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Egypt: Verdict in case of police who tortured and killed detainee reinforces limited justice for crimes by state officials

The South Cairo Criminal Court's conviction and sentencing on 11 November 2018 of Assistant Detective Mohamed Sayed Abdel Halim and Police Officer Mohamed Ahmed Salem to three years and six months' imprisonment respectively for conduct involving the torture and killing of 22-year-old Mohamed Abdel-Hakim Mahmoud does not amount to justice for the crimes against him, the ICJ said today.

The ICJ called on prosecutors to consider options for appeal or new charges that could hold the perpetrators properly to account for serious crimes, with sanctions appropriate to the gravity of their conduct and in line with international law.

The two officers apparently unlawfully arrested Mohamed Abdel-Hakim Mahmoud, otherwise known as "Afroto," on 5 January 2018 and subjected him to severe beatings and other torture, as a result of which he died.

The Court convicted Abdel Halim of "beating that led to death," a crime that carries a sentence of three to seven years' imprisonment under Article 236 of the Egyptian Penal Code, and Salem of "light beating."

"The low sentences imposed by the Court are completely disproportionate to the conduct of the perpetrators, who beat Afroto, threw him into a cell and then beat him again when he complained he was unable to breathe. The perpetrators should have been held accountable for their true criminal conduct, which included torture and murder in police custody," said Kate Vigneswaran, Senior Legal Adviser of the ICJ MENA Programme. "The Egyptian authorities' consistent efforts to immunize public officials from real accountability denies the victims and their families their right to redress and reinforces the Egyptian people's increasing lack of trust in the Egyptian government and judicial system."

The definition of torture under Article 126 of the Egyptian Penal Code only establishes liability for torture for the purpose of obtaining a "confession" against a suspect, falling far short of the standard required by the Egyptian Constitution and the Convention Against Torture (CAT), which contemplate torture being undertaken for any number of purposes. The Penal Code also imposes penalties—hard labour and the death penalty—inconsistent with human rights, including for torture and murder.

"Egypt should amend the Penal Code to prohibit all forms of torture and abolish the death penalty and hard labour," said Kate Vigneswaran. "The authorities are obligated under international law to ensure effective justice for crimes committed by public officials by charging them with crimes and imposing sentences reflecting their criminal conduct. Legislative reform is needed to both ensure accountability for victims and uphold the rights of perpetrators."

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Background

According to reports, on 5 January 2018, Abdel Halim and Salem unlawfully arrested Afroto, took him to the Moqattam Police Station and subjected him to severe beatings. According to eyewitnesses, Afroto was then thrown into a police cell drenched with water and struggling to breathe, saying he felt like he was dying. According to the eyewitness, police officers called to assist said "let him die" and one officer kicked Afroto in the chest, after which he died. Afroto's death certificate issued on 6 January reportedly cites "the injury, the resulting laceration in the spleen, and abdominal bleeding" as the cause of death. The Prosecutor charged Abdel Halim and Salem with "unlawful arrest and detention" and "beating that led to death."

The Prosecutor also charged 102 persons for protesting against Afroto's death. They were arrested, detained and charged with illegal assembly, vandalism, burning police cars, attempting to break into the Moqattam Police Station and resisting authorities. A verdict in the case is pending.

Article 52 of the Egyptian Constitution prohibits "[a]ll forms of torture...with no statute of limitations." Article 126 of the Egyptian Penal Code requires the perpetrator or person ordering torture to be a public employee, the victim to be a suspect, and the crime to have occurred for the purpose of obtaining a confession.

Egyptian State officials enjoy almost complete impunity for torture and other serious crimes under international law. Police and military forces responsible for the unlawful killing of hundreds of Raba'a Al Adaweyya square protesters in August 2013 have not been held accountable. Instead, on 10 September 2018, the Cairo Criminal Court convicted and sentenced 75 of the protestors to death and another 658 to life or five to 15 years' imprisonment after a grossly unfair trial. In May 2018, two National Security Agency officers were acquitted on appeal of "beating that leads to death" for the torture and murder of lawyer Karim Hamdi in 2015.

In 2014, the African Commission on Human and Peoples' Rights' Resolution 287 on Human Rights Abuses in Egypt expressed concern over torture and ill-treatment in detention and called on Egypt to end the "culture of impunity" for public officials committing grave human rights violations. In 2017, the Committee Against Torture reached the "inescapable conclusion that torture is a systematic practice in Egypt," over which "[p]erpetrators...almost universally enjoy impunity."

In 2016, the ICJ documented how the Egyptian Judiciary, including the Office of the Public Prosecutor, consistently failed to meet standards of impartiality and independence and maintained an integral role in facilitating impunity for human rights violations committed by public officials.