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EGYPT: QUASH CONVICTIONS IN TORTURE-TAINTED GROSSLY UNFAIR MASS TRIAL OF 2019 PROTESTERS

The heavy prison sentences imposed following a grossly unfair mass trial of 103 people by an emergency court in connection to the September 2019 anti-government protests serve as a chilling reminder of the Egyptian authorities' zero tolerance for street protests and any other forms of dissent. The Egyptian president must immediately quash the verdict by the emergency court, whose proceedings were marred by fair trial violations and credible reports of enforced disappearance and torture, and whose verdicts are not subject to appeal by a higher court.

On 15 January 2023, the Emergency State Security Court (ESSC) in Settlement 1, New Cairo, convicted 82 people, 45 of them in their presence, in connection to anti-government protests in the city of Suez in September 2019, and sentenced them to harsh prison terms ranging from five years to life in a case referred to as "Joker" in Egyptian media. Twenty-eight of the defendants were children at the time of their arrests, of whom 23 were convicted and sentenced to between five and 15 years in prison. The court also convicted 59 adults, including former army contractor Mohamed Ali whose allegations of corruption sparked the 2019 protests, and sentenced them to prison terms ranging from five years to life. All those convicted were also sentenced to five years of police probation. At the time of writing, twelve youth, arrested when they were under the age of 18, one woman, and 32 men, who were tried in their presence, were serving their sentences in various prisons across Egypt including Badr 1, east of Cairo, and Ataga in Suez governorate.

The individuals tried in their presence were accused of involvement in mostly peaceful protests on 20-21 September 2019 in the city of Suez where people took to the streets denouncing corruption and calling for the removal of Egyptian President Abdel Fattah Al-Sisi. They were among the over 2,300 people rounded up and held in prolonged pretrial detention in connection to scattered anti-government protests that broke out in several governorates in Egypt including Cairo, Alexandria, Dumyat, Mahala, and Suez. Out of the thousands arrested in connection to the 2019 protests, only the 103 defendants in the "Joker" case were referred to trial on 28 April 2021. They were indicted on multiple charges related to acts protected under international law such as participation in an illegal gathering of more than five people with the purpose of disturbing "public peace". They were also charged with hampering traffic, incitement or involvement in terrorism, use of violence against "officials on duty" and attempted murder of a police officer. The remainder of those swept up in connection to the 2019 protests have either been released without charge, prosecuted in separate cases unrelated to the 2019 protests or remain held in abusive prolonged pretrial detention.

The 45 convicted defendants, who were arrested in Suez in the aftermath of protests and tried in their presence, have been subjected to a catalogue of human rights violations, including enforced disappearance, torture and other ill-treatment, and prolonged pretrial detention, without the possibility to meaningfully challenge its lawfulness. Amnesty International calls for their immediate release as their detention is arbitrarily due to flagrant fair trial violations. The President or his designate, who has sole authority to ratify verdicts by emergency courts, must immediately quash the verdict, while all charges stemming from defendants' exercise of the rights to freedom of expression or peaceful assembly must be dropped.

ENFORCED DISAPPEARANCE, TORTURE AND OTHER ILL-TREATMENT

Amnesty International gathered evidence from informed sources pointing to the widespread use of enforced disappearances against those arrested in connection to the September 2019 protests, including defendants in the "Joker" case. Amnesty International obtained information on the use of torture and ill-treatment against at least nine defendants in the "Joker" case, while they were forcibly disappeared following their arrests between November 2019 and January 2020, some of them for nearly two months. During this period, they were held without access to the outside world, most in locations controlled by the National Security Agency (NSA), a specialized police force, while authorities refused to provide their families and lawyers with any information about their fate and whereabouts. Children were held together with adults, and similarly denied any contact with their relatives or lawyers.

Most frequently reported methods of torture and other ill-treatment included severe beatings, the use of electric shocks, and being forced to remain in blindfolds for periods reaching 11 days. For instance, one defendant in the "Joker" case,

who was forcibly disappeared for over 30 days, was subjected to electric shocks all over the body in order to extract forced "confessions". Several other defendants reported being blindfolded for days and severely beaten during their arrest and subsequent detention at the NSA headquarters in Suez.

Even when they were transferred out of locations controlled by the NSA to prisons in early 2020, defendants were unable to see or communicate with their families or lawyers, given restrictions imposed by the Egyptian authorities to combat the spread of Covid-19. Given the Egyptian authorities' failure to introduce any alternative means of communication, including phone-calls and the periodic denial of written correspondence between prisoners held for political reasons and their loved-ones, defendants in the "Joker" case remained cut off from the outside world until restrictions were lifted in August 2020, exacerbating concerns for their wellbeing and mental health, in particular for the children.

FAIR TRIAL VIOLATIONS

Defendants' fair trial rights were violated, including the rights to adequate defence, to communicate with counsel of their own choosing, not to self-incriminate, to a fair and public hearing by a competent, independent and impartial tribunal and to genuine review.

According to information gathered by Amnesty International, all defendants were interrogated by NSA officers without the presence of lawyers, and were denied access to lawyers until their appearance in front of the Supreme State Security Prosecution (SSSP), weeks or in some cases months after their arrests. Several also reported that their arrest dates were falsified in official records to indicate the date of their appearance in front of the prosecution, rather than the day of their arrest. At least two children were also questioned by prosecutors without the presence of their lawyers.

Lawyers were also unable to access and photocopy the full casefiles, namely the secret reports of the NSA on which the arrest warrants and indictments were based. They were tried in closed hearings, inaccessible to observers, members of the public and even relatives of defendants. Further, according to one of the defence lawyers, at trial, the presiding judge refused to summon all defence witnesses citing lack of time and their large number. Additionally, proceedings in front of ESSCs are inherently unfair as defendants are denied the right to appeal their convictions and sentences in front of a higher tribunal. At the time of writing, lawyers have not been able to obtain a reasoned copy of the verdict, issued on 8 February 2023, hampering their efforts to appeal to the president not to ratify it.

Their convictions were also based, in part, on the draconian law on assembly (Law No. 10/1914), which attributes criminal responsibility to all participants of a gathering of more than five people held with a purpose of "committing a crime, or obstructing or delaying the implementation of laws and regulations" or seeking to "influence the authorities" for any crimes committed during the gathering as long as participants were aware of its aim (articles 2 and 3 of Law No. 10/1914).

BACKGROUND

Small protests broke out in several cities across Egypt starting on 20 September 2019. In response and consistent with well-documented patterns, Egyptian security forces used unlawful force to disperse the mostly peaceful protesters, resorting to teargas, beatings and birdshot. They also sought to prevent a second round of protests later the same month by shutting down large parts of downtown Cairo and carrying out mass arrests.

Since the ousting of late former President Mohamed Morsi in 2013, the Egyptian authorities have introduced multiple laws which effectively criminalize the exercise of the right to freedom of peaceful assembly. In 2013, the authorities passed Law No. 107/2013 on Organizing the Right to Public Meetings, Processions and Peaceful Protests which grants security forces free rein to ban protests and use excessive force against peaceful protesters. Since 2013, the authorities have also relied on the draconian colonial era Law No.10/1914 on assembly to prosecute thousands of peaceful protesters in grossly unfair mass trials.

In the months leading up to the lifting of Egypt's state of emergency on 25 October 2021, scores of human rights defenders, opposition politicians, protesters and others held for politically-motivated reasons were referred to trials in front of emergency courts, which are established under the state of emergency. The law governing the state of emergency stipulates that ongoing trials are to continue even after the state of emergency is no longer in force.