Announced death... and overlooked violations

Report on the death of Shady Habash
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The report is based on legal analysis of the articles of the constitution, law and prison regulations in Egypt. It also relies on international standards related to the conditions of prisoners. It used the statements issued by the Egyptian Public Prosecution on the death of Shady Habash, along with some reports of local human rights organizations which dealt with the healthcare conditions in prisons. The author of the report obtained a number of testimonies from former prisoners.

Introduction

The case of Shady Habash was a medical emergency one that should have been dealt with appropriately and immediately to avoid any serious complications, which in Habash’s case resulted in his death inside a cell in Tora Prison. The death resulted from negligence in providing adequate and timely medical care.

This report deals with Habash's case in detail as an example of the crisis facing the justice system in Egypt, including the arrest of creators and dissidents because of their creativity or political views and charging them with terrorism. The report also deals with the jurisdiction of the Supreme State Security Prosecution to investigate creators and dissidents over these charges. The Supreme State Security Prosecution is exceptional, as it has special powers that lead to the violation of the defendants’ rights, such as the renewal of pre-trial detention.

The case of Habash is also a serious example of the Prisons Authority's mismanagement of the Covid-19 crisis. This included the failure to provide healthcare to prisoners during the pandemic, in addition to other measures such as preventing prisoners from communicating with their families, banning visits, skipping sessions to renew pre-trial detention, and not releasing pre-trial detainees adequately to curb overcrowding in prisons. Moreover, the mismanagement resulted in the distribution of methyl alcohol that is not suitable for human use among prisoners.

Finally, visits to prisons were resumed, but reports of deaths of other prisoners continue. Human Rights Watch reported on September 3, 2020, the deaths of four detainees in three days inside Egyptian prisons.
This report includes a background on Habash's case and its connection to freedom of creativity. It provides a timeline of his illness and death, based on the Egyptian Public Prosecution's statements. The report then reviews the shortcomings in Habash's death, and then explains the aspects of the rights violated by the Egyptian authorities in this regard. Habash was subjected to a violation of his right to freedom of expression, right to a fair trial, and finally his right to health and life, based on international human rights standards and Egyptian law. The report concludes with several recommendations directed by the Association for Freedom of Thought and Expression (AFTE) to the concerned official bodies.
Background: The case of Shady Habash and freedom of creativity

Shady Habash (1996-2020) is a young Egyptian photographer and filmmaker. He codirected a satirical political song entitled “Balaha” (a date), performed by singer Ramy Essam who lives outside Egypt. The Egyptian authorities arrested Habash in March 2018, after the song was released on YouTube in February of the same year. Six others were arrested1, including the song’s author Galal al-Beheiry2, and Mustafa Gamal3, who was earlier the admin of Essam’s Facebook page.

The prosecution accused Habash of joining a terrorist group and spreading false news, in the case No. 480 of 2018 registered with the Supreme State Security Prosecution. Habash remained in custody for 26 months without trial, in contravention of the law, as he had to be released in March 2020 after he spent two years, which is the maximum period for pre-trial detention as per the Criminal Procedure Code. However, Habash remained in prison until his death in Tora Prison in the evening of Friday 1 May 2020, after his health deteriorated.

The death of Habash has recalled medical negligence in Egyptian prisons, and the healthcare provided to prisoners, especially in emergency cases that endanger the prisoner’s life. Habash was kept in pre-trial detention without legal justification, thus violating his right to a fair trial. Then he died due to medical negligence in prison, thus violating his right to health and life. The prison administration should therefore be held responsible twice, and the Public Prosecution and the Prisons Authority should accordingly take action. Investigation and administering punishment on those responsible are the first steps that state institutions should take in this regard.

The recurrence of deaths inside places of detention4, without serious investigations into the causes of death due to the absence of healthcare and poor detention conditions especially amid the Covid-19 pandemic, is a serious indication of the failure of the Interior Ministry, represented by the Prisons Authority, which should assume its responsibility towards the health and lives of thousands of inmates.

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1. "Guilty by association: Seven Egyptians in jail over links to critical song", fanack, 22 February 2019; Link: shorturl.at/bKSZ0
2. Galal al-Beheiry’s profile, AFTE, 4 June 2020; Link: shorturl.at/issAQT
3. Mustafa Gamal Kamel’s profile, AFTE, 4 June 2020; Link: shorturl.at/ilwz0
1. The circumstances of Shady Habash’s death

On 5 May 2020, three days after Habash’s death, the Public Prosecution issued a statement explaining the circumstances of his death. The statement was based on the testimony of the doctor who conducted the medical examination of Habash, as well as testimonies from his cellmates. The statement explained that the cause of death, according to the testimonies, was due to the fact that Habash mixed soda water with alcohol used as a hand disinfectant.

1.1 A timeline of Habash’s disease until his death according to the official narrative

The following is an attempt to organize the facts as stated in the Public Prosecution statement. The wording of the statement, however, was not clear. It did not include a specific timeline for the developments of Habash’s case since he was examined by the prison doctor.

- Thursday noon, 30 April 2020: A cellmate said he met Habash - with others - in the prison’s yard where the latter had a bottle of soda water. The cellmate drank a sip from the bottle and found it tasting unusual. When he asked Habash about that, he told him that he mixed the soda water with the alcohol used for hand disinfection to give the same effect of alcoholic drinks.

- Friday dawn, 1 May 2020: The doctor in charge of Tora Prison conducted a medical examination of Habash for the first time, and he found out that Habash’s consciousness was good and the rates of his vital signs were normal. Habash told the doctor that he had drunk some alcohol by mistake from a bottle which he thought was a bottle of water "on the day before his death" – Thursday 30 April – claiming that he was unaware of the amount of alcohol he drank. He said he had an abdominal pain after drinking alcohol. The doctor gave Habash an intestinal antiseptic and an antispasmodic, and then returned him to the prison cell as his condition was stable.

The statement here acknowledged that the doctor knew that Habash had drunk some alcohol the previous day, however he did not take action to treat the alcohol poisoning or even suspect it.

- Friday morning, 1 May 2020: The doctor was informed again that Habash was still sick and had vomiting. The doctor examined him and confirmed the normal rates of his vital signs. This time, the doctor injected Habash with an antiemetic and sent him back to the cell. Then the doctor contacted another doctor who helped him and assured him that the action he had taken to treat the prisoner was correct.

5. Statement by the Public Prosecution regarding the death of Shady Habash in his cell, 5 May 2020; Link: https://bit.ly/2Yn9gnr
The statement here acknowledged that the doctor met Habash for the second time and was aware of Habash’s poor health condition, however he did not take the necessary measures.

- Friday noon, 1 May 2020: As Habash continued to complain of an abdominal pain, the doctor examined him for the third time, injected him with an antispasmodic, and made sure that his vital signs were normal.

The statement here acknowledged that the doctor examined Habash for the third time, and that he did not take the necessary measures.

- Friday evening, 1 May 2020: Habash’s condition continued to worsen. The night shift doctor was informed of Habash’s case and got to know that Habash had drunk some alcohol the previous day. Then, the doctor recommended that Habash be moved to the prison clinic until the doctor arrives at the prison headquarters. The doctor examined Habash and found out that he had disturbed consciousness, so he proceeded to take measures to immediately move him to an external hospital. As Habash’s condition worsened further, the doctor gave him fluids and tried to revitalize his heart and lungs, but Habash did not respond and died. It was the fourth and final time that prison doctors examined Habash.

The statement here acknowledged that dealing with Habash’s case in an appropriate way did not begin until the fourth time he was examined by the prison doctors, and that he was left suffering for more than twelve hours without receiving appropriate medical treatment, although the doctors who examined him were aware that he had drunk an amount of methyl alcohol.

Later, on 10 May 2020, the Public Prosecution issued a supplementary statement explaining that after examining the visceral sample taken from Habash’s body, methyl alcohol was found, which was the cause of death after it caused acidity in the blood, depression of the central nervous system, and acute respiratory failure.

Although more than three and a half months have passed, the Public Prosecution has not issued any further statements on the progress of investigation into the case.

1.2 Medical negligence: Failure to provide adequate healthcare for a case in need of due medical attention

The statements of the Public Prosecution did not address the doctors’ apparent failure and
negligence in treating clear symptoms of alcohol poisoning, despite their knowledge of Habash
taking an unknown amount of methyl alcohol, since the first time he felt ill. The protocol used
for treating alcohol poisoning has specific steps that are known to any clinician.

Treatment includes helping the body get rid of alcohol, while the body is supplemented with
liquids during the process. As soon as the doctor suspects alcohol poisoning, blood and urine
tests should be conducted to check the levels of alcohol in the blood, and to detect other signs
that may be indicative, such as low blood sugar.

Treatment for alcohol poisoning also includes “close monitoring, prevention of breathing
problems or choking, oxygen therapy, intravenous fluids to prevent dehydration, and the use
of vitamins and glucose to help prevent serious complications”. Moreover, those who have
consumed methyl alcohol (like in Habash’s case) or isopropanol may need dialysis to speed up
the removal of alcohol from the bloodstream.

1.3 Supervisory and administrative shortcomings: Distribution of toxic disinfectants
to prisoners and lax control over these supplies

The type of alcohol used in Habash’s case is crucial, as there are three types of alcohol; only two
of them are suitable for human consumption, namely ethyl alcohol and isopropanol. The third
type, methyl alcohol, whose traces were found in Habash’s body, is used in the manufacture of
chemicals.

The differences between these types can be recognized, as methyl alcohol is extracted from
burning wood, brown in color, and is not suitable for medical use. It is not also suitable for
drinking due to its high toxicity. It is used as an industrial solvent in the manufacture of plastics
and chemicals.

Ethyl alcohol, on the other hand, is extracted naturally from the fermentation of sugarcane,
grapes, and apples. It is colorless, suitable for medical use and disinfection, and is used in the
manufacture of alcoholic drinks and perfumes in specific proportions.

The third type of alcohol is isopropanol, which is used primarily for disinfection and cleaning.
What is currently being used in disinfection of hands and surfaces during the Covid-19
pandemic is either ethyl alcohol or isopropanol, or a mixture of both. Methyl alcohol is never
used for disinfection.

7. “Alcohol Poisoning”, Mayoclinic; Link: shorturl.at/cisKS
8. See: “Main types of alcohol,” Link: shorturl.at/cfgio, and “The difference between ethyl and methyl alcohol, and which one causes death?”;
Link: shorturl.at/afmq
The Public Prosecution’s first statement stated that after Habash's condition deteriorated with severe vomiting and headache and a pain in his eyes, his cellmates began to check the amount of alcohol they had. They found two empty 100-ml bottles of alcohol of a different type that only Habesh used. They also found another bottle of the same type in his belongings.

This means that Habash had three bottles of alcohol different from that used by his cellmates. Where did these bottles come from, which later turned out to contain methyl alcohol and not the alcohol used in disinfection of hands?

The prison administration should be held responsible for the presence of three bottles of methyl alcohol that is not authorized for use in disinfection in Habash's possession, as it is responsible for distributing hygiene supplies among the prisoners to prevent the spread of Covid-19. It is noteworthy that Habash could not communicate with his family since the last hearing session he attended in February 2020. Moreover, his attendance before the counselling room in the Criminal Court was cancelled after the Egyptian authorities applied measures to confront the outbreak of Covid-19 inside prisons on 9 March 2020. These measures included the suspension of the work of courts, delaying sessions on renewal of detention, and banning all family visits to prisoners.

Thus, the prison administration is responsible for the presence of methyl alcohol, the substance that caused Habash's death. It is also essentially responsible for the gross negligence in treating him from alcohol poisoning, despite the fact that he visited the prison’s clinic four times before his death, and for not taking the usual medical steps for the treatment of suspected cases of alcohol poisoning.

After this detailed review of the circumstances of Habash’s death, the report provides below a summary explaining the problems with the Public Prosecution's statements on 5 and 10 May 2020:

- The Public Prosecution's statements did not address the main problem in Habash’s case, which is the continuation of his pre-trial detention despite the expiration of the maximum two-year period legally permitted for pre-trial detention. The statements did not also mention any indication of the prosecution’s failure to release Habash or bring him to trial. The continuation of Habash’s detention in violation of the law requires investigation and punishment of the perpetrator.

- Habash visited the prison’s clinic four times over the course of more than twelve hours, from the dawn of 1 May until his death in the evening of the same day. Two prison doctors

examined Habash, the first-shift doctor for three times and the second-shift doctor for once, in addition to a third one who the first doctor said he consulted about Habash's health condition and he acknowledged the soundness of giving an antiemetic and an antispasmodicto Habash. Nevertheless, that method of treatment was not correct for treating alcohol poisoning.

- The two doctors learned that Habash had drunk an unknown amount of alcohol, and yet they did not try to transfer him to an external hospital or to deal with him as a suspected case of alcohol poisoning, except in the fourth time by the second-shift doctor, just before Habash died, according to their account.

- The Public Prosecution's first statement, dated 5 May, indicated that the cause of death was mixing soda water with alcohol “used in disinfection of hands”, which was later proven wrong after the autopsy of Habash's body was carried out, according to the prosecution's supplementary statement on 10 May, as traces of methyl alcohol were found in the body although the substance is not used for disinfection.

- The Public Prosecution's statements mentioned nothing about investigation procedures to hold accountable those negligent in providing healthcare to Habash.

- The Public Prosecution's first statement came out four days after Habash's death, after the news spread in newspapers and on social media. The statement was supposed to explain in detail what happened with Habash since the beginning of his illness, with dates and times specified for all developments. However, the statement was not clear, as it did not reveal the timeline of the health crisis that Habash faced, or the extent of medical neglect that he suffered.

- The Public Prosecution's second statement, which proved the presence of methyl alcohol residues in Habash's body, did not address the investigation into how the bottles of methyl alcohol, which is not authorized for use in disinfection, reached the prisoner although the prisoners were isolated from the outside world at the time. The statement did not also address the prison administration's responsibility in this regard.
2 Violation of Shady Habash’s rights under Egyptian laws and international human rights law

In its second section, the report reviews the multiple violations of Habash’s rights due to his participation in a creative work. These rights are not only protected under international human rights law, but are also protected under the Egyptian constitution and laws.

2.1 Violation of Habash’s right to freedom of expression and creativity

The Supreme State Security Prosecution charged Habash with joining a terrorist group and spreading false news, in the case No. 480 of 2018 registered with the Supreme State Security Prosecution. Meanwhile, the case documents show that all Habash committed was his participation in directing a satirical music video entitled “Balaha” performed by singer Ramy Essam and posted on YouTube in 2018. Therefore, the Egyptian authorities may use the articles of the anti-terrorism law to prosecute and arrest dissidents thanks to the broad wording of these articles.

AFTE has documented in its annual reports the targeting of political opponents and creative people, especially satirists, by levelling accusationsthat may be related to the articles of that law. The arrest of Habash and levelling terror-related charges against him are a blatant violation of the articles on freedom of expression enshrined in the Egyptian constitution, which stipulate that freedom of thought and opinion is guaranteed and all individuals have the right to express their opinion through speech, writing, imagery, or any other means of expression and publication. Moreover, freedom of artistic and literary creativity is guaranteed, and no punishments of custodial sanction may be imposed for crimes committed because of the public nature of the artistic, literary or intellectual work. It is also considered a violation of Egypt’s obligations under international human rights law.

2.2 Violation of Habash’s right to a fair trial: Illegal detention after the end of pre-trial detention

International human rights law stipulates that it shall not be the general rule that persons awaiting trial shall be detained in custody, and pre-trial detention shall be limited to those

10. Article 65 of the Egyptian constitution
11. Article 67 of the Egyptian constitution
12. See: International Covenant on Civil and Political Rights, Article 19
whose continued presence in society constitutes a serious threat or may affect the trial. It should also be preferred to release the accused while awaiting trial, because the accused is considered innocent until proven guilty in a fair court of law, and therefore they may not be deprived of their freedom as long as a final judgment is not issued proving that they committed the crime that requires their punishment.

Although Habash was arrested for his participation in a creative artistic work, and because of the unclear wording of the Egyptian anti-terrorism law, his participation in that work was considered a terrorist act, and he was remanded in custody for more than two years. The Supreme State Security Prosecution does not commit itself to the maximum period legally specified for pre-trial detention and uses pre-trial detention in itself as a punishment. The detention of Habash for more than two years in Tora Prison is illegal, as the maximum period of pre-trial detention is two years according to the Egyptian Criminal Procedure Code. The maximum period of Habash's detention should have expired by the end of February 2020.

The last court session Habash attended was on 24 February 2020, in which the court decided to extend his detention, which the authorities dealt with as being valid for more than 60 days in violation of the law which stipulates that detention renewal sessions shall be held once every 45 days. However, due to the suspension of the work of courts as part of the Covid-19 preventive measures, Habash's detention was automatically extended without a decision from the court. Habash's lawyer said that his client was unable to communicate with his family due to the exceptional Covid-19 measures, thus leading his health and psychological condition to worsen in the last months.

Thousands of defendants are currently languishing in Egyptian prisons, and the vast majority of them remain in pre-trial detention and are not transferred to trial until after the end of their detention period. Some may be released after the end of the maximum period of pre-trial detention without trial, justification or compensation for the time they spent in jail. Further charges may be brought against the prisoner immediately after the end of the

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13. Article 9 of the International Covenant on Political and Civil Rights
14. Article 96 of the Egyptian constitution
15. Penalties may only be inflicted by a judicial ruling, Article 95 of the Egyptian constitution
16. He remained in prison despite the end of the legal period for pre-trial detention: Who bears responsibility for the death of young man Shady Habash?, Egyptian Front for Human Rights, 2 May 2020; Link: shorturl.at/hqvKZ
17. AFTE calls on the Attorney General to investigate the death of Shady Habash, AFTE, 4 May 2020; Link: https://afteegypt.org/press-releases/2020/05/04/18688-afteegypt.html
legal period of his pre-trial detention\(^\text{18}\) in order to ensure that he remains in detention in a new case, and therefore a new period of detention starts and may last for another two years without trial.

The Covid-19 crisis requires a special treatment of prisoners due to the factors related to the nature of prisons, including the closure, the limited space, and the inevitable mixing of prisoners, which constitutes an appropriate environment for the spread of the virus. This prompted many governments to release large numbers of prisoners.\(^\text{19}\) Thus, Habash and others with similar conditions should have been released from pre-trial detention in order to reduce overcrowding in prisons and limit the spread of the disease, not to keep them in jail without legal justification beyond the period of pre-trial detention.

The Covid-19 pandemic is an appropriate reason, but not the only one, for releasing pre-trial detainees in Egypt.\(^\text{20}\) The case of Habash is evidence of the poor healthcare services provided to prisoners, which requires a review of the pre-trial detention period, the overcrowding in prisons, and the level of healthcare available to them.

**2.3 Violation of Habash’s right to life, health and a safe and healthy environment**

Habash’s right to health was violated, first as an Egyptian citizen and secondly as a prisoner. The authorities that detained him should be responsible for his safety. Access to healthcare without discrimination is one of the main elements of the right to health,\(^\text{21}\) and it should not be affected by the legal status of the detained person, as he is deprived of liberty. Prisoners are entitled to the highest attainable standard of physical and mental health,\(^\text{22}\) as any free citizen.

The punishment of a prisoner is to deprive him of his freedom, not to inflict any kind of harm on him. Rather, the state must pay due attention to the prisoners’ right to health. Of course, prisoners cannot manage in case they fall ill while in detention, because they are isolated from the outside world. Therefore, their access to adequate healthcare depends on

\(^{18}\) “Recycling the defendants: On the release of defendants, then detaining them in new cases,” Arab Network for Human Rights Information, 19 February 2020; Link: [https://www.anhri.info/?p=14857](https://www.anhri.info/?p=14857)


\(^{21}\) General comment No. 14 on Article 12 of the International Covenant on Economic, Social and Cultural Rights: The right to the enjoyment of the highest attainable standard of health, United Nations Committee on Economic and Social Rights, adopted on 11 August 2000, paragraph 34

\(^{22}\) Article 12 of the International Covenant on Economic, Social and Cultural Rights
the readiness and management of prisons. The government is responsible for providing
them with adequate health services and healthy environment. Rule 24 of the United Nations
Standard Minimum Rules for the Treatment of Prisoners\textsuperscript{23} states that “the provision of
healthcare for prisoners is a State responsibility, and prisoners should enjoy the same
standards of healthcare that are available in the community”.

The case of Habash is an example of an emergency medical case that should have been dealt
with appropriately and immediately to avoid any serious complications, which in Habash’s
case led to his loss of vision, according to the testimonies of his cellmates, and then his death
as a result of negligence in providing appropriate and timely medical service. The treatment
in Habash’s case indicates that there is a gap in the level of healthcare provided to prisoners
compared to what free individuals get. If Habash had been outside prison and had been
exposed to alcohol poisoning, he would have been able to go to a hospital and get the right
treatment at the right time, thus saving his eyesight and his life.

Prisoners’ right to health is stipulated in Egyptian laws, including the constitution, the law
organizing prisons, and the prison regulations, in addition to international human rights
charters and agreed international standards on prisoners’ rights that were approved by the
UN General Assembly. This can be further explained as follows:

- **International standards on prisoners’ right to health**

International standards on prisoners’ right to health stipulate that it is a general principle
that a proper medical examination shall be offered to a detained or imprisoned person
as promptly as possible after their admission to the place of detention or imprisonment\textsuperscript{24},
and thereafter any necessary medical care and treatment shall be provided to them free of
charge.\textsuperscript{25} Prisoners shall have access to the health services available in the country without
discrimination on the grounds of their legal situation.\textsuperscript{26} Clinical decisions may only be taken
by the responsible healthcare professionals.\textsuperscript{27}

\textsuperscript{23} The Nelson Mandela Rules, adopted by UN General Assembly Resolution 70/175, on 17 December 2015
\textsuperscript{24} Principle 24, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Adopted by UN
General Assembly resolution 43/173 of 9 December 1988, and Rule 24, the Nelson Mandela Rules, adopted by UN General Assembly
Resolution 70/175, on 17 December 2015
\textsuperscript{25} Principle 24, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Adopted by UN
General Assembly resolution 43/173 of 9 December 1988
\textsuperscript{26} Principle 9, Basic Principles for the Treatment of Prisoners Adopted and proclaimed by General Assembly resolution 45/111 of 14
December 1990
\textsuperscript{27} Rule 25, the Nelson Mandela Rules, adopted by UN General Assembly Resolution 70/175, on 17 December 2015
Every prison should have adequate health facilities and healthcare staff to provide a range of healthcare services for inmates, including dental and psychiatric care. Sick prisoners who cannot be treated in prison, such as prisoners with mental illnesses, should be transfered to a civilian hospital or a specialized hospital in the prison. The medical officer must be responsible for ensuring that appropriate health standards are applied within the prison, through periodic inspection and advising the prison director on the appropriateness of food, water, hygiene, sanitation, heating, lighting, ventilation, clothes and bedding, as well as the availability of physical exercise for prisoners.

All cases of death during detention and the disappearance of prisoners must be properly investigated, as “whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.”

- **Egyptian law and its implementation regarding prisoners’ health**

The current Egyptian constitution guarantees the right to health for all citizens. Article 18 of the constitution states that “every citizen is entitled to health and to comprehensive healthcare quality standards.” Article 55 also stipulates the right of prisoners specifically to health and appropriate care. It says: “All those who are apprehended, detained or have their freedom restricted shall be treated in a way that preserves their dignity. They may not be tortured, terrorized, or coerced. They may not be physically or mentally harmed. They shall be detained or imprisoned in designated locations that are appropriate according to humanitarian and health standards. The state shall provide means of access for those with disabilities.” Article 56 says: “Prison is a house for reform and rehabilitation. Prisons and detention centers shall be subject to judicial oversight, and anything that violates the dignity of a person or endangers his health is prohibited.”

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28. Rule 22, paragraphs 1 and 2, the Nelson Mandela Rules, adopted by UN General Assembly Resolution 70/175, on 17 December 2015
29. Rule 26, the Nelson Mandela Rules, adopted by UN General Assembly Resolution 70/175, on 17 December 2015
30. Principle 34, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Adopted by UN General Assembly resolution 43/173 of 9 December 1988
The regulation of the health conditions of prisoners is stated in articles 33 to 37 of the Prisons Organization Law No. 396 of 1956 and its amendments. The prison regulations issued by the interior minister’s decree No. 79 of 1961 and their amendments explain the Prisons Organization Law. The regulations include 36 articles on the treatment of prisoners, starting from Article 24 to Article 59. The regulations can be used in litigation to interpret the provisions of the law, and it is not permissible for the prison administration to violate the regulations. They may also be used in filing a complaint to the Doctors Syndicate against one of the prison doctors, in addition to the Doctors Syndicate law and the medical ethics regulations.  

The legal text, however, does not explicitly mention the term “prisoners’ rights,” although it addresses the duties and obligations of doctors, healthcare providers, and prison administrators towards the prisoners. It also addresses the conditions of release for health reasons, etc. However, it does not include a rights approach that affirms the prisoners’ right to healthcare which is guaranteed to them by international covenants and human rights principles.

In addition to the problems of the legal text, there are problems in the practices inside prisons that lead to the violation of prisoners’ rights to health and human treatment which are stipulated in Egyptian laws. For example, medical negligence in prisons begins with the failure to offer medical examination to prisoners upon their admission to the place of detention or imprisonment, although this is stipulated in Article 27 of the prison regulations. Moreover, medical services and their providers are not available when needed, not to mention the wrong diagnosis and treatment, the slowdown and intransigence in moving the patient to an external hospital for treatment when needed, and the failure to investigate negligence in the treatment of prisoners.

The prison doctor, as stated in the prison regulations, is responsible for “health measures that ensure the safety of prisoners’ health, particularly protecting them from epidemic diseases, monitoring the validity and adequacy of the food, clothes, and furnishings provided for prisoners, and observing the cleanliness of workshops, sleeping wards, and all parts of the prison. If the prison doctor is absent, the prison director should notify the Prisons Authority to take necessary action by assigning a doctor from the health ministry to

31. “Treat them or release them: Medical negligence in prisons is a crime,” a joint report issued on 21 May 2017 by the Egyptian Initiative for Personal Rights and Al-Nadeem Centre for the Rehabilitation of Victims of Violence, p. 9; Link: https://eipr.org/sites/default/files/reports/pdf/medicalnegligence_jointreport.pdf
33. The Egyptian Initiative and Al-Nadeem Centre, op. cit., p. 5
replace the absent doctor. The prison director may call the health ministry doctor directly in urgent cases”. Moreover, the prison doctor is responsible for taking the decision to transfer the patient to the prison hospital, and he must visit every prisoner in solitary confinement every day, and must visit other prisoners at least once a week to check their health conditions and hygiene.

Article 37 of the prison regulations states that “if the means of treatment of any prisoner are not available and the prison doctor deems it necessary to treat the prisoner in an external hospital, prior to the transfer, the matter shall be put to the assistant director for treatment affiliated to the competent Medical Affairs Directorate for examination in consultation with the prison doctor. The conclusion shall be reported to the Medical Department at the Prison Authority to act upon at its discretion”. The same article states that “the prison doctor may order the approval of medicines provided to the prisoner from outside, should a medical need be identified”.

Among the problems of the legal text regarding prisoners’ health rights is the failure to stipulate the necessity of having a sufficient number of doctors in prisons as well as doctors in all medical specialties, as one or more doctors are assigned for each public prison. The legal text did not explicitly stipulate that every prison should have a sufficient number of doctors commensurate with that of prisoners in each prison so that a doctor can perform his duties optimally.34

Regarding central prisons, the law did not stipulate the appointment of a doctor to a central prison, but it stipulated the possibility of seeking the help of a doctor from outside. It is supposed that “all prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care”.35

There are two types of doctors in Egyptian prisons; civilian doctors and doctors trained in the Police Academy to become medical officers.

Medical officers wield power within the prison. Civilian doctors do not belong to the police, but they work for the Interior Ministry under a contract. They do not have enough power before the prison administration, and their opinions are largely advisory.36

34. The Egyptian Initiative and Al-Nadeem Centre, op. cit., p. 9
35. Rule 27, the Nelson Mandela Rules, adopted by UN General Assembly Resolution 70/175, on 17 December 2015
36. The Egyptian Initiative and Al-Nadeem Centre, op. cit., p. 16
The prison regulations allow the prison administration not to approve the recommendations of the prison doctor. Article 33 of the regulations stipulates in its first paragraph that the prison director must implement the prison doctor’s recommendations regarding any change in the prisoners’ treatment or food according to their health condition. The second paragraph of the same article stipulates that the prison director has the right not to approve the doctor’s recommendations and therefore refer the matter to a committee for study. Thus, the article has been emptied of its essence, and the prisoner’s health may as a result deteriorate.

Previous studies documented the prevalence of contempt and violence against prisoners, and noted that doctors viewed prisoners as “criminals who do not deserve humane treatment,”37 and thus they do not believe their complaints or their need for medical care. Moreover, there are no regular announced times for the presence of doctors, especially senior doctors and specialists. Also, the presence of the on-duty doctor is not guaranteed all the time, and in the event of his presence he may be a recent graduate or inexperienced or may not be sufficiently qualified to diagnose an urgent case and deal quickly with it, as happened with Habash when he was checked by two doctors who failed to deal with his urgent case and he had to wait for the on-duty doctor for a long time.

A previous report38 indicated that it is possible that the cell doors will not open again after the prison is closed in the evening, no matter how the prisoners shouted loudly or banged on the doors to call the guards. Even if the prisoner in an emergency situation is moved to the prison clinic, he will be given nothing but a painkiller and then will be returned again to the cell, as happened in Habash’s case where the prison doctor only gave him an intestinal antiseptic and an antiemetic during the three times he visited the doctor, despite the deterioration of his condition and the fact that the doctor was aware that Habash had consumed an amount of alcohol.

If the patient needs treatment in an equipped hospital outside the prison, coordination must take place between three parties so that the prisoner can be transferred to receive his treatment. These parties are the Prisons Authority, the prison administration, and the prisoners’ transfer department, in addition to a fourth party in the case of political prisoners, which is the National Security Agency. Sometimes, the National Security Agency explicitly interferes with the prisoners’ transfer to an external hospital.39

These procedures constitute a serious threat when the prisoner must be transferred to an external