

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Re: Executions of 75 Defendants in Egypt

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and others who promote human rights and the rule of law through advocacy, education and research. LRWC is a non-governmental organization in Special Consultative Status with the Economic and Social Council of the United Nations.

LRWC urges the Government of Egypt to immediately suspend the executions of 75 Muslim Brotherhood members and supporters that was ordered on September 8, 2018 following a mass trial which saw 739 defendants tried for their participation in the month long sit-in at Rabaa al-Adawiya and al-Nahda squares in Cairo to protest the overthrown of elected president Mohamed Morsi. The defendants were amongst those arrested on 14 August 2013 in a brutal raid by the police and armed forces that left hundreds and possibly thousands dead and many more injured. Human Rights Watch called the raids by state authorities, "one of the world's largest killings of demonstrators in a single day in recent history" (the "Rabaa Massacre"). Since President Abdel Fattah al-Sisi took power in 2014, there has been a crackdown on individual and groups seen to be actually or potentially critical of the current Government of Egypt or to be advocating on behalf of or providing legal representation to such people. The sentencing violates the internationally protected rights of the defendants, including rights to life, participation in public affairs, expression, association, and assembly. The sentences violate Egypt's international law obligations to respect and ensure the fundamental rights and freedoms of the defendants.

The 75 defendants sentenced to death for participating in the protests that culminated in the Rabaa Massacre, include prominent Muslim Brotherhood members Essam El-Erian, Mohamed Beltagy, Abdel-Rahmam al-Bar and Osama Yassin. Another 56 defendants were sentenced to life imprisonment, including the leader of the Muslim Brotherhood, Mohamed Badie. 374 people were sentenced to 15 years, and another 215 of the defendants were sentenced to 5 years in

prison. Security officials, responsible for death and injury during the Rabaa Massacre have not been held accountable.

Egypt's international law obligations

As a member of the African Union and as a party to the *African Charter on Human and Peoples' Rights* (Banjul Charter) and as a member of the United Nations (UN) and party to the *International Covenant on Civil and Political Rights* (ICCPR), Egypt has legal obligations to adopt measures that effectively ensure rights to liberty, freedom from arbitrary detention, freedom of expression, rights to participate in public affairs, the presumption of innocence, and fair trial before competent, impartial and independent civilian court. Egypt is also a signatory to the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR), and the *International Convention on the Elimination of all Forms of Racial Discrimination* (CERD). As a member of the UN, Egypt is expected to comply with and respect the *Universal Declaration of Human Rights* (UDHR) and the various principles, guidelines, standards and recommendations adopted by the UN General Assembly and other UN bodies, relating to rights to liberty, fair trial, and freedom of expression, as well as relevant rules of customary international law.

The mass trial violated Egypt's obligations to ensure a fair trial, under UDHR arts 10 and 11, and ICCPR, articles 14, 9.3, and 9.5. The trial saw a vast range of defendants including peaceful protestors and journalists, tried simultaneously. The defendants were denied due process and did not receive a fair trial in contravention of the rule of law. Defendants were deprived of the rights to legal representation and to present evidence. LRWC echoes the comments of Amnesty International that this mass trial was a "grotesque parody of justice" and "disgraceful." LRWC urges Egyptian authorities to heed the outcry of the international community and act swiftly to suspend these sentences and order a retrial.

The death penalty has been abolished or suspended by more than 160 UN member states. As stated by UN Secretary General António Guterres, "[t]he death penalty has no place in the 21st century." It is widely known and accepted that capital punishment is dangerous for a variety of reasons: it allows states to execute critics and those convicted of non-violent crimes, poses unacceptable risks to the lives of innocent people and serves no public purpose.

Michelle Bachelet, the UMN High Commissioner of Human Rights, calling for suspension, recently said an "irreversible miscarriage of justice" would occur if the death sentences were carried out in these cases. The ICCPR Article 6.3 confirms that capital punishment may only be imposed for the most serious crimes and only after a final judgment is rendered by a competent court. Given the clear absence of due process, the ruling sentencing 75 defendants to death resulting from the Rabaa Massacre would not be upheld on any appeal that properly considered the facts and law including the provisions of the ICCPR, UDHR and other international law binding on Egypt. If the Egyptian Government proceeds with the ordered executions, it will be in clear violation of ICCPR Article 6.3 and Article 6.4 which guarantees the right to seek pardon or commutation of the sentence.

The UN Human Rights Committee has affirmed that the ICCPR Article 2.1 creates binding obligations on States to exercise due diligence to prevent, punish, investigate and redress violations of protected rights committed by State actors. Egypt is required under ICCPR Article 2.3 to ensure and enforce an effective remedy for the violations of the internationally protected rights of the 75 defendants sentenced to death.

LRWC calls upon Egypt to take immediate curative action as follows:

1. Suspend the sentences of all 75 individuals sentenced to death;
2. Individual retrials before independent, impartial and competent courts with consideration given to Egypt's legal obligations arising from the ICCPR, UDHR and other international instruments;
3. Permit trial observations by UN and civil society actors
4. Permit all 75 defendants to right to seek pardon or commutation of the sentence; and
5. Abolish capital punishment and suspend pending abolition

Sincerely,



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