

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights defenders.

REFERENCE:
AL EGY 7/2016

29 July 2016

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 24/7, 24/5, 24/6, 25/13 and 25/18.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **widespread allegations of arbitrary arrests and detentions including incommunicado detentions, lack of access to legal counsel and violations of fair trial and due process of law guarantees, imposition of death penalty following unfair trials, torture and ill-treatment and lack of access to adequate health care during detention, coerced extraction of confessions, and targeting of human rights defenders and civil society organisations (including travel bans and freezing of assets), since 2011.**

Some of the allegations detailed below were the subject of previous communications sent to your Excellency's Government, as, among others, on 4 May 2016 (case no. EGY 6/2016), on 24 March 2016 (case no. EGY 4/2016), on 17 December 2015 (case no. EGY 17/2015, *see* A/HRC/32/53), on 28 October 2015 (case no. EGY 13/2015 *see* A/HRC/31/79), and on 26 June 2014 (case no. EGY 9/2014, *see* A/HRC/28/85). We would like to thank your Excellency's Government for the replies received, yet find that they do not fully address the issues raised in the initial communications.

According to the information received:

Background

Since the beginning of the so-called Egyptian Revolution on 25 January 2011 with massive protests held in Cairo and elsewhere in Egypt, and in particular since the arrest and ouster of then-President Morsi in July 2013, there has been a heavy handed governmental response to silence any dissenters to the current Government under President Adel-Fattah Al-Sisi and particularly those from the youth movement and the Muslim Brotherhood .

Laws restricting freedom of the press, freedom of association and freedom of peaceful assembly accompanied by measures giving broad powers to law enforcement have resulted in creating an authoritative and repressive regime.

Arbitrary arrest and detention

According to the information received, nearly 12,000 persons were imprisoned between January and September 2015, and 22,000 in 2014, often without being formally charged or tried before a court promptly following the arrest. Other reports indicate that between the ouster of then-President Morsi and June 2014, between 16,000 and 41,000 people had been arrested. The majority of those arrested were alleged members or supporters of the Muslim Brotherhood, perceived supporters of former President Morsi, as well as journalists, human rights defenders and dissidents. In addition to targeting the leadership of the Muslim Brotherhood, Egypt's main opposition group, many activists from the Tamarod youth movement were also arrested. In the meantime, many of the youth activists that participated in the 2011 uprising are still behind bars. Some sources indicate that nearly 60'000 persons have been detained for political reasons since July 2013.

Since the beginning of this year, the Secretariat of the UN Working Group on Arbitrary Detention has received over 160 submissions regarding cases of arbitrary detention allegedly occurred in Egypt.

To date, the Working Group on Arbitrary Detention has adopted 13 opinions addressing cases of arbitrary detention concerning 48 individuals which have occurred in Egypt since January 2011 (A/HRC/WGAD/2016/6, A/HRC/WGAD/2016/7, A/HRC/WGAD/2015/14, A/HRC/WGAD/2015/17, A/HRC/WGAD/2015/49, A/HRC/WGAD/2015/52, A/HRC/WGAD/2015/53, A/HRC/WGAD/2014/10, A/HRC/WGAD/2014/35, A/HRC/WGAD/2013/39, A/HRC/WGAD/2012/1, A/HRC/WGAD/2012/11, A/HRC/WGAD/2011/57). We are particularly concerned that among these 48 persons, six were minors at the time of arrest.

In this regard, we encourage your Excellency's Government to submit any updated information on the situations of the individuals concerned. We welcome the release of Yara Sallam, the subject of Opinion No. 2015/52; a minor, one of the subjects of Opinion No. 2015/53; Khaled El-Kazaz, one of the subjects of Opinion No. 2013/39; Sayed Mohammed Adullah Nimr, Islam Abdullah Ali Tony and Ahmed Maher Hosni Saifuddin, the subjects of opinion No. 2012/11; and Ahmed Jaber Mahmoud Othman and Mohammed Amin Kamal, the subjects of Opinion No. 2011/57. In the meantime, we urge your Excellency's Government to implement the opinions rendered by the Working Group and take immediate actions to remedy the situation of all victims of arbitrary detention.

Around the 2016 anniversary of the so-called Egyptian revolution of 25 January 2011, numerous human rights defenders were pre-emptively detained to reduce the likelihood of protests. Such arrests and detention of activists are regularly justified under the law No. 107 of 2013 on "organizing the right to peaceful public meetings, processions and protests" which heavily restricts the right to protest.

