gives practical effect and worth to a State's obligations to respect and protect life." (A/HRC/41/CRP.1, para. 258). In the context of the extent of impunity for crimes that violated the right to life, highlighted by the lack of identification of perpetrators, we recall that the failure to initiate investigations and bring the perpetrators of such violations to justice may lead to impunity that may encourage repetition of the crimes by others in subsequent incidents (para. 15, General Comment No. 31 [80] The Nature of the General Legal Obligation of States Parties to the Covenant). We note that the "consequences of non-investigation are extremely serious, including the violation of the right to life; the continuation of policies and practices which may impact on the right to life; and the perpetuation of a range of violations and bad practices because of the veil of ignorance or secrecy surrounding them" (A/HRC/41/CRP.1, para. 261).

In light of the allegations of torture and other cruel, inhuman or degrading treatment or punishment, we refer to Article 7 of the ICCPR which prohibits torture and other cruel, inhuman or degrading treatment or punishment. We recall the absolute prohibition of torture, which is a *jus cogens* norm of international law as well as of the UN Convention against Torture as well as of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 6 and the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 1.

Paragraph 7c of Human Rights Council Resolution 16/23 urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment." Furthermore, we would like to recall Principle 17 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, which stipulates that the adoption of specific measures are required under international law to ensure meaningful access

to the right to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention and receive without delay appropriate remedies by certain groups of detainees. This includes, but is not limited to, persons detained in solitary confinement or other forms of incommunicado detention or restricted regimes of confinement. The Working Group on Arbitrary Detention in its previous jurisprudence has stated that a forced confession taints the entire proceedings, regardless of whether other evidence was available to support the verdict<sup>4</sup>.

In connection with the above alleged enforced disappearance of Mr. Hadhoud, we would like to remind your Excellency's Government of the absolute prohibition of enforced disappearances under international human rights law. In its preamble, the 1992 Declaration on the Protection of All Persons from Enforced Disappearances expressed deep concern about persons being detained against their will by officials of the Government, "followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law." It condemned any "act of enforced disappearance "as a denial of the purposes of the Charter of the United Nations" and "as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights", and stressed 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.". We also recall that the Declaration sets out the necessary protection by the State, in particular Articles 9, 10, 11 and 12, which relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons.

In this regard, we would like to further remind your Excellency's Government that the right to challenge the lawfulness of detention before a court, protected under article 9 of the ICCPR is a self-standing human right and a peremptory norm of international law, which applies to all forms of deprivation of liberty and the absence of which constitutes a human right violation. It is a judicial remedy designed to protect personal freedom and physical integrity against arbitrary arrest, detention, including secret detention, exile, forced disappearance or risk of torture and other cruel, inhuman or degrading treatment or punishment. It is also a means of determining the whereabouts and state of health of detainees and of identifying the authority ordering or carrying out the deprivation of liberty.<sup>5</sup> In its jurisprudence, the Working Group on Arbitrary Detention has also reiterated that giving prompt and regular access to family members, and to independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture as well as protection against arbitrary detention and infringement of personal security.<sup>6</sup>

It is also noteworthy that the prohibition of enforced disappearance and the corresponding obligation to investigate and punish perpetrators have attained the status of *jus cogens*. More specifically, as it concerns, *inter alia*, the definition of

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<sup>4</sup> See Opinions 54/2020

<sup>5</sup> See A/HRC/30/37, para. 2.

<sup>6</sup> See Opinion No. 87/2020, para. 116.

enforced disappearance; the right to report the case to the competent authorities and to carry an effective investigation; the prohibition of secret detention, the right of family relatives or legal representatives to access information; and the right to know the truth, to search for the disappeared and to obtain reparations. In this regard, Article 13 of the 1992 Declaration on the Protection of All Persons from Enforced Disappearances includes a set of important principles to investigate and prosecute enforced disappearances, requiring that: (a) investigative authorities should have access to any place of detention, official or not, (b) the investigation should be undertaken without delay, even *ex officio*, without formal complaint, (c) those suspected of having been involved in the disappearance should not have the possibility of influencing the investigation through pressure, acts of intimidation or reprisals; (d) State agencies the members of which could be involved in the disappearance should not participate in the investigations; (e) authorities should have the necessary powers to compel the attendance of witnesses and the production of the relevant documents, including military, police and intelligence files.” (A/HRC/39/46, para. 62).

In its General Comment No 35, the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary. As reiterated in the Working Group on Arbitrary Detention’s jurisprudence and in the Human Rights Committee’s General Comment No. 35, enforced disappearance constitutes a particularly aggravated form of arbitrary detention. Furthermore, in its General Comment on the right to truth in relation to enforced disappearance, the Working Group on Enforced or Involuntary Disappearances emphasised that “the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons in an absolute right, not subject to any limitation or derogation. ... The State cannot restrict the right to know the truth about the fate and whereabouts of the disappeared as such restrictions only adds to, and prolongs, the continuous torture inflicted upon the relatives.”

We would like to also bring to the attention of your Excellency’s Government article 12, coupled with article 2.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Egypt 14 August 1982, which enshrines the right of everyone, including people prisoners and detainees, to the enjoyment of the highest attainable standard of physical and mental health. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights reiterates that “States are obliged to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services.” Additionally, we would like to refer to the Mandela Rules, adopted unanimously by the UN General Assembly (A/RES/70/175), which recognize the responsibility of States to provide health care for prisoners, free of charge without discrimination (Rule 24), paying special attention to those with special healthcare needs or with health issues that hamper their rehabilitation (Rule 25) and indicate that prisoners requiring specialized treatment shall be transferred to specialized institutions or to civil hospitals (Rule 27). We wish to also remind Rule 46 that stresses that health-care personnel shall “pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff” and that “[h]ealth-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider

it necessary to terminate or alter them for physical or mental health reasons”.

Moreover, we wish to refer to the report of the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in which he makes reference to the fact that “[i]n contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life” and that [v]iolations of the right to health emerge as both causes and consequences of confinement and deprivation of liberty”.<sup>7</sup> In addition the mandate holder indicated that [b]earing in mind the goal of progressive realization of the right to health, measures are needed to ensure its realization in closed settings, including a plan to end forced confinement in hospitals”.<sup>8</sup> He also stresses that “for the right to health to be enjoyed in detention centres, health-care facilities, goods and services must be available, accessible, acceptable and of good quality”.<sup>9</sup> In addition, the Special Rapporteur urges States to “[f]ully abide by, and implement, the Nelson Mandela Rules, in particular as regards the provision of health care in prisons”.<sup>10</sup>

Finally, we would like to draw the attention of your Excellency’s Government to the obligations of States to provide victims of human rights violations with effective remedies. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in 2006, provide that victims of a gross violation of international human rights law or a serious violation of international humanitarian law should be guaranteed: equal and effective access to justice; adequate, effective and prompt reparation for the harm suffered; and access to relevant information about the violations and to redress mechanisms.

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<sup>7</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/38/36, para. 18.

<sup>8</sup> *Ibid.* para. 24.

<sup>9</sup> *Ibid.* para. 34.

<sup>10</sup> *Ibid.* para. 98 (a).