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IMPUNITY IS NOT AN OPTION
 Ensure accountability for mass killings in Egypt

Alkarama is a Swiss-based, independent human rights organisation established in 2004 to assist all those in the Arab World subjected to, or at risk of, extrajudicial executions, disappearances, torture and arbitrary detention. Acting as a bridge between individual victims in the Arab world and international human rights mechanisms, Alkarama works towards an Arab world where all individuals live free, in dignity and protected by the rule of law. In Arabic, Alkarama means dignity.



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IMPUNITY IS NOT AN OPTION

**ENSURE ACCOUNTABILITY
FOR MASS KILLINGS IN EGYPT**



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Ever since the military takeover on 3 July 2013 and the appointment of Adli Mansour as *interim* President of the Republic there has been a systematic campaign of killing of protesters who express their opposition to the government currently in power. This disregard for the right to life has been a permanent feature since the outset of the revolution on 25 January 2011. Nevertheless, it took a dramatic turn after 3 July 2013, culminating on 14 August 2013 with the violent dispersal of the Rabaa and Nahda sit-ins. More than one thousand people who were demanding the return of deposed President Mohamed Morsi died that day. The authorities' lack of accountability for the killing of protesters is of great concern. While national commissions of inquiries have been formed, they have failed to ensure accountability.

Investigating human rights violations and achieving accountability is not optional for states - international law places an obligation on states to investigate and prosecute whenever human rights violations are thought to have occurred. International law also sets out criteria that investigations and prosecutions must respect.

This report reviews the work of Egyptian prosecutors (the authority in charge of investigating and prosecuting perpetrators in Egypt) in order to verify whether it complies with the criteria and best practices established in international law. The report bases its conclusion on cases of violations committed against pro-Morsi demonstrators that Alkarama has documented. It submits that prosecutors have failed to ensure accountability for the violations of the right to life occurring in Egypt since 3 July 2013.

In conclusion, we argue that, in view of the gravity of the violations that have occurred in Egypt, it is time the Human Rights Council establishes a Commission of Inquiry into the violations committed against protesters since the military takeover.

In the age of human rights accountability, it is inconceivable that systematic extrajudicial killings of demonstrators remain poorly investigated and unpunished. Since the outset of the revolution on 25 January 2011, Egypt has witnessed killings of demonstrators under the rule of Mubarak, the Supreme Council of the Armed Forces (SCAF), President Mohamed Morsi and *interim* President Adli Mansour. Alkarama has continued to report on the violence carried out against demonstrators under each of these regimes since the beginning of 2011 by providing UN complaint mechanisms with relevant information on developments in the country.

While the violence against demonstrators has been endemic over the past three years, it peaked on 14 August 2013 when the Egyptian security apparatus stormed the sit-ins of Rabaa and Nahda, where protesters were demanding the return of Morsi as President. More than one thousand people died that day, but no one has been held accountable for the killings.

This pattern of killing and lack of accountability over the past three years indicates that there is a structural problem with the Egyptian security and judicial apparatus, making it unable to address violations of human rights, and more specifically, the right to life.

While commissions of inquiries have been constituted under the SCAF and the presidencies of Mohamed Morsi and Adli Mansour to investigate the killing of demonstrators, these have not lead to meaningful results. For example, under Mohamed Morsi's presidency, a fact-finding committee was established pursuant to Decision 10 of 20 July 2012 to investigate the killings of demonstrators which had taken place between 25 January 2011 and 30 June 2012. The committee was entrusted with establishing the truth and determining who was responsible for violations against protesters. The findings were submitted to President Morsi in December 2012 but he refused to publish the results, thus indicating a lack of political will to ensure accountability.

Likewise, for the events of Rabaa and Nahda, no serious efforts have been undertaken to establish an accurate account of the violations. This should normally be done through the establishment of an investigation mechanism in conformity with international standards which would, after having identified those responsible for violations, bring the perpetrators to justice. It is submitted in this report that the Egyptian authorities that would normally be entrusted with the task of investigating the killing of demonstrators since 3 July 2013 are unable to produce meaningful results. In Egypt, it is the prosecutor who monitors the work of the security authorities. In addition, s/he also carries out the investigation and brings the charges at the same time. Egypt does not follow a system of mandatory prosecution, so it is up to the prosecutor to take the decision to prosecute. The prosecution's work has significant impact on the case, as the judge rules according to the evidence presented by the prosecutor.

After a review of Egyptian law and practice, the extent to which prosecutors have failed to uphold human rights and more importantly, accountability for human rights abuses, will be exposed. The report will then examine their inability to carry out meaningful investigation and prosecution for violations committed by Egyptian officials since the military takeover. In addition, it will be shown that given the anti-Muslim Brotherhood (MB) climate encouraged by the government which has capitalised on shortcomings of Morsi's presidency, accountability for the killing of MB protesters will be even harder to achieve. Even though the report seeks to shed light on the inability of authorities to prosecute violations of the right to life, it will also refer to other violations (torture, administrative detention) to highlight the discrepancy between internationally-accepted good investigation practices and the work of Egyptian prosecutors.

While this report deals with the discrimination faced by MB supporters at the hand of authorities responsible for ensuring accountability, this does not mean that, in practice, the violations highlighted in the report are restricted to the sole MB. Such violations have been occurring against demonstrators of various political background, opposed to the ruling regime over the past three years. Nevertheless, at no time has the repression been as systematic and widespread as it has been against the MB since 3 July 2013.

1. WHY EGYPT MUST INVESTIGATE, PROSECUTE AND PUNISH

International law prescribes states to proceed *ex officio* with an investigation whenever one *suspected* case of extrajudicial killing has occurred, let alone hundreds.

1.1 THE DUTY TO INVESTIGATE, PROSECUTE AND PUNISH

Despite the fact that the duty to investigate and punish perpetrators of grave human rights violations is not enshrined explicitly in a hard law instrument, it can be deduced from the nature of every human right. Human rights have to be effective and not merely illusory. A state's obligation cannot be confined to refrain from violating human rights (negative obligations) but it also extends to respecting and fulfilling these rights (positive obligations). Failure to investigate and punish a violation is in itself a violation of that right.¹ The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has reiterated this legal principle particularly with regards to violations of the right to life.²

One can find several legal bases to support the state's duty to investigate and bring those responsible for human rights violations to justice.

States have to grant "effective remedy" for victims of violation of rights enshrined in the International Covenant on Civil and Political Rights (ICCPR) according to article 2 paragraph 3(a). The notion of remedies has evolved from compensation and rehabilitation to include punishing the person responsible for the violation which in turn implies an investigation, and where applicable, prosecution and conviction. The Human Rights Committee has deduced this obligation from the right to an effective remedy regarding violations of rights enshrined in the Covenant³ including violations of the right to life.⁴

The Human Rights Committee has also referred to the nature of the punishment that should be meted out, and considers that in situations of violations of the right to life, disciplinary and administrative sanctions are not enough to be considered "adequate and effective".⁵ In fact, in situations of police abuse, the Committee has specifically recommended criminal sanctions.⁶

Another legal basis for this duty is the obligation of states, pursuant to article 2 paragraph 1 of the ICCPR, to respect, and to ensure respect for, the rights enshrined in the Covenant. It is inconceivable to envisage respect for human rights when perpetrators of serious violations are not punished. Punishment can be an efficient deterrent for future crimes and therefore increases "respect" for human rights in the sense of article 2 paragraph 1 of the Covenant. In fact the Human Rights Committee has stated that "respect for human rights may be weakened by impunity for perpetra-

1 Human Rights Committee, General Comment 31 on the nature of the General Legal Obligation imposed on States Parties to the Covenant, 2004 (U.N. Doc. CCPR/C/21/Rev.1/Add.13) para. 18.

2 *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, submitted to the General Assembly at its sixty eighth session, 13 September 2013, (A/68/382), para.95.

3 General Comment 31, para 15.

4 Human Rights Committee, *Irene Bleier Lewenhoff and Rosa Valiño de Bleier v. Uruguay*, No. 30/1978, 1985 (CCPR/C/OP/1)) para 15.

5 Human Rights Committee, *Arhuaco v. Colombia*, No. 612/1995, 1997 (CCPR/C/60/D/612/1995) para 5.3.

6 Human Rights Committee, 79th session, Concluding Observations of the Human Rights Committee on the third periodic report of Romania, 5 November 1993 (CCPR/C/79/Add.30), para 15.

tors of human rights violations”.⁷ But, for the deterrent effect of punishment to be efficient, the penalty has to be commensurate with the gravity of the crime.⁸ Leniency in delivering justice such as short prison sentences or a less grave legal qualification of the crimes (misdemeanour instead of felony - see for example the case of Abu Zaabal, page 16) will engage the state’s responsibility under article 2 paragraph 1.