In this context, Mr. Haythem Mohammedin and Mr. Ahmed Abdullah, political activists, and Mr. Bawabet Yanayer and Mr. Amr Badr, journalists, were, among others, arrested in April and May 2016 on charges of dissent against the Government (see joint urgent appeal of 4 May 2016 (EGY 6/2016) by 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 and the Special Rapporteur on the situation of human rights defenders).

Between 15 and 25 April 2016, protests took place across Egypt and security forces responded with tear gas and use of force to disperse the protestors. Over 380 protestors, journalists and human rights defenders were arrested during and following the demonstrations.

Excessive use of force

Law No. 107 of 2013, often referred to as Protest Law, which severely limits freedom of peaceful assembly and association, is regularly invoked by authorities to crack down on protesters with excessive or unnecessary force to disperse unauthorised demonstrations and other public gathering, often resulting in serious injuries and sometimes even death of protesters. According to some sources, in 2015, at least 328 individuals allegedly died at the hands of security forces outside detention centres.

Detention conditions and overcrowding

Conditions of detention in prisons and police stations remain extremely poor. Cells are severely overcrowded and unhygienic, and in some cases officials prevented families and lawyers from giving food, medicine and other items to prisoners.

Conditions in prisons and police stations have been made worse by overcrowding (sometimes up to three times the maximum capacity) of the cells as a result of the increase in arrests. In June 2015 the National Council for Human Rights (NCHR) reported that prison populations reached 160 percent of maximum capacity and police station detention centers reached 300 percent of maximum capacity.

As a result, the vast majority of detainees in Egypt do not have individual beds, they have to take shifts to be able to lie down and sleep and they are forced to sleep directly on the floor. In some instances, detainees have to pay to obtain enough floor space to sleep. Detention centres often have poor ventilation systems; the lack of proper ventilation is aggravated due to the large number of inmates, which leads to detainees having difficulties breathing, particularly in the hot summer months. Prisons and police stations are furthermore characterised by poor hygiene standards and inadequate sanitary facilities.

Torture and ill-treatment in custody

Torture and ill-treatment of persons arrested and detained, including children, appears to be rampant. According to certain sources, in 2015, between 600 and 700 cases of torture were documented amongst individuals in detention.

Security forces allegedly frequently beat and mistreat suspects, including children, at the time of their arrest and during transfer between police stations and prisons. New arrivals in a prison are often greeted by a so-called “welcoming committee” whereby police officers or guards stand in two rows with the new inmate being forced to walk through the middle to continuous beatings with available objects, like whips, batons and belts. The beatings often continue for hours thereafter. There are also frequent reports of suspects being subjected to electroshocks (mostly to the genitals and other sensitive areas), prolonged suspension by the limbs from a ceiling or door, and stress positions including with handcuffs and blindfolded while in detention.

Reports also indicate that rape and sexual violence, including against children, is used in some locations where individuals are deprived of their liberty.

In a widely reported case, an Italian PhD student was allegedly picked up by security forces during raids prior to the 2016 anniversary of the 25 January 2011 revolution. His badly bruised and beaten body was found 10 days later on the side of a road in Cairo, showing marks of cigarette burns, stabbing wounds and bruises. An autopsy performed in Italy confirmed the allegations of torture. This is not a unique case but rather exemplary of existing patterns within the Egyptian security services.

Lack of access to health care and death in custody

According to various sources, at least 137 individuals died in custody in 2015 alone. Numerous cases of death in custody have been reported as a result of torture and other ill-treatment in combination with the lack of access (or inadequate) to medical care.

While, according to Egyptian law, a physician should be present in each prison, it is reported that this is not always the case in reality and even less so when it comes to unofficial detention locations, police lock ups or intelligence services’ detention locations. The crucial medical examination upon admission into the prison is thus rarely performed which renders the continued care of each detainee’s health situation very difficult. Numerous detainees do not have access to adequate health care and have allegedly suffered from medical negligence during their detention, which can include deliberate denial or refusal of urgent and specialized medical care; dismissing the seriousness of a medical problem; withholding essential medication; refusing temporary medical leave to undergo specialized treatment or release on compassionate grounds for health reasons; and requesting prisoners to pay for medical care when they cannot afford it. In addition, harsh prison conditions such as overcrowding, inadequate food and poor sanitation can have a detrimental impact on prisoners’ pre-existing medical conditions and create new health problems. As a result of these practices and conditions, prisoners are at risk of death or irreparable damage to their health.

Moreover, reports indicate that denial of health care in detention is also being used as a punishment against political opponents or human rights defenders expressing dissenting views and claiming basic rights.

