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; the Special Rapporteur on the promotion and protection of human rights while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA EGY 8/2017

15 June 2017

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of human rights while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 27/1, 26/12, 31/3 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **death sentences imposed on Messrs. Basem Mohsen Elkhorieby (also written Bassem Mohsen), Khaled Askar, Mahmoud Mamhouh Wahba, Ibrahim Yahia Azab, Abd Elrahman Attia and Ahmed al-Waleed al-Shal (also written Ahmed El Waleed El Shal) following trials that did not meet fair trial and due process guarantees**.

A related communication concerning the imposition of the death penalty on six other individuals following trials that reportedly did not meet fair trial and due process guarantees, was sent to your Excellency's Government on 24 February 2017 (case no. EGY 2/2017). We regret that no response has been received to date and would welcome receiving a reply at your earliest convenience.

According to the additional information received:

On 7 June 2017, the Court of Cassation upheld the death sentences issued against Messrs. Basem Mohsen Elkhorieby (also written Bassem Mohsen), Khaled Askar, Mahmoud Mamhouh Wahba, Ibrahim Yahia Azab, Abd Elrahman Attia and Ahmed al-Waleed al-Shal (also written Ahmed El Waleed El Shal) for the alleged killing of a police officer that took place in the city of Mansoura, northern part of Egypt, on 28 February 2014. These sentences are reportedly final and without the possibility of appeal.

The six men were part of a group of 24 individuals charged with and sentenced by the Mansoura Criminal Court on 7 September 2015 (case no. 16850/2014) for terrorism related offences, including establishing and joining a group against the law, providing it with money and weapons, and premeditated murder. The Court sentenced nine of them (including the six above-mentioned men) to death, 12 to life imprisonment and several others to 10 years in prison. The sentences of several other defendants were reduced on appeal, including the death sentences imposed on three of the nine individuals, which were changed to life imprisonment.

Between 28 February and mid-march 2014, during the investigation of the case, all six men were forcibly disappeared, for periods ranging from a week to several months. During this time they were subjected to acts of torture and ill-treatment for the purpose of obtaining self-incriminating confessions. They were subsequently transferred to Mansoura prison while awaiting trial, where they were held in inhumane conditions and denied access to medical treatment.

Family members of three of them (Mr. Mahmoud Mamdouli Wahba, Khaled Askar and Ahmed al-Waleed al-Shal) first learnt about their whereabouts during a video broadcast on the Egyptian satellite channel ON TV, showing them confessing to the murder of the police officer. Mr. Basem Mohsen was held for four months at Al-Azouli military prison before his family was informed of his whereabouts through non-official sources.

During the trial phase, the men recanted their forced confessions and stated before the Court that they had been extracted under torture. One of the defendants, Mr. Khaled Askar, removed his shirt to show to the judge marks on his body that he claimed resulted from the torture inflicted on him. The forensic report that was subsequently requested by the Court, in an attempt to conceal any evidence of torture, indicated that it was not possible to identify whether the markings were recent or not.

Although they were withdrawn by the defendants, the confessions were nevertheless used as the basis for the convictions of the six men.

Furthermore, the supporting evidence in the cases as well as testimonies given by state security members showed major inconsistencies: for instance, one witness stated that he saw the murder taking place in front of a factory. However, on the insistence of the defence council, security camera footage of the said factory was examined in Court and showed that no such incident took place at the time and place indicated in the testimony.

Moreover, among confiscated objects meant to prove that the main defendant, Mr. Ahmed al-Waleed al-Shal, was driving a motorcycle when he supposedly shot the victim, was a rifle: the bullets however, collected from the body of the victim, did not match that weapon; and the motorcycle supposedly used by the accused had a different colour than the one mentioned in the testimonies of state security officers. In addition, a crime scene report that examined the victim's wounds appears to contradict further the statements and confiscated objects, as it indicated that the shooter must have been standing near the victim, and could not have been passing by on a motorcycle.

A request for presidential pardon to lower the sentences handed down to the six men has to be made within 14 days from the date of the handing down of the final decision by the Court of Cassation, which was 7 June 2017. If such pardon is denied, their sentences will be carried out imminently.