In addition to these hard law instruments, the UN has adopted principles and guidelines that require investigation and punishment when violations of the right to life occur. Although not binding, these instruments constitute best practices in the field.

The *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (Hereinafter *Principles on the Effective Prevention and Investigation*) state that “there shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions”.⁹ Should this investigation point to a person or a group of persons responsible for extra-legal killing, the government “shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction.”¹⁰ Likewise, in 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*, it is stated that “in cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, states have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him.”¹¹

Last but not least of the soft law instruments figures the right to truth, whereby “every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes”.¹² Naturally, an investigation into past violations is essential to establish an account of past events. The right to truth is not a simple exercise of history writing but is also considered a tool to fight impunity.¹³

7 Human Rights Committee, 79th session, Concluding Observations of the Human Rights Committee on the second periodic report of Argentina 4 May 1995, (CCPR/C/79/Add.46), para 10.

8 Human Rights Committee, 79th session, Concluding Observations of the Human Rights Committee on the third periodic report of the Dominican Republic, 5 May 1993, (CCPR/C/79/Add.18) para. 10.

9 Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 of 24 May 1989, principle 9.

10 Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 18.

11 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 and proclaimed by General Assembly resolution 60/147 of 16 December 2005; principle 4.

12 Updated Set of principles for the protection and promotion of human rights through action to combat impunity in Report of the independent expert to update the Set of principles to combat impunity submitted to the Commission on Human Rights at its sixty-first session, 8 February 2005, (E/CN.4/2005/102/Add.1); principle 2.

13 “recognizes the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights;” Human Rights Council, resolution 9/11, Right to the truth, 24 September 2008 (A/HRC/9/L.12).

1.2 STANDARDS OF INVESTIGATION

States have the obligation of means in achieving accountability. While this assumes some margin of appreciation, certain standards cannot be ignored. Most importantly, it is not possible to identify all those involved in extrajudicial killings and prosecute them if investigations suffer from fundamental defects. This is why international law has set certain standards which investigations must meet. The *Principles on the Effective Prevention and Investigation* mention that an investigation has to be thorough, prompt and impartial, without giving more details. The Basic Principles and Guidelines are silent on the criteria an investigation should meet.

International jurisprudence has however clarified certain standards that an investigation should fulfill. Evidently, investigations into allegations of extrajudicial killings have to be carried out by the state, independently of a complaint by the victims.¹⁴ The investigation must be independent. In other words, the persons carrying out the investigation have to be independent from those implicated in the events hierarchically, institutionally and practically.¹⁵ An investigation has also to be prompt to increase public confidence in the accountability process. Promptness translates into expeditiousness.¹⁶ This requirement should be met to the extent possible even in countries where the security situation might not necessarily allow it. In addition, investigations must be transparent, which should translate into a form of public scrutiny,¹⁷ such as making the findings public.¹⁸

In conclusion, an investigation has to meet enough standards to be able to **“explore all possible lines of investigation that make it possible to identify the perpetrators of the crime, so that they can be tried and punished.”**¹⁹

14 Inter-American Commission on Human Rights, Judgment, *Velasquez Rodriguez*, July 29 1988, (Ser. C) No. 1, para 17.

15 European Court of Human Rights, Judgment, *Al-Skeini and others v. The United Kingdom*, 7 July 2011, (Application no. 55721/07), para 167.

16 *Al-Skeini and others v. The United Kingdom*, para 167.

17 European Court of Human Rights, Judgment, *Ahmet Özkan v. Turkey*, 6 April 2004, Application No. 21689/93, para 314.

18 Inter-American Court of Human Rights, Judgment, *Case of Las Palmeras v. Colombia*, 6 December 2001, para 58

19 Inter-American Court of Human Rights, Judgment, *Monsenor Oscar Arnulfo Romero and Galdámez v. El Salvador*, 13 April 2000, Case 11/481, para 177.

The office of the public prosecutor in Egypt has a longstanding tradition of shielding police officials from criminal prosecution, and so has the military prosecutor when it comes to abuses committed by the military.

Prosecutors in Egypt do not prosecute even when there are clear evidence of human rights abuses committed by the security authorities. However, by deciding not to prosecute in certain cases, prosecutors maintain a climate of impunity which favours further violations.

2.1 EXTRAJUDICIAL KILLINGS

Prosecutors are quick to charge demonstrators with committing violence during protests, but not so much when investigating *prima facie* violations of the right to life by the security authorities. Such stark discrimination has arisen after each demonstration led by opponents of the military takeover of 3 July 2013. Hundreds of demonstrators have been arrested and charged for protesting, while the deaths of demonstrators remain without investigation.

Lawyers in Egypt have officially requested the authorities open investigations into the deaths of protesters, but find that their requests fall on deaf ears. Alkarama has obtained copies of such requests submitted by lawyers to the judiciary. One example, registered under number 1512/2013 lodged against – amongst others – the Minister of Interior, requests the opening of an investigation and that the prosecution hears witnesses and those who were injured during the demonstrations that took place on 7 July 2013 in Ramses Square against the 3 July 2013 military takeover. Seven demonstrators were killed that day, and around 260 were injured. Such inaction stands in stark contrast with the *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* which places an obligation on the state to conduct investigations into “**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** [emphasis added].”²⁰

20 Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions; principle 9.

Copy of complaint No. 1512/2013 lodged against the Minister of Interior for the killing and injury of demonstrators at Ramses Square on 7 July 2013

١٥١٢ / ٢٠١٣
مبنى النيابة العامة

السيد الأستاذ المستشار / النائب العام

تحية طيبة وبعد،،،،،

مقدمه لسيادتكم / عبد الرحمن سعيد النمر - المحامي.

ضد

١- محمد إبراهيم وزير الداخلية

٢- مساعد وزير الداخلية للأمن المركزي

٣- مدير أمين القاهرة والجيزة

٤- رئيس مباحث العاصمة والجيزة.

الموضوع

مساء يوم ٧/١٥ وعقب صلاة المغرب قرر مجموعة من المواطنين المصريين التظاهر السلمى بميدان رمسيس وميدان النهضة بالجيزة احتجاجاً على سلبهم الحق فى تقرير مصيرهم وضد تمييز القوات المسلحة ووزارة الداخلية بين المواطنين فهذا معارض لهم منزوع الوطنية وهذا مؤيداً كامل الحقوق والمواطنه مشمول بحماية الاجهزة الأمنية الباسلة التى تسهر على أمنه وراحته . . . اما المعارض فذات السلطات الآتية الباسلة تسهر على اذلاله وكبت حريته وسلب حقوق وسفك دمه أحياناً كما حدث فى مجزره الحرس الجمهورى وفى هذه الواقعة حيث انه قد قامت قوات الأمن المركزى وبأستخدام القوة المفرطة كعادتها فى عهد النظام السابق بالقيام بغض الاعتصام بالقوة المفرطة وذلك بأستخدام القنابل المسيلة للدموع بكثافة وأستخدام الخرطوش.

الأمر الذي أدى الى وقوع مئات الإصابات برغم سلمية المظاهرات وعدم مساسها بالمنشآت العامة والخاصة.

ورغم ان هناك آلاف المتظاهرين موجودون بأماكن أكثر حيوية مثل ميدان التحرير وقصر الاتحادية وتقوم القوات المسلحة بتوزيع العصائر والمياه الباردة عليهم وحمايتهم الكاملة ومع اصرار المتظاهرين السلميين على ممارسة حقهم فى التظاهر السلمى المكفول لهم قانوناً ودستوراً قامت قوات الداخلية الباسلة بالاستعانة بمجموعة من البلطجية حاملى الأسلحة البيضاء والنارية ٠٠٠ فقامت قوات الأمن بحماية ظهر المجرمين ووضعهم فى مقدمه صفوفها ليقوموا بالأعتداء على المتظاهرين السلميين الأمر الذى أدى الى استشهاد عدد من المتظاهرين وجرح واصابة المئات بطلقات الخرطوش وطلقات نارية حيه وجروح متفرقة وذلك كله تحت حماية ورعاية ودعم ومساندة وتوجيه الشرطة المصرية وامعاناً فى الإجراء قامت هذه المجموعة المجرمة من البلطجية وتابعى قوات الشرطة بمحاصرة مسجد الفتح وحتى كتابة هذه السطور فى اليوم التالى هناك العديد من المحتجزين فى المسجد من المواطنين المصريين تقوم هذه المجموعات بالقاء المولوتوف عليهم والأعتداء على كل من تسول له نفسه الخروج من المسجد تحت سمع وبصر ومساعدة دعم الشرطة وأبنت هذا وحسب بل قامت مجموعة أخرى من المجرمين والقتلة تابعى الشرطة بمحاصرة مستشفى باب الشعرية والتي انتقل اليها المصابين والقتلى ليتلقوا عناية نشعرهم بأنهم ربما يكونون بشراً لهم أرواحاً وأنفساً مثل قوات الداخلية وتستمر هذه المهزلة لساعات طوال وتحت سمع وبصر وعون الداخلية دون إحترام لجنسية أو لدين أو لا أدميه.

- ٣ -

ان ما تفعله الشرطة المصرية لهو الإجرام بعينه ٠٠ وان سياسة وزارة الداخلية فى التفرقة والتمييز بين المواطنين ٠٠ فهذا مشمول بالحماية لانه يقف بجانبها وهذا مسحول ومقتول او معتقل بتهم كثيرة وما أكثرها فى جعبة وزارة الداخلية.

ان حريتنا تنتقص وان حقوقنا تهدر وان ارواحنا تزهق وان دماننا تسيل بيد من هو مكلف شرعاً وقانوناً وإنسانياً بحمايتنا ورعاية أمننا.

إننا إذ نتقدم بهذه الشكوى فإننا نطلب أبسط حقوقنا كمصريين فى حفظ أمننا وحفظ دماننا وحمايتنا من حارسنا المفترض.

لذلك

نرجو من سيادتكم التكرم بسرعة فتح تحقيق قضائى فى الواقعة والإستماع الى شهادة شهود الواقعة والاستماع الى المصابين واتخاذ موقفاً قانونياً رادعاً ضد المشكو فى حقهم والا تحولت البلاد الى غابه البقاء فيها لمن يملك القوة.

ولسيادتكم جزيل الشكر ،،،،

مقدمه لسيادتكم

عبد الرحمن سعيد النمر

عبد الرحمن سعيد النمر

٠١٠٦٦٢٢٠٤١١

Killings in Rabaa Square



On 14 August at around 7 a.m., the Egyptian authorities proceeded with the dispersal at Rabaa by simultaneously moving in on three sides of the sit-in using tear gas and rubber bullets. Helicopters were also used in the operation, flying over the sit-in at low altitude. The security forces left one corridor free, supposedly for those who wanted to leave the protest to be able to do so safely. However, according to testimonies provided by doctors and NGOs present, some of those who fled through this corridor were shot in the back by snipers. The shooting continued until late in the afternoon.

The non proportional character of the means used by the authorities (bulldozers, snipers, live ammunition against mostly unarmed protesters, etc.) to disperse the sit-in constitutes a breach to Human Rights Law. In addition, Alkarama assembled accounts describing security forces opening fire on demonstrators not posing any threat to life. The final death toll of the dispersal is believed to have exceeded 1000 deaths. In fact, a large number of victims have not been identified because they either did not have their identity card on them or because their bodies were entirely cremated. Alkarama's researcher who was present during the dispersal counted that in a sample of 44 bodies, only 23 could be identified formally before the army evacuated and set fire to the emergencies centers (medical centre and morgue) that same night. On 14 November, the Forensic Medical Authority said the number of bodies brought to the official morgue or hospitals was 726, but that the number excluded bodies buried directly by their families. It should also be noted that so far, the Ministry of Health has not pronounced itself on the official number of casualties

that occurred during the dispersal. This suggests that Egyptians officials are still trying to hide the extent of the killing that occurred on this day.

Alkarama's researchers based in Cairo documented the death of 985 individuals along with their names and addresses of residence which it referred to the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. Alkarama stressed the inaction of the authorities in investigating the deaths of demonstrators and requested the Special Rapporteur's immediate intervention to try to obtain a remedy to the situation.

As we demonstrate below, whenever prosecutors decide to address violations committed by the police, their prosecution is inadequate with respect to the gravity of the crime committed.

37 demonstrators dead from asphyxiation during prison transfer

The lack of investigation into the death of 37 demonstrators at the hands of security officials while being transferred to Abu Zaabal prison is emblematic of the leniency which exists when it comes to efforts to achieve accountability. Below is the list of the dead:

1. Mr Gamal Abdelrahman Mohamed **Abdelrahim** (جمال عبد الرحمن محمد عبد الرحيم), is of Egyptian nationality, he lives in Gamal AbdelNasser Street, Al-Salam, Egypt.
2. Mr Hesham Azzam **Hafez** (هشام عزام حافظ), is of Egyptian nationality, he lives in Qalyoubeya ,Egypt.
3. Mr Rafik Mohamed Ibrahim **Abdelghani** (رفيق محمد إبراهيم عبد الغني), is of Egyptian nationality, he lives in Al-Mahalla, Egypt.
4. Mr Reda El-Sayed Ahmed **El-Sayed** (رضا السيد أحمد السيد), is of Egyptian nationality, he lives in Al-Hussneya Al-Sharqeya, Egypt.
5. Mr Shokry Ibrahim **Saad** (شكري إبراهيم سعد), is of Egyptian nationality, he lives in 19 Omaret El-Tob Al-Ramly, Nasser City, Cairo, Egypt.
6. Mr Mohamed Ismail Mohamed **Saleh** (محمد إسماعيل محمد صالح), is of Egyptian nationality, he lives in Al-Mahmoudeya, Al-Behera, Egypt.
7. Mr Adel Abdelshafi **Abdelhafez** (عادل عبد الشافي عبد الحافظ), is of Egyptian nationality he lives in Shaaban El-Sayed Street, Al-Marg, Cairo, Egypt.
8. Mr Waleed El-Sayed Mohamed **El-Naggar** (وليد السيد محمد النجار), is of Egyptian nationality, he lives in Borg Al-Arab, Alexandria, Egypt.
9. Mr Abu Taleb Abdelgawad **Soliman** (أبو طالب عبد الجواد سليمان), is of Egyptian nationality, he lives in Faqous, Al-Sharqeya, Egypt.
10. Mr Mohamed Shehata **Ismail** (محمد شحاتة إسماعيل), is of Egyptian nationality he lives, in Damanhour, Egypt.
11. Mr Sherif Gamal Mohamed **Seyam** (شريف جمال محمد صيام), is of Egyptian nationality, he lives in Al-Qorashy Street, Nasser City, Egypt.

12. Mr Ahmed Ibrahim Kamel **Hamzawy** (أحمد إبراهيم كامل حمزاوي), is of Egyptian nationality, he lives in Al-Mahalla, Egypt.
13. Mr Mahmoud Abdullah **Mohamed Ali** (محمود عبد الله محمد علي), is of Egyptian nationality, he lives in Ebshway, Al-Fayoum, Egypt.
14. Mr Farag El-Sayed **Farag** (فرج السيد فرج) is of Egyptian nationality he lives, in Ebshway, Al-Fayoum, Egypt.
15. Mr Ibrahim Mohamed Ibrahim **Al-Dahshan** (إبراهيم محمد إبراهيم الدهشان) is of Egyptian nationality, he lives in Faqous, Al-Sharqeya, Egypt.
16. Mr Mamdouh Sayed **Abdallah** (ممدوح سيد عبد الله) is of Egyptian nationality, he lives in Al-Saff, Giza, Cairo, Egypt.
17. Mr Safwat Ahmed **Abdullah** (صفوت أحمد عبد الله) is of Egyptian nationality, he lives in Kafr El-Mansoura, Minia, Egypt.
18. Mr Mohamed Hassan **El-Sayed Ahmed** (محمد حسن السيد أحمد) is of Egyptian nationality, he lives in Dakarens, Daqahleya, Egypt.
19. Mr Ali Mhanna **Abu Khedr** (علي مهني أبو خضر) is of Egyptian nationality, he lives in Dakarnes, Daqahleya, Egypt.
20. Mr Hassan Ibrahim **Kordi Mohamed** (حسن إبراهيم كردى محمد) is of Egyptian nationality, he lives in Belbes, Sharqeya, Egypt.
21. Mr Ahmed Ibrahim **Kordi Mohamed** (أحمد إبراهيم كردى محمد) is of Egyptian nationality, he lives in Belbes, Sharqeya, Egypt.
22. Mr Mostafa Mohamed Abdelsalam **Mohamed** (مصطفى محمد عبد السلام محمد) is of Egyptian nationality, he lives in Belbes, Sharqeya, Egypt.
23. Mr Tarek Mohamed **Hamed** (طارق محمد حامد) is of Egyptian nationality, he lives in Al-Saff, Giza, Cairo, Egypt.
24. Mr Sayyed Barakat **Shaaban** (سيد بركات شعبان) is of Egyptian nationality, he lives in Fayyoun, Egypt.
25. Mr Mansour Abdeltawab **Abbas** (منصور عبد التواب عباس) is of Egyptian nationality, he lives in Fayyoun, Egypt.
26. Mr Ahmed Shaaban **Ragab** (أحمد شعبان رجب) is of Egyptian nationality, he lives in Fayyoun, Egypt.
27. Mr Ahmed Khamis **Mohamed** (أحمد خميس محمد) is of Egyptian nationality, he lives in Fayyoun, Egypt.
28. Mr Sayyed Gomaa **Eisa** (سيد جمعة عيسى) is of Egyptian nationality, he lives in Fayyoun, Egypt.
29. Mr Mohamed Ramzy Abdallah **Khalil** (محمد رمزي عبد الله خليل) is of Egyptian nationality, he lives in Embaba, Cairo, Egypt.
30. Mr Mohamed Tawfik **Soliman** (محمد توفيق سليمان) is of Egyptian nationality, he lives in 69 Abdelfattah Ashmawy, El-Waili, Cairo, Egypt.

31. Mr Ahmed Mohamed Ragab **Mandour** (أحمد محمد رجب مندور) is of Egyptian nationality, he lives in Banha, Egypt.
32. Mr Alaa El-Din Hassan **Eisa** (علاء الدين حسن عيسى) is of Egyptian nationality, he lives in 34 Abdelhadi El-Saidi, Al-Matareyah, Cairo, Egypt.
33. Mr Mahdi Mahmoud **Ahdy** (مهدي محمود عهدي) is of Egyptian nationality, he lives in Alwasta, Bani Swef, Egypt.
34. Mr Mohamed Abdelmageed Mahmoud **Ibrahim** (محمد عبد المجيد محمود ابراهيم) is of Egyptian nationality, he lives in Kom Hamada, Behera, Egypt.
35. Mr Talaat Abdelazim **Ali** (طلعت عبد العظيم علي) is of Egyptian nationality, he lives in Akhmeem, Souhaj, Egypt.
36. Mr Abdelmonem Mohamed **Mostafa** (عبد المنعم محمد مصطفى) is of Egyptian nationality, he lives in Abu Kbeer, Sharqeya, Egypt.
37. Mr Mostafa Mohamed **Mostafa** (مصطفى محمد مصطفى) is of Egyptian nationality, he lives in from Abu Kbeer, Sharqeya, Egypt.

The above-mentioned individuals were arrested on Rabaa Square on 14 August 2013. They were transferred to Nasser City I and Nasser City II Police Stations where they remained until 18 August 2013. On 18 August 2013, the prosecution ordered the transfer of 612 detainees to Abu Zaabal Prison in Daqahleya governorate. During the transfer, 37 detainees being transported in a truck died from asphyxiation after security officials introduced gas inside the truck. Alkarama brought a complaint on their behalf the UN Special Procedures on 28 August 2013 requesting that the Egyptian authorities open an investigation in conformity with international standards into their killing.

On 23 October 2013, the Prosecutor referred four officers to trial by a court of misdemeanour for “negligence” and “unintentional killing”. In fact, the protesters died as a result of asphyxiation due to the gas released by bombs that were shot inside the locked truck. The prosecutor did not deem it necessary to take into account testimonies that asserted that the gravity of the crime required a referral for felony.



Bus used by the Egyptian police to transport the 37 demonstrators who died from asphyxiation during prison transfer

2.2 TORTURE

Alkarama has documented numerous cases of torture and other ill-treatment inflicted on demonstrators. In these cases, when allegations of torture and ill-treatment are brought to the attention of the prosecutor, they are simply ignored. Such deliberate omission violates the specific duty of prosecutors to “ensure that those responsible” for acts of torture or ill-treatment are brought to justice.²¹

The cases of Islam Ahmad Suleiman, Ihab Abdel Menhem Hussein, Omar Aysar Ibrahim and Mostafa Ahmed Ali that Alkarama investigated are revealing in this respect.

طوان الطبية
مستشفى حلوان العام
حوادث استقبال

رقم القيد :

تقرير طبي مبدئي

اسم المصاب : اسلام احمد سليمان السن : ٤٢ سنة

التاريخ : ١٢ / ٩ / ٢٠١٣

ساعة الوصول : ٤ ، ١٤ ، ١٤

النوع : (ذكر / أنثى) ذكر

العنوان : من الحاج محمد من حليل الامير

التشخيص

كدمات متعددة في بؤرة الرأس وصدري وكدمات متعددة في الظهر
وهذه هي اجزاء من كدمات او اثار بالقدم اليمنى ووجع رجلي بالاذن
اليسرى وكدمات بالشفة السفلى من تقرير يوافق اممات الامير
بالكشف على الأسنان وهدم الخلع في القواطع وعدم التدبر على الفرج
على الظهر من الخلفه نتيجة تذبذب كان ذلك

توقيع
المدير المناوب

الطبيب الاختصاصي : مستشفى الشرطة (الشرطة)
الاسم : محمد محمد
الاسم : محمد محمد

اسم الطبيب : محمد محمد
الاسم : محمد محمد

Medical Certificate of Islam Ahmed Suleiman, 12 September 2013

21 *Guidelines on the Role of Prosecutors*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held between 27 August to 7 September 1990; guideline 16.

1. Mr Islam Ahmad **Suleiman** (إسلام أحمد سليمان), aged 24, is of Egyptian nationality and lives in the Fourth quarter, Fifth congregation, New Cairo Egypt.
2. Mr Ihab Abdel Menhem **Hussein** (إيهاب عبد المنعم حسي), aged 48, is of Egyptian nationality and lives in the Third Congregation, Area 3, New Cairo Egypt.
3. Mr Omar Ayssar **Ibrahim** (عمر أيسر ابراهيم), aged 18, is of Egyptian nationality and lives in Fifth congregation, Banafssaj quarter, Villa 69, New Cairo Egypt.
4. Mr Mostafa Ali **Ahmed** (مصطفى علي أحمد), aged 42, is of Egyptian nationality and lives 'Iskan Al-Shabab, Thrid Congregation, Area 2.

These four individuals were returning from a demonstration and holding banners featuring deposed President Morsi on 10 September 2013 when they were arrested at a police checkpoint in New Cairo by the Investigation Unit of the police. They were taken to the police station in New Cairo where they were subjected to torture, causing bruises and even a fractured jaw. On 11 September, the four men were charged, *inter alia*, with assault on a policeman. On 12 September, they were examined by doctors who produced four medical reports documenting the acts of violence to which they had been subjected.

The Deputy Public Prosecutor referred the case to the judge on 14 September (two days after the medical reports were prepared) for a first hearing which occurred on 17 September. The allegations of torture were not acted upon. This demonstrates the inability or unwillingness of the judicial authorities to investigate into allegations of torture.

“ Several bruises and scratches on the head. Several scratches in the back and others on the right foot. Injury in the left ear and bruise on the lower lip. His central incisors are loose and he is unable to exert pressure on his molars because of the displacement of the jaw. ”

Medical Certificate of Islam Ahmed Suleiman, 12 September 2013

3. INQUIRIES

A typical behaviour that highlights how investigating authorities favour impunity is their almost exclusive reliance on police reports. These inquiries or “*tahariyat*” are prepared by the police whenever a crime has occurred. Article 24 of Egypt’s Code of Criminal Procedure enjoins the police with obtaining all the necessary information to facilitate investigation of the facts they collect. Such inquiries aim at obtaining information on a crime and to identify its authors, and are carried out secretly. Prosecutors then proceed to transfer these inquiries to judges, in some instances without backing them up with further evidence. This is in contradiction with Egyptian case-law, which has established that prosecutors cannot rely solely on inquiries prepared by the police when deciding to carry out further investigations.²² Egyptian case-law has also objected to using inquiries alone as evidence to convict an accused.²³

Inquiries can be unreliable as they do not amount to a proper investigation. In addition, the Egyptian police can in certain respects, and often not involuntarily, overlook facts that would be crucial to a case by reporting on violations committed by one side and not another. By relying solely on such reports when referring a case to the judge, the prosecutor perpetuates impunity by giving a one-sided account of the facts.

An example of inquiries where killing of demonstrators is overlooked is the killing at the Presidential Guard Facility on 8 July 2013.

This is the first incident of the mass killing of protesters that occurred after the military takeover of 3 July 2013. Alkarama documented the death of 78 people who were killed by the security forces during a sit-in outside the Presidential Guard Facility and brought their case to attention of the UN Special Procedures on 9 July 2013, requesting the opening of an investigation meeting international standards into the events of that day.

Alkarama has obtained a police record dating from 8 July 2013 that details the police inquiry into the events of that day. The record revolves only around the deaths of seven security officials due to the protesters’ violence. The report is manifestly biased against the demonstrators, describing at full length their violence and the arms they used.

“ The forces present succeeded in controlling the situation using live ammunition to the extent permitted by the law. Some deaths occurred as a result of the indiscriminate use of weapons **by the protesters among themselves** ”

Report 9134/2013, General Directorate of the Inquiries of Cairo, Sector of Police Inquiries, 8 July 2013, *The report explains the killing of the demonstrators at the Presidential Guard Facility on 8 July 2013.*

22 As early as 1967 Egypt’s Court of Cassation has ruled that prosecutors “cannot issue a search warrant to prevent a future crime even if inquiries and serious evidence indicate that it will be actually committed”

23 Egypt’s Court of Cassation ruled on 14 February 1977 in decision No 955 that “inquiries alone are not enough for conviction. It can be used to reinforce the evidences of the case once it has been examined and the court has been satisfied of the veracity of the information it contained”

نقيب / محمد اسماعيل أنود الفايز بالأمم المتحدة [مصاباً برصاص
ضرب فوش الرقيب]

الميد / مالك عبد الناصر محمد من قوة الأمن المركزي [مصاباً برصاص ضرب فوش
بالقسم اليسرى]

الميد / أحمد كارم أحمد من قوة الأمن المركزي [مصاباً برصاص ضرب فوش
بالوجه]

وقد تبين صدور الأوامر التشارية والقنابل الحارقة من مجرمات المعتصمين
باليام المواجهه لمقر المجلس الجمهوري وكذا بعض العلاقات والقائد الملقب
الصلبة ممن يعطون أسلحة القنابل الحارقة لمقر المجلس الجمهوري
ووردوا لتلك المناظر والاشياء ذلك الامتداء فقد تمتعت القوات المتواجده
في السيطرة على الموقف مستخدمة الرشاشه التيه بالقدرة الذي اباحه

القانون ، وقد حدثت بعض العنايات جراء الهلأه النار والعتواتي

المعتصمين فيما بينهم وأحدثوا اصابات ببعضهم البعض وباللواطين وقد
اشك في ضبط بندقيته اليد وأضرب ضرب فوش على القنابل الحارقة للمجلس
الجمهوري وقد تزامى مع ذلك ضبط مجرمه من الأسله إلا لا

حاليه لوضع والأسله على إرفع والأسله الصيغ

متملقه اليام المواجهه لمقر المجلس الجمهوري بالممتده

بشارع هلال سالم ، وعقب ضبط مجرمات من مرتكبي تلك الوقائع

تبين قيام البعض منهم بفتح أجزاء خرسانية من الرصيف بشارع

هلال سالم وإقامة تاريس الخلفه لها انزها انجها بشارع مما سبب

Copy of page 2 of report 9134/2013, General Directorate of Inquiries, Cairo, Sector for Police Inquiries, 8 July 2013. The report explains the killing of the demonstrators at the Presidential Guard Facility on 8 July 2013.

The prosecutor did not initiate any serious investigation into the events of the Presidential Guard Facility. This is indicative of the extent the police inquiry was taken at face-value by the prosecutor who did not bother to undertake any further scrutiny into the facts at hand. This inaction is all the more surprising when one considers that lawyers have requested an investigation (Request No. 1478/2013) into the events of the Presidential Guard Facility, requesting the summoning of witnesses and injured victims, in addition to the reviewing of pictures and videos that were taken during the demonstration that day.

Copy of request No. 1478/2013 demanding the opening of an investigation into the events at the Presidential Guard Facility on 8 July 2013

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

السيد الأستاذ المستشار رئيس نيابة مصر الجديدة بالقاهرة

مقدمه لسيادتكم /

مصطفى فتحي عزب المحامي
طارق إبراهيم أحمد المحامي

ضد

السيد / محمد إبراهيم وزير الداخلية
السيد/ عبد الفتاح السيسي وزير الدفاع والانتاج الحربي
السيد / مساعد وزير الداخلية للأمن المركزي
السيد / قائد قوات الشرطة العسكرية
السيد / قائد قوات الحرس الجمهوري

الموضوع

استيقظ المصريون صباح يوم الأحد الموافق ٢٠١٣/٧/٨ علي مجزرة انسانية تحمل في طياتها صوراً من القتل والفتك والاجرام والاشلاء والمصابين مجزرة لم يكن لاحد ابدا ان يتخيل ان تحدث في مصر بين ابناء الوطن الواحد.

ووقف المصريون مشدوهين وهم يروا صور الشهداء يتصيب منها أنهار الدماء، وأرواحهم الطاهرة تتصاعد الي السماء .

بدأت المجزرة أمام مبني الحرس الجمهوري حينما وقف المعتصمون السلميون الذين أتوا من شتي بقاع مصر ليدافعوا عن مستقبل مصر الثورة ويدافعوا عن شرعية الرئيس المنتخب وعن مدينية الدولة .

وقفت هذه القلوب الطاهرة والأأيادي المتوضئة تناجي ربها وتدعوه أن يحفظ مصر وأن يزيل كربتها وأن يستنشق شعبها عبير الحرية والكرامة ، وقفوا يصلون الفجر متجهين الي القبلة التي تجابه مبني الحرس الجمهوري، فاتجهوا بقلوبهم الي القبلة وأعطوا ظهورهم الي قوات الشرطة والجيش المصري مستأمنينهم علي أرواحهم كما استأمنوهم علي الزود عن بلادنا وحفظ أمنها

واستقرارها ، وحينما انحني جموع المصلين راكعين أمطرتهم قوات الجيش والشرطة بوابل من الرصاص الحي والخرطوش وأطلقت الشرطة القنابل المسيلة للدموع لتخفي وتغطي علي ما حدث بدخانها الأثيم واعتلى بعض الجنود والضباط أسطح البنايات وبدأوا في قنص المصلين بلا رحمة أو هوادة .

مجزرة استمرت قرابة الأربع ساعات أسفرت حوالي عن ١٠٠٠ مصاب وجريح منهم قرابة ١٥٠ مصاب برصاص حي وما يقرب من ٨٠ شهيدا وفقا للتقديرات المبدئية من تقرير وزارة الصحة ونقابة الأطباء .

إن شهادة المستشفى الميداني وتوثيق نقابة الأطباء والصور التي تحسن التعبير أكثر مما قد تحسنه الشهادات والتقارير تظهر مدى الاجرام والوحشية في التعامل مع المتظاهرين السلميين فمعظم الطلقات أصابت مباشرة الجمجمة والرقبة والصدر والبطن والقدمين .

وكان تعامل قوات الجيش والشرطة الموجودة في محيط نادي الحرس الجمهوري مع المعتصمين السلميين تعاملًا ينم عن وحشية وتجبر وإجرام جعلتهم يطلقون الرصاص الحي علي إخوانهم وأبنائهم وأبنائهم من بني جلدتهم العزل وأثناء قيامهم بأداء صلاة الفجر، وأخرجتهم عن دورهم الشريف في حفظ الوطن وأمنه وسلامة أراضيه إلي دور منحط يقفوا فيه مدافعين عن الخونة والانقلابيين ويتصدون فيه إلي إرادة فصيل أساسي من الشعب المصري ويتركوا حيادهم المفروض عليهم لينحازوا إلي فصيل آخر فيلقون هناك الاعلام ويوزعون الماء البارد والعصائر وهنا يوزعون رصاصات الغدر بلا مقدمات .

إن ما يحدث في مصر من إرهاب ومجازر وقتل وقتك وإجرام ودماء يسأل عنه في المقام الأول وزير الداخلية ووزير الدفاع حيث أنهم وقفوا بمجنزراتهم ومدركاتهم وبنادقهم أمام قطاع من الشعب المصري الأعزل الذي يدافع عن حرمة وكرامته وشرعية رئيسه المنتخب وإن رصاصات الغدر التي استقرت في اجساد المصريين العزل كان مكانها الطبيعي في صدور الأعداء والقاتلين لا العزل الساجدين .

- وإمعانا في الظلم والقهر رفضت معظم المستشفيات إستقبال الحالات المصابة ومن رق قلبه منها للحالات رفض نهاية المطاف أن يعطي للمصاب المسكين تقريراً طبياً يعبر عن حالته ويكشف ما أصابه ، كما رفضت الشرطة تحرير محاضر للمصابين في المستشفيات إلا قليلا منهم ، وكيف تفعل وهؤلاء هم خصومها السياسيين الذي خرجت قوات الشرطة ضدهم في مظاهرات تطالب بعودة الأمن وكان الأمن منتج أجنبي كان يلزمنا إستيراده ، وإمعانا في المهانة يتم إعتقال الضحايا والمجني عليهم ومن لم يختره القدر شهيدا أو جريحا جرحا يمنع من الحركة ليتم تلفيق التهمة لهم فيكون المتهم هو الضحية ويغيب عن المحاسبة الفاعل الأصلي والمجرم الحقيقي والقاتل الذي يملك

كل أجهزة الإثبات في الدولة كالمستشفيات والمشرحة وأقسام الشرطة ، فمن هؤلاء الضحايا المحتجزين زورا وظلما وعدوانا من تم عرضه على النيابة بتهمة القتل والشروع في القتل دون بينة أو دليل ، ومنهم من تم تفتيق تهم حيازة أسلحة وخلافه وكلهم من المعتصمين السلميين المغدورين الذين أخطأوا وأعطوا ظهورهم لقوة كان من المفترض أن تحميهم ، كما أن من هؤلاء المعتقلين والمحتجزين ما غابت عنا أخباره ولا نعلم عنه شيئا في خطوة توضح إنتهاك حقوق وأدمية الإنسان في صورة تعيدنا إلى عصر النظام السابق حين تجبرت الشرطة وطغت وظنت نفسها قاهرة قادرة على الشعب فأذلت العباد وأفسدت البلاد ، وها قد استدار الدهر دورته وعاد الطغيان يجرى في نفوسهم .

- إننا نطلب بسرعة فتح تحقيق جديد في المجزرة وفق ما سنقدمه من إثباتات وسماع أقوال الشهود والمصابين والإطلاع على كافة الأدلة الدامغة التي تثبت تورط قوات من الجيش والشرطة في هذه المجزرة وتظهر تبين النية لهذه المجزرة قبل بدايتها وتظهر التعسف واستغلال النفوذ بما يحول بين المجني عليهم وبين إثبات حقهم .

- كما أننا نطالب أن يكون هذا التحقيق من جهة قضائية لم يصدر منها قبل ذلك تصريحاً سياسياً أو ميلاً تجاه فصيل دون آخر أو كان لها خصومة بحال من الأحوال مع السيد النائب العام السابق بغية تحري الحق والعدل والإنصاف .

- إن شعور الشعب المصري بأن مؤسساته التي من المفترض أن تحفظ حقوقه وأمنه هي التي تسفك دمه وتقتل أبناءه لشعور بالمرارة قد يؤدي الي كارثة وطنية وإنسانية إن استمر الحال علي هذا النحو خاصة وأن الشهداء يوميا في الإعتصامات السلمية في مختلف أنحاء الجمهورية يتساقطون كل يوم بفعل وتقايس قوات الجيش والشرطة ثم يتهم من بقى متهم على قيد الحياة بأنه قتل من قتلته يد الغدر .

- ما الذي ينتظره الوطن من شباب قُتل أخوته أمام عينه ثم اتهم فيه ظلما وزورا وكان قاتله وظالمه هو الذي يحاسبه .

- العدل إسم من أسماء الله ، والقضاء كلمة الله في الأرض ، وإننا ننتظر الحق والعدل والإنصاف من قضاء طالما واجه الكثير من رجاله بطش الظالمين في أعتى العصور .

أوقفوا إراقة الدماء ، لا تعينوا القاتل على الإستمرار في جرمه بامتناعكم عن محاسبته أو تراخيكم في ذلك .

نذرك

نلتمس من سيادتكم سرعة التحقيق في الواقعة وسماع أقوالنا فيها وسماع شهادة الشهود والمصابين الذين سنقدم بياناً بأسمائهم ، والإطلاع على الصور والفيديوهات التي استطاع البعض التقاطها تحت قصف النيران ، واتخاذ اللازم قانوناً حيال المشكو في حقهم لمسئوليتهم الكاملة عن المجزرة التي حدثت فجر الأحد الموافق ٢٠١٣/٧/٨ .

ولسيادتكم جزيل الشكر والإحترام ،،،

مقدمه لسيادتكم/

مصطفى فتحى عزب

طارق ابراهيم أحمد

This inaction on the part of the public prosecutor regarding these events is confounded by some judges who rely solely on these documents and police statements to convict protesters.

For example, on 26 October 2013, 16 demonstrators were convicted by the court of misdemeanour of Bolak. These demonstrators had taken to the streets on 6 October 2013 in different parts of Cairo on the 30th anniversary of the 1973 war between Israel and Egypt. That day, Alkarama documented the death of 64 demonstrators and alerted the UN Special Procedure on 1 November 2013 requesting that Egypt open an investigation meeting international standards into the killings.

The judge found 16 protesters to be guilty of the charges based on article 1, 2, 3, 3 bis/1 of law 1914 on illegal assemblies. In one paragraph, the judge declared the charges founded, but the only evidence discussed in this paragraph was the testimony of members of the police. One of the police officials referred to in the paragraph is a member of the Inquiries Unit of Bulak Abu Al 'Ala, the unit entrusted with carrying out inquiries.

(The officer in charge of the inquiries) “witnessed a large concentration of Muslim Brotherhood supporters coming from Ramses Street after having been chased by residents of the neighbourhood. They (referring to the demonstrators) threw a large number of stones and empty glass bottles at the officer and accompanying forces which inflicted injuries on some of them. This caused a state of chaos, violence and intimidation among the population. The secret inquiries of the officer corroborate the fact that the accused took part in the described events.”

Court judgment, First Instance Court of Northern Cairo, Misdemeanour Court of Bulak, Case No. 5390/2013, 26 October 2013

Even though judges have to scrutinise inquiries, in this case the judge satisfied himself of the credibility of the acts of violence attributed to the accused by relying solely on the testimony of the officer and the report that was written by that same officer. To corroborate the findings of the inquiries, the judge mentioned four other members of the police who witnessed the facts described by the officer responsible for the inquiry. So, in sum, the judge convicted the accused on these counts on the basis of an inquiry report whose content was confirmed by four other members of the police.

اسمته ٥٦ قى جلسة ١٩٨٧/١/٨
 وحيث أن المحكمة قد طالعت الأوراق على بصر وبصيرة و بعد أن وازنت بين أدلة الإثبات و النفي اطمانت
 لنيوتها قبل المتهمين على النحو المتقدم وأنها تشكل الجنج المؤتممة بالموت
 أنفة البيان وقام الدليل عليها أخذاً من أقوال الرائد المصطفى إبراهيم رئيس وحدة مباحث شرطة بولاق ابو
 العلا والذي شهد بأنه حال تواجده بشارع الجلاء دائرة القسم لتأمين المنشآت العامة والشرطة في اطار
 احتفالات نصر أكتوبر وبرفقتة قوات القسم شاهد مجموعة كبيرة من أنصار جماعة الاخوان المسلمين
 القادمين من شارع رمسيس عقب مطاردة الأهالي لهم حاملين كميات كبيرة من الحجارة والزجاجات الفارغة
 قاموا بالقائها عليه وعلى القوات المرافقة محدثين اصابات لبعضهم ومحدثين حالة من الفوضى والعنف
 وترويع المواطنين وأن تحرياته السرية أسفرت عن صحة قيام المتهمين المضبوطون بالمشاركة في ارتكاب
 هذه الوقائع ، وما شهد به أمين الشرطة وائل محمد حسين الذي شهد بأنه حال تواجده بشارع الجلاء لتأمين
 المنشآت العامة والشرطة شاهد مجموعة كبيرة من أنصار جماعة الاخوان المسلمين القادمين من شارع
 رمسيس متجهين صوب القوات وقاموا بالقاء الحجارة وازجاجات الفارغة عليهم وأن المتهمين المضبوطين
 شاركوا في الاعتداء عليه محدثين اصابته وما شهد به كل من العريف شرطة احمد محمد حيد ومنذوب
 الشرطة محمد سيد محمد راضي والعريف شرطة ابراهيم محمد حيد ، كما أن يتسند مع ذلك ويدعمه أن
 تاريخ الواقعة هو يوم الاجازة الرسمية للاحتفال بالسادس من أكتوبر فضلاً عما هو معلوم للكافة ومن العلم
 العام بما كان معداً من الدعوة للتظاهر من قبل بعض الجماعات في ذلك اليوم ومكان الواقعة هو بؤرة الأحداث
 الساخنة لهذا التظاهر المدعو له ومع ذلك فإن المتهمين لم يقدموا ثمة مبرر مقبول أو مستساغ لتواجدهم في
 الزمان والمكان محل الواقعة والقبض عليهم فيها على الرغم من بئ حال اقاء اتهم جميعاً عن مكان الواقعة
 وجاعت أقوالهم جميعاً في هذا الشأن لا يمكن أن تظمن معاً المحكمة لاعتقادها ، كما لا تعول على انكار
 المتهمين ازاء ما اطمنت اليه من أدلة الثبوت سائلة البيان وتكون معاً التهم ثابتة قبل المتهمين وتستوجب
 معاقبتهم .
 وحيث أنه عن تهمة التعدي على موظفين عموميين فإن المحكمة تشهد لقبضاتها بأن مناط اعتبارها جريمة
 منتقلة وعدم سريان حكم المادة ٣٢ / ٢ عقوبات على النحو المشار اليه سنفا أن الجريمة مما يقبل التجزئة
 عن غيرها من الجرائم المنسوبة للمتهمين ومن ثم يتعين معاقبة المتهمين عنها على استقلال .
 وحيث أنه من المقرر نص المادة ٣٢ / ٢ عقوبات

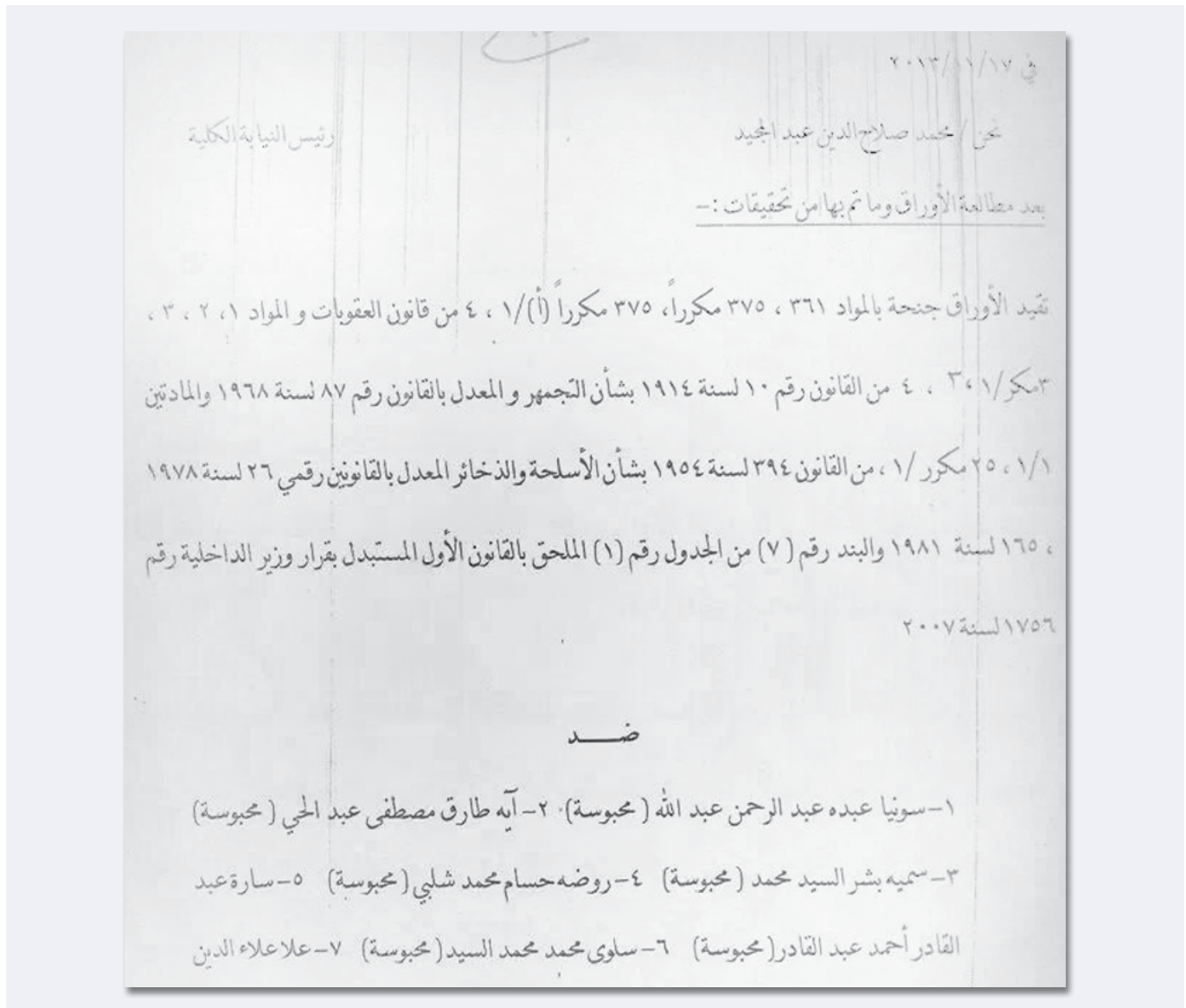
Copy of the court judgment, First Instance Court of Northern Cairo, Misdemeanour Court of Bulak, Case No. 5390/2013, 26 October 2013

4. CHARGES BROUGHT IN ABSENCE OF A CRIME

Prosecutors in Egypt have failed to uphold the right of individuals. They have charged people that were arbitrarily arrested by the police for exercising their right to freedom of expression and assembly, thereby sanctioning the practice of unlawful arrest that is carried out by the police in the first place. This stands in stark contrast to their role in “upholding human rights.”²⁴ Since the military takeover of 3 July 2013, prosecutors have systematically charged sympathisers of deposed President Morsi with acts that do not amount to crimes. Taking part in demonstrations became the crime of “jeopardizing public order”, or even “terrorism”. Members of the Muslim Brotherhood have been charged for belonging to an illegal organisation even before the organisation was banned by the government.²⁵

Prosecutors have also charged people when they have committed no offence using overly broad charges that violate the principle of legality.

Charge sheet issued by Head Prosecutor: Mohamed Salah Eddine Abdel Majid, 17 November 2013



24 Guidelines on the Role of Prosecutors; guideline 12.

25 Amnesty International, Egypt: Roadmap to Repression, 23 January 2014, <http://www.amnesty.org/en/library/asset/MDE12/005/2014/en/cddf8fbf-6dcb-45b2-b411-6d12190b7583/mde120052014en.pdf> (accessed 18 February 2014), page 11.

عزت (محبوسة) ٨- جهاد موافي جابر أحمد (محبوسة) ٩- آلاء أسامة سعد الدين علي
 (محبوسة) ١٠- سميه رجب علي محمد (محبوسة) ١١- مها محمد مصطفى طه (محبوسة)
 ١٢- إسماء جمال محمود شعبان (محبوسة) ١٣- منى ماهر محمد إبراهيم (محبوسة) ١٤- آية
 كمال الدين حسين سيد (محبوسة) ١٥- مدحت أحمد محمود الحداد (هارب) ١٦- أحمد

أحمد أحمد النحاس (هارب) ١٧- محمد طاهر محمد رمضان ندير (هارب) ١٨- محمد أحمد
 شحاته محمد (هارب) ١٩- علي عبد الفتاح علي عبد الفتاح (هارب) ٢٠- محمد علي محمد
 أحمد هندأوى (هارب)

٢٠١٣/١٠/٣١
 بدائرة قسم شرطة سيدي جابر
 محافظة الإسكندرية

بمات من الأولى حتى الرابعة عشر :-

اشتركن وأخربات أطفال وآخرون مجهولون في تجمهر مؤلف من أكثر من خمسة أشخاص الغرض منه التأثير على
 لطات في أعمالها وارتكاب جرائم الترويع والتخويف والإتلاف مستعملين في ذلك القوة والعنف مع علمهم بالغرض
 صود فوقعت منهم تنفيذاً لذلك الغرض الجرائم الآتية :

استعرضن وأخربات أطفال وآخرون مجهولون القوة ولوحوا بالعنف واستخدموهما ضد الجنتي عليهم المبينة
 بانهم بالتحقيقات وآخرين بمنطقة رشدي وكان ذلك بقصد ترويعهم وإلحاق الأذى المادي والمعنوي بهم ولغرض
 صلوة عليهم بأن تجمعوا في مسيرة متوجهين للمكان سالف الذكر حاملين أدوات معدة للاعتداء على الأشخاص
 غتوهم بالاعتداء بها عليهم بأن قذفوهم بالحجارة مما ترتب عليه بث الرعب والخوف في نفوسهم وتعريض حياتهم و
 لاسمهم وأموالهم للخطر وتكدير الأمن والسكينة العامة علي النحو المبين بالتحقيقات .

In a case that caused international uproar, 21 women including 7 of whom were minors, were sentenced to 21 years imprisonment for protesting. They were later sentenced to a one-year suspended sentence on appeal.

The 21 individuals participated in a peaceful demonstration in the morning of 31 October 2013 in Alexandria. During the demonstration, the participants shouted anti-military slogans. This, as usual, prompted the police and army to intervene. The 21 individuals were arrested close to the Istanli Bridge in Alexandria. During their arrest, they were beaten by the Egyptian police. A girl arrested that day and immediately released provided an account of the violence by the authorities on Al-Jazeera.²⁶

The women were interrogated by the prosecutor and charged the same day under articles 361, 375 bis and 375 bis (A)/1,4 of Egypt's Criminal Code, articles 1,2,3, 3 bis1,3,4 of law number 10 of 1914 regarding illegal assembly, and articles 1/1, 25 bis 1 of law 394 of 1954 regarding weapons and ammunitions. Alkarama brought a complaint to the UN Special Procedures on 15 November 2013 on their behalf requesting their immediate release.

21 women demonstrators sentenced to 21 years imprisonment



Egyptian women demonstrators in defendant's cage in courtroom, Alexandria, November 2013.

²⁶ See video (in Arabic), available at <https://www.youtube.com/watch?v=MGukbsBDd2c> (consulted 24 February 2014).

The list of articles on which the charges were based is astonishing considering that all the 21 women did was to demonstrate peacefully. However, some of the articles are so elastic that they can be used to charge peaceful demonstrators. Law No. 10 of 1914 on illegal assemblies figures prominently in the charges brought against demonstrators. Article 1 of this Law which defines illegal assemblies as any “assembly of at least 5 people that aims to endanger public order” suffices to highlight its arbitrariness. Along the same lines, article 375 of Egypt’s Criminal Code is used systematically by prosecutors to prosecute demonstrators. It criminalises what in Egypt is called “Baltaga”, the Egyptian colloquial equivalent of “thuggery”. Article 375 bis sanctions, among others, display of force or threats of using violence when such threat or display of force is “liable to plant terror in the heart of the victim, disturb his peace, serenity, or security.”

Human rights law has set standards to determine whether criminal laws are arbitrary. The Human Rights Committee has determined that arbitrariness is not only against the law but also includes elements of inappropriateness, injustice and lack of predictability.²⁷ The elasticity of the two articles mentioned above is regularly used by prosecutors to charge demonstrators even when no crime has actually been committed. The arbitrariness of these articles is evident as prosecutors can use their elastic nature to charge participants of any demonstration at their discretion.

27 Human Rights Committee, *Hugo van Alphen v. The Netherlands*, Communication No. 305/1988, 1990, (CCPR/C/39/D/305/1988) para. 5.8.

5. ADMINISTRATIVE DETENTION: A FORM OF PUNISHMENT

International law allows the detention of suspects in situations where it is required for the purposes of the investigation, such as to prevent flight of criminal suspects, or tampering of evidence.²⁸ However it should remain an exceptional measure during the investigation process. Article 134 of the Egyptian Code of Criminal Procedure grants the Public Prosecutor the power to order the detention of the suspect if the evidence is sufficient and if the crime is punishable by a period of a minimum of three months imprisonment.

However, practice differs from the law. Public prosecutors have recourse to administrative detention in the great majority of cases, under the guise of carrying out further investigations. It appears that prosecutors use it as a form of punishment. Should prosecutors in Egypt be entrusted with carrying out an investigation into the killing of protesters, their method of resorting to administrative detention will only further human rights violations rather than obtaining justice. Alkarama has expressed its concern about this form of detention, particularly when it comes to minors. Under international law, prosecutors do not have the legal authority to order detention. The Human Rights Committee has condemned states that grant this power to prosecutors.²⁹

Mr 'Afifi was arrested without a warrant on 26 September 2013 in front of Sidi Fath School in Baltim by Members of State Security dressed in civilian clothing. He had been distributing leaflets criticising the military takeover of 3 July 2013. Mr 'Afifi was charged by the prosecutor on 27 September 2013 for distributing leaflets that compromised state security, and for calling for civil disobedience. The prosecutor also ordered his administrative detention.

Practice has shown that prosecutors in Egypt do not respect the fact that administrative detention is an exceptional measure that should not exceed a few days.³⁰ In Egypt, ad-



Mr Yahya Mostafa 'Afifi (يحيى مصطفى عفيفي) aged 16, is a pupil of Egyptian nationality and lives in Baltim, Kafar El-Cheikh Bourj El Barlass.

28 Open Society Foundations, *Pretrial Detention and Torture: Why Pretrial Detainees Face the Greatest Risk*, 2011, <http://www.opensocietyfoundations.org/sites/default/files/pretrial-detention-and-torture-06222011.pdf>; p.18.

29 Human Rights Committee, *Torobekov v. Kyrgyzstan*, No. 1547/2007, 2011 (CCPR/C/103/D/1547/2007) para. 6.2.

30 Human Rights Committee, *General Comment No.8* (1994) on Article 9, para 2.

ministrative detention is frequently ordered and renewed by prosecutors who tend to not heed its exceptional nature nor provide reasonable explanations for their decisions. Such practice violates a fundamental tenet of the right to a fair trial, which is the right to the presumption of innocence. This presumption is jeopardised when an accused person is put behind bars for a long time.³¹

Even more worrying is the practice of resorting to the administrative detention of children where the threshold of detention should be even higher. In fact, the detention of minors must be resorted to only for serious acts involving violence³² and for the shortest time possible.³³ Whenever possible, the state should seek alternative measures to detention.³⁴ Despite this, and as the case of 16-year old Yihya 'Afifi described above shows, minors are all too often placed behind bars while awaiting trial.

31 Human Rights Committee, *Cagas v. Philippines*, No. 788/1997, 2001 (CCPR/C/73/D/788/1997), para. 7.3.

32 *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ("The Beijing Rules") Adopted by General Assembly resolution 40/33 of 29 November 1985; principle 17.a para c.

33 *Convention on the Right of the Child (CRC)*, adopted by the General Assembly resolution 44/25 of 20 November 1989 and entered into force 2 September 1990; article 37 para.b.

34 *The Beijing Rules*; article 13 para.b.

6. CONCLUSION

Investigating authorities in Egypt suffer from fundamental shortcomings when it comes to investigating human rights abuses and prosecuting those responsible. Grave human rights violations are overlooked and not prosecuted even when reliable reports point to their commission by security officials. Such violations entail rights that have achieved peremptory status under international law, such as the prohibition of torture, and their prosecution cannot be left to the margin of discretion of the prosecutor. In addition, the way investigations are conducted shows a major discrepancy with best practices and frequently violate human rights (ex. abusive recourse to administrative detention).

Not only this, but prosecutors in Egypt have failed to uphold human rights, attempting instead to suppress them by charging individuals for acts that fall within the framework of the lawful exercise of the rights enshrined in international human rights law. Thus, it can be expected that prosecutors will remain inactive when it comes to the massive killing of protesters by security. Even in the case where action is taken, as we have demonstrated above, their methods of work are highly likely to be incomplete and even worse, led to further human rights violations.

All of this casts doubt on the ability of prosecutors to carry out investigations and prosecute cases of human rights violations, particularly in cases of protester deaths, in conformity with the international standards.

Given this situation, it is extremely disappointing that the UN Human Rights Council has not taken any steps to remedy the situation as it has done in other cases of grave human rights violations. In light of the Human Rights Council's inaction, we would have hoped that the High Commissioner for Human Rights establish a Fact Finding Mission about the events in Egypt³⁵, but this has yet to happen.

For all the above reasons, Alkarama calls on the Human Rights Council to establish a commission of inquiry into the death of protesters since the military takeover. This is necessary to ensuring that victims of these massive violations of the right to life which have occurred since 3 July 2013 against protesters exercising their rights under international law obtain justice. The UN has taken such steps in the past with regards to violations that were much more limited in gravity and less extended in time.

In view of the gravity of the violations that have occurred in Egypt, and are still occurring, there is a need for investigative efforts commensurate with the powers of a Human Rights Council-mandated commission of inquiry.

Such an investigation would not only ensure justice is served, and accountability rendered, but would also have a deterrent effect to avoid further significant violations of the right to life in Egypt. In addition, it would ensure that no fact is overlooked and that both sides' actions are scrutinised.

35 The High Commissioner for Human Rights has, on the basis of its general mandate from the General Assembly resolution 48/141, established Fact finding missions such as in Togo (2005), Kenya(2008) and Honduras(2009).

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Ever since the military takeover on 3 July 2013 and the appointment of Adli Mansour as interim President of the Republic there has been a systematic campaign of killing of protesters who express their opposition to the government currently in power. This disregard for the right to life has been a permanent feature since the outset of the revolution on 25 January 2011. Nevertheless, it took a dramatic turn after 3 July 2013, culminating on 14 August 2014 with the violent dispersal of the Rabaa and Nahda sit-ins. More than 1000 people who were demanding the return of deposed President Mohamed Morsi died that day. The authorities' lack of accountability for the killing of protesters is of great concern. While national commissions of inquiries have been formed, they have failed to ensure accountability.

Investigating human rights violations and achieving accountability is not optional for states - international law places an obligation on states to investigate and prosecute whenever human rights violations are thought to have occurred. International law also sets out criteria that investigations and prosecutions must respect.

This report reviews the work of Egyptian prosecutors (the authority in charge of investigating and prosecuting perpetrators in Egypt) in order to verify whether it complies with the criteria and best practices established in international law. The report bases its conclusion on cases of violations committed against pro-Morsi demonstrators that Alkarama has documented. It submits that prosecutors have failed to ensure accountability for the violations of the right to life occurring in Egypt since 3 July 2013.

IMPUNITY IS NOT AN OPTION

Ensure accountability for mass killings in Egypt