Coerced confessions

Numerous reports have been received according to which the Egyptian security apparatus often resorts to torture and ill-treatment of suspects to obtain confessions. In a well-publicized case, Mr. Mahmoud Mohamed Ahmed Hussein, who was arrested on the third anniversary of the 25 January 2011 revolution in 2014, was allegedly tortured by security forces to confess to his crimes. Following his initial refusals, and after 4 hours of beatings and electric shocks applied to his back, hands and testicles by National Security officers during his interrogation in a police station, Mr. Hussein “confessed” on a videotaped recording to possessing explosives, receiving money to demonstrate and taking part in an unauthorized protest.

Mr. Hussein was the subject of an earlier communication (UA EGY 17/2015 of 17 December 2015). In a reply provided by the Egyptian Government on 2 February 2016, it was maintained that he “was in good health” and that “there were no indications that he had been subjected to torture”. Without any additional information or results of a potential inquiry into the allegations, this assertion remains however doubtful.

Reports indicate that in particular the National Security Agency resort to such methods to obtain confessions, often video-tape the “confession” and in some cases release them for public broadcasting and use in subsequent trials of the detainees.

Reports indicate that children are subjected to the same measures to extract confessions.

Solitary confinement

An emblematic case of prolonged solitary confinement is that of Mr. Mohamed Soltan, a dual Egyptian-American citizen who was arrested in his home in Cairo on 25 August 2015, later convicted of spreading false information and funding protests along with others in the “Rabaa Operations Room” case, and sentenced to life imprisonment. Mr. Soltan was subjected to solitary confinement for the period of 6 months possibly as punishment for and in an attempt to break his ongoing hunger strike. During this time, Mr. Soltan was held alone in a cell that was the only occupied cell in an entire wing of the maximum security Tora prison in Cairo, making it impossible for him to even communicate through doors or walls with other inmates, or merely hear the noise of other human beings. He did not have access to any books, letters, or TV, and had no clocks and no windows to tell the time. He received weekly visits from his family for 30 minutes, and monthly visits from representatives of his embassy. Throughout this time, Mr. Soltan was furthermore subjected to threats by guards, suggestions for suicide by doctors (who gave him razors and exposed electric wires in his cell), and deprived of sleep by means of a giant and flickering light inside his small cell.

Following strong international pressure, Mr. Soltan was released and deported from Egypt to the United States of America on 30 May 2015, after giving up his Egyptian nationality.

Mr. Mohamed Soltan is not a unique case but exemplifies the solitary confinement suffered by countless other inmates in Egyptian prisons.

Incommunicado/secret detention

The use of secret prisons and the holding of individuals incommunicado appears to be common. Arrested suspects are often moved around various police stations, pre-trial detention locations and unofficial detention locations possibly under the control of the National Security Agency, without their families or lawyers being informed of their fate and whereabouts or even the arrest being acknowledged.

By way of example, Mr. Mohammad Adel, one of the leaders of the Tamarod movement, was arrested on 18 December 2013 while volunteering at the Egyptian Center for Political and Social Rights and held incommunicado at a secret detention location until his court date on 22 December 2013.

In another case, Mr. Hosni Talaat Mohammed Al Nagar (subject of communication UA EGY 13/2015 of 24 September 2015) was arrested on 27 July 2015 and detained in various unknown locations, without information provided to his family or lawyer, until 18 September 2015. Despite providing information regarding Mr. Al Nagar's case in a reply of 21 December 2015, the Government did not provide any information regarding his detention location.

Unfair trials and death penalty

According to the information received, violations of fair trial and due process of law guarantees are common in Egypt and include the excessive use of preventative custody and pretrial detention without access to a lawyer at an early stage, the use of military courts to try civilians, and mass trials of numerous defendants (hundreds) during which no individual evidence is presented at times leading to the imposition of the death penalty (see for example communication of 26/06/2014 - EGY 9/2014 *see* A/HRC/28/85). According to some reports, on April 28, 2014, 683 people were sentenced to death all at once in absentia. The month prior, the same judge sentenced 589 people to death. Both trials were carried out without allowing the defendants the ability to present a meaningful defense, without considering evidence from the defense, or in many cases, without the defendants or their lawyers' presence in the courtroom. Most of these death penalties have since been commuted to lesser sentences.

Furthermore, sources indicate that many of the convictions obtained seem to rely on confessions or declarations made by defendant under torture and other ill-treatment, that are not investigated or prosecuted nor excluded from evidence.