Without making a judgement as to the accuracy of the information made available to us, we would like to express our most serious concern at the imposition of the death penalty on the six afore-mentioned men following a trial where international standards relating to fair trial and due process guarantees do not seem to have been upheld. We are extremely concerned at the allegations of acts of torture and ill-treatment against these individuals during the pre-trial phase, while they were held in unknown locations, and that confessions obtained under these conditions appear to have been used as the main basis for their convictions.

In view of the irreversibility of the punishment of the death penalty, we urge your Excellency's Government to take all steps necessary to **halt the execution of Messrs. Basem Mohsen Elkhorieby (also written Bassem Mohsen), Khaled Askar, Mahmoud Mamhouh Wahba, Ibrahim Yahia Azab, Abd Elrahman Attia and Ahmed al-Waleed al-Shal (also written Ahmed El Waleed El Shal), as to proceed with the executions may constitute a violation of applicable international human rights law and standards, and thus amount to arbitrary executions.** We further appeal to your Excellency's Government to quash the death sentence against the aforementioned individuals and to ensure a re-trial in compliance with international standards. Moreover, we reiterate our call to your Excellency's Government to establish an official moratorium on the death penalty, and to consider its complete abolition.

The facts as alleged indicate a prima facie violation of the rights to life, liberty and security, and the right not to be deprived arbitrarily of one's liberty, as set forth in articles 6 (1) and (2), 9, 19, 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982. In addition, these allegations appear to be in contravention of the right to fair proceedings before an independent and impartial tribunal, as set forth in article 14 of the ICCPR. Finally, the allegations indicate a prima facie violation of the right to be free from torture and other cruel, inhuman and degrading

treatment or punishment as set forth in article 7 ICCPR and articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), acceded by Egypt on 25 June 1986.

Article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides that capital punishment may only be carried out after a legal process that gives all possible safeguards to ensure a fair trial. Only full respect for stringent due process guarantees distinguishes capital punishment, as possibly permitted under international law, from an arbitrary execution.

Regarding the allegations of torture and ill-treatment, we refer to the absolute and non-derogable prohibition of torture and other ill-treatment as codified in article 1 of CAT. Article 15 of the same Convention prohibits the use of any statement made as a result of torture as evidence in any proceedings, a prohibition that is reiterated in paragraph 7c of Human Rights Council Resolution 16/23.

In relation to the allegations that these six individuals were subjected to enforced disappearance between 28 February and mid-march 2014, and held incommunicado, the United Nations Declaration on the Protection of All Persons from Enforced Disappearance sets out the necessary protection and responsibility of the State; in particular article 2 states that no State shall practice, permit or tolerate enforced disappearances.

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 response on the steps taken by the Government of Egypt to safeguard the rights of the above-mentioned persons in compliance with international instruments and Egypt's obligations under the treaties it 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.

2. Please provide detailed information concerning the legal grounds for the detention, prosecution, and sentencing of the six individuals mentioned above. Please also explain how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR, and in the ICCPR and the CAT, ratified by Egypt.

3. Please provide any information on the legal, procedural and effective measures taken by the relevant authorities to ensure individuals in police as well as other security personnel custody are protected against any attempt against their physical and psychological integrity during all stages of their detention.

4. Please provide detailed information and, where available, findings, of any investigation, judicial or otherwise, carried out in relation to the allegations that these six persons were tortured during the investigations and forced to confess against themselves, and that their confessions were used as evidence to incriminate, try and sentence them. If no such inquiries have taken place, or if they have been inconclusive, please explain why, and in particular how this is compatible with Egypt's obligations under CAT.

5. Please provide detailed information and, where available, results, of any investigation, and judicial or other inquiries carried out in relation to the allegations of enforced disappearance and torture of these persons. If no inquiries have taken place, or if they have been inconclusive, please explain why.

6. Please also provide information on safeguards in place to guarantee fair trial and due process, in particular in death penalty cases, and how they are effectively enforced.

While awaiting a reply, we respectfully urge that all necessary 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 violations committed.

We are considering making public our concerns in the near future as, in our view, the information upon which they are based appears to be sufficiently reliable to warrant urgent attention. We also believe that, given the gravity of the death penalty, the wider public should be informed about what occurred in this case. Our public statement would indicate that we have been in contact with your Excellency's Government's to clarify the issue in question.

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.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Houria Es-Slami
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Ben Emmerson
Special Rapporteur on the promotion and protection of human rights while countering terrorism

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment