

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL EGY 9/2016

16 August 2016

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 24/7, 26/7 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the repeated prosecution under charges of illegal demonstration and belonging to a forbidden group of Mr. [REDACTED], who was acquitted four times by a court for the same charges.

Mr. [REDACTED] is a 17 year-old Egyptian national, born on 6 December 1998, National ID No. [REDACTED]. He was one of the subjects of Opinion No. 53/2015 (A/HRC/WGAD/2015/53) adopted by the Working Group on Arbitrary Detention on 4 December 2015. In its Opinion, the Working Group considered the deprivation of liberty of Mr. [REDACTED] as arbitrary, being in contravention of article 9 of the International Covenant on Civil and Political Rights (ICCPR), article 37 of the Convention on the Rights of the Child (CRC), and article 9 of the Universal Declaration of Human Rights, falling within category III (when there is non-observance of the international norms relating to the right to a fair trial) of the categories applicable to the consideration of the cases submitted to the Working Group. In addition, in the initial communication transmitted to your Excellency's Government, the Working Group addressed reported allegations of torture and ill-treatment. These include that during the arrest, Mr. [REDACTED] was blindfolded, handcuffed and forced into a military vehicle; in order to make him confess to crimes he had reportedly not committed, he was subjected to further torture and ill-treatment; he was held in a cell with adult detainees, continuously subjected to torture and ill-treatment by the prison personnel and other inmates; he was denied access to medical care; and he suffered from generally bad detention conditions. The Working Group noted in its Opinion that the Government failed to provide any information on whether an independent and impartial investigation was conducted into the specific allegations of torture and ill-treatment during the arrest and detention of Mr. [REDACTED]. The Working Group requested the Government to take steps necessary to remedy the

situation and bring it into conformity with the standards and principles enshrined in the UDHR and the ICCPR. The Working Group also called for the release of Mr. [REDACTED] and necessary compensation in accordance with article 9(5) of the ICCPR.

According to the new information received:

On 19 January 2016, Mr. [REDACTED] was acquitted by the Suez misdemeanour court of the accusations of illegal demonstration, belonging to a forbidden group, and possession of photos of former President Morsi and of a Rabaa sign under Law No. 107 of 2013. Although Mr. [REDACTED] was found not guilty and acquitted by the court, he remained in custody.

On 26 January 2016, he was brought before the State Security prosecution under further accusations of illegal demonstration.

On 1 February 2016, Mr. [REDACTED] was moved back to Ataqa police station so that the detaining authorities could finalize the release paper work, but he was not released.

On 4 February 2016, he was once again sent to the Homeland Security facility in Suez and formally charged three days later. The detention was then renewed for 15 days pending investigations. Subsequently, Mr. [REDACTED] was transported back to Ataqa prison.

On 19 April 2016, Mr. [REDACTED] was acquitted for a second time by the Suez misdemeanour court for the same charges of illegal demonstration and belonging to a forbidden group. Despite this judgment, he remained in detention.

On 24 May 2016, Mr. [REDACTED] was acquitted for a third time, again by the Suez misdemeanor court for the same charges of illegal demonstration and belonging to a forbidden group, but was kept in detention for reasons of national security.

On 8 June 2016, he was brought before the Suez misdemeanour court to be tried for the fourth time under the same charges of illegal demonstration and belonging to a forbidden group. He was then brought back to Ataqa prison which is an adult detention facility in the city of Suez, North-East of Egypt. The facility is affiliated to the Police Department (Ministry of the Interior) of the same city. Allegedly, at Ataqa prison, Mr. [REDACTED] was held in an adults' cell together with adult detainees.

On 28 June 2016, he was acquitted for a fourth time by the Suez misdemeanor court but was not released immediately.

On 20 July 2016, three weeks after the fourth acquittal by the court, Mr. [REDACTED] was finally released. However, he was again charged, for a fifth time, with illegal demonstration and belonging to a forbidden group. This time the prosecution formulated the charges under a higher category of criminal offenses and the case will be tried before the criminal court of Suez. A hearing is scheduled for 10 September 2016.

It is alleged that the charges brought against Mr. [REDACTED] are groundless and fabricated. To justify the new charges brought after each acquittal, the authorities are reportedly stating that they are related to Mr. [REDACTED]'s participation in an unauthorized demonstration at a different location and time than the demonstration for which the previous charges were brought. It is important to note that in some instances the alleged facts attributed to Mr. [REDACTED] and forming the basis of the new charges brought against him took place when he was already in detention. We welcome the release of Mr. [REDACTED] on 20 July 2016 following the fourth acquittal by the Suez misdemeanor court. While we do not wish to prejudge the accuracy of the aforementioned allegations, serious concerns are expressed that Mr. [REDACTED] was repeatedly tried under the same charges despite the fact that he had been acquitted of those charges multiple times by the same court and that he is again facing the same charges. Moreover, as indicated in the opinion of the Working Group, no information has been provided by your Excellency's Government on whether an investigation has been conducted into the allegations of torture and ill-treatment raised in the the initial communication sent by the Working Group. In addition, concern is expressed at the fact that Mr. [REDACTED], a minor, was detained together with adult detainees, which put him at risk of further psychological and physical abuses and ill-treatment.

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 be grateful for your observations on the following matters:

1. Please provide information on any action taken to implement the recommendations made by the Working Group on Arbitrary Detention in its Opinion No. 53/2015 (A/HRC/WGAD/2015/53), especially with regard to compensation and investigation of the allegations of torture and ill-treatment.

2. Please provide any additional information and any comment you may have on the above mentioned allegations.
3. Please provide information regarding the outstanding charges against Mr. [REDACTED] despite four court acquittals. Please explain in particular how such trials based on the same charges comply with article 14 of the ICCPR.
4. Please explain why Mr. [REDACTED] was detained together with adult detainees in contravention of the Convention on the Rights of the Child and the ICCPR.
5. Please provide any information on measures taken to ensure the physical and psychological well-being of Mr. [REDACTED].

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 responsible of 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.

José Guevara
Chair-Rapporteur of the Working Group on Arbitrary Detention

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers

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

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we urge your Excellency's Government to conduct an independent and impartial investigation into the specific allegations of torture and ill-treatment raised in the present letter and in the Opinion of the Working Group; and to accord Mr. [REDACTED] an enforceable right to compensation in accordance with article 9 (5) of the ICCPR.

We appeal to your Excellency's Government to take all necessary measures to guarantee Mr. [REDACTED]'s right not to be deprived arbitrarily of his liberty and his right to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the ICCPR to which Egypt has been State Party since 14 January 1982. In particular, we would also like to underline paragraph 7 of article 14, which enshrines the fundamental principle of 'ne bis in idem', i.e. that no one shall be tried or punished again for an offence for which he has already been finally convicted or acquitted. The UN Guidelines on the role of prosecutors also underscore that prosecutors should perform their duties fairly and uphold human rights (Guideline 13) and that they shall not initiate or continue prosecution when an impartial investigation shows the charge to be unfounded (Guideline 14).

Additionally, we would like to draw the attention of your Excellency's Government to article 10(2)(b) of the ICCPR stating that accused juveniles shall be separate from adults; and article 10(3) stating that juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status. We would also like to remind your Excellency's Government of article 37(c) of the CRC, to which your Excellency's Government has been State Party since 6 July 1990, stating that every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so.

Moreover, 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 acceded on 25 June 1986, and we would like to draw the attention of your Excellency's Government to its article 12, 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 its article 7 which requires State parties to prosecute suspected perpetrators of torture.

