

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/10/44/Add.4, 17 February 2009: Egypt

Allegations Transmitted

61. A.S. R., M. H. A., A. M. M., K. A. A. and A. H. A., who are the subjects of a criminal case before the Qasr al-Nil Court of Misdemeanors. On 24 October 2007, Mr. A. S. R. and Mr. M. H. A. were arrested during an altercation in Bab El-Louk in downtown Cairo. When Mr. R. explained to the arresting police officers that he was HIV-positive, both were taken directly to the Morality Police Department in Mugamma'al-Tahrir, where they were detained, and later interrogated by an officer named M. O. A. The officers allegedly slapped Mr. R. in the face and beat Mr. A. They forced them to sign statements, the contents of which they were not allowed to read. During the four days they were detained in Mugamma' al-Tahrir, the two men were handcuffed to an iron desk and left to sleep on the floor. They were denied food and water and were required to pay for them later. A forensic anal examination was performed on both men in order to establish whether they had engaged in anal sexual intercourse. On 20 January 2008, Mr. A. M. M. was arrested on the street, Mr. K. A. A. at his apartment on the following day, and Mr. A. H. A. on 3 February 2008 at an unknown location. On 19 February 2008, Mr. M. was beaten by a police guard. The police guard handcuffed his wrists to opposite poles of the bed and chained one of his ankles to the bed's end to prevent him from moving. Allegedly, Mr. M. had been punched repeatedly in the face, head and body by the same officer.

On or around 20 November 2007, Mr. M. M. M. and Mr. E. H. M. were arrested and held at the Appeals Jail in central Cairo, apparently in connection with the arrests of Mr. R. and Mr. A. Police arrested Mr. M. at his workplace. Both men were released on 26 February and 29 February, respectively, upon court orders as the maximum preventive detention period had expired. Another individual, Mr. G. M., was arrested on an unknown date and later released. It is alleged that all men were forcibly tested for HIV without their consent. Mr. E. H. M., Mr. M. M. M. and Mr. G. M. tested negative and charges against them were dropped. Mr. A. S. R., Mr. M. H. A., Mr. A. M. M., and Mr. K. A. A. tested positive and are being held at Abbasiyya Fevers Hospital. They were chained to their beds until 25 February 2008 when the Ministry of Health intervened. Mr. A. H. A. is at present detained at Tora Prison. Reportedly, the five detainees were indicted on 4 March 2008 on charges of "habitual practice of debauchery" under article 9 (c) of Law 10/1961. Mr. A. S. R. and Mr. M. H. A. continued to be detained and were indicted after the lapse of the maximum 90-day period of preventive detention for misdemeanours. Allegedly, the lead prosecutor indicated to a defense counsel that the men should not be permitted to roam the streets freely as the Government considers them to present a danger to public health. The first trial hearing scheduled for 12 March was postponed to 19 March in order to provide the defense more time to prepare. Their verdict is expected for 9 April. Concerns are expressed for the physical and mental integrity of the men. Further, it is alleged that the five above-mentioned individuals might have been discriminatorily arrested and detained and that their indictment might be solely connected to their reported HIV status.

Government Response

By letter dated 06/10/08, the Government informed that two individuals, Mr. A. S. R. and Mr. M. H. A. were involved in a street fight in a crowded area in the center of midtown Cairo. A police officer near the scene of the fight intervened to separate the two men and to calm down the situation. Upon enquiring from the two men about the reasons for their altercation, Mr. H. claimed that Mr. R. had insisted upon him to resume their sexual relationship, something he did not wish to do in light of his knowledge that Mr. R. had contracted HIV/AIDS. The two individuals were taken to the police station in order to continue the investigation. Mr. R. confirmed that he was infected with HIV/AIDS which he believed to have contracted through homosexual intercourse with a number of individuals whom he named. According to procedure, the Public Prosecutor's Office (PPO) was notified and assumed the responsibility for further investigation into the case. The investigations indicated that the two individuals and the group they named habitually engage in male prostitution, and that one of them actually runs a brothel for male prostitution. Therefore, the Attorney General issued an order summoning the individuals named in the testimony of the two men and they were later charged with "habitual practices of debauchery". During the investigations, a number of them admitted to the charges pressed against them and confirmed that the others also participated with them in such practices. Once the PPO investigations were completed, charges were brought against the aforementioned individuals, their cases were referred to the courts which ruled against the defendants in two of the cases. The defendants in both cases appealed the verdict, one was rejected while a decision on the second has not yet been issued. It is worth mentioning that the court verdict assigned the convicted individuals infected with HIV/AIDS to designated health centers and not to regular prisons in order to ensure they receive the necessary medical treatment while serving their sentences. The verdicts against the individuals named as defendants in these cases were not related to their "sexuality" or due to their "sexual orientation". They were clearly based on violations of specific provisions of the Egyptian penal code, none of which explicitly or implicitly criminalizes homosexuality. The allegation that the defendants were tried simply for being HIV positive or for carrying the AIDS virus is also unfounded. As demonstrated above, the trial was for violating specific provisions of Egyptian law and not for health status of the defendants. The infected individuals were granted medical services throughout the process and continue to receive the necessary treatment while serving their sentences. All proceedings at every stage of this case were carried out under strict judicial supervision. More specifically, the investigations were done by an independent judicial authority. Moreover, the rights of the accused were fully respected and included, inter alia, their right to a fair hearing before a competent court, their right to present their defense and the right to legal representation throughout the investigations and the trial, and the right of appeal. Allegations of arbitrary detention and torture are also unsubstantiated as the entire process followed the designated legal course including the issuance of the required legal permits to summon the group based on a previously defined and criminalized act punishable by the law. The court rulings were based on articles of the Egyptian Penal Code. Allegations of inhuman treatment and torture are also groundless. Firstly, Egyptian law penalizes any mistreatment, including torture and inhuman practices, of individuals including detainees and prisoners. Furthermore, the PPO closely follows and investigates any claims of illegal practices by security personnel and/or any other executive body in Egypt. In case such claims prove to be substantiated, whoever commits such crimes is presented to court to be tried for his or her actions. The

initial investigations of the PPO show that all of these claims were unsubstantiated and lacked concrete evidence needed to incriminate any offender of the law.