Serious concern is expressed about the alleged arbitrary arrests and detentions, incommunicado detentions and prolonged solitary confinement, torture and ill-treatment

of prisoners in custody, including children, (sometimes resulting in deaths) as well as coerced extraction of confessions, lack of access to appropriate health care, lack of access to legal counsel and violations of fair trial and due process of law guarantees, imposition of death penalty following unfair trials, as well as the continued targeting of human rights defenders and civil society organisations (including travel bans and freezing of assets).

In connection with these allegations and concerns, we would like to remind your Excellency's Government of its obligations under international human rights law, in particular the right to life and security of the person (art. 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982) as well as the absolute prohibition of torture and other forms of ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Egypt ratified on 25 June 1986, and in article 7 of the ICCPR.

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.

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 therefore 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 information on measures taken in the judicial system to prevent arbitrary arrest and detention and to guarantee the right of everyone to a fair trial and the right to access to a lawyer.
3. Please provide information on the progress made to develop a full fledged juvenile justice system.
4. Please provide of any measures taken to ensure the physical and psychological integrity of detained individuals.
5. Please provide the details, and where available, the results of any investigation, and judicial or other inquiries carried out as a result of the above-mentioned allegations, and indicate what kind of measures are being taken to ensure that any public actors are being investigated and prosecuted to ensure accountability.
6. Please provide information about existing framework to guarantee access to adequate health care in detention, including medical screening after arrest and transfer to detention facilities, presence of health care personnel in detention facilities, and access to preventive, curative and palliative health services by people in detention.

7. Please provide information regarding what international human rights' standards training are being offered to security forces. If none, please explain why.
8. Please indicate the measures adopted to ensure that human rights obligations are being met and that individuals are able to exercise their democratic rights in Egypt in a safe and enabling environment without fear of reprisals, violence or harassment of any sort.
9. Please indicate what measures have been taken to ensure that human rights defenders in Egypt are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment and persecution of any sort.

We would appreciate receiving a response within 60 days.

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's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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Juan Ernesto Mendez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment 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. Article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Egypt is a party and ratified on 14 January 1982, provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Furthermore, we would like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156, which, "[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished."

We would also like to draw the attention of your Excellency's Government to article 15 of the Convention against Torture which provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

In addition, the ICCPR 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 (article 6). When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a *presumption of State responsibility*.

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). 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".

We therefore urge your Government to carry out an expeditious, independent and transparent inquiry into the circumstances surrounding the deaths of persons while in custody, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate his or her family. In this context, we would also like to draw the attention of your Excellency's Government to article 12 of the CAT, which requires the competent

authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

With regards to the possible sentences amounting to life imprisonment or death penalty, we would like to refer to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/67/279), in which retentionist States are called upon to rigorously observe the restrictions and conditions imposed by article 7 of the ICCPR and articles 1 and 16 of the CAT.

Regarding access to adequate health care while in detention, we would like to bring to your Excellency's attention that the right to the enjoyment of the highest attainable standard of physical and mental health is reflected, *inter alia*, in article 12 of the International Covenant of Economic, Social and Cultural Rights, acceded by your country on 1 May 1972. This includes an obligation on the part of all State Parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. According to Article 12, States have an obligation 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 (General Comment CESCR 14, Para.34). In addition, the Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111, establish that all prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9).

We would furthermore like to remind your Excellency's Government of Articles 19, 21 and 22 of the ICCPR, which guarantee the rights to freedom of opinion and expression and freedom of peaceful assembly and association, respectively.

With regard to the allegations concerning human rights defenders, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a), which provides for the right to meet or assemble peacefully;
- articles 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;

-article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;

-article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights; and

- article 13, which provides for the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.

We would also like to refer to Human Rights Council resolution 22/6, which indicates that domestic law should create a safe and enabling environment for the work of human rights defenders (PPs 10-13). Moreover, we would also like to refer to Human Rights Council resolution 22/6, which urges States to ensure that laws affecting human rights defenders are “clearly defined, determinable and non-retroactive”. (OP 11).

Finally, we would further like to refer your Excellency’s Government to Human Rights Council resolution 24/5, in which the Council “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law”.

We are also referring your Excellency’s Government to the recent report on the proper management of assemblies, which provides that a “failure to notify authorities of an assembly does not render an assembly unlawful, and consequently should not be used as a basis for dispersing the assembly” and “dispersing an assembly also risks escalating tensions between participants and law enforcement. For these reasons, it must be resorted to only when strictly unavoidable... Failure to notify authorities of an assembly is not a basis for dispersal” (A/HRC/31/66, paras. 23, 61 and 62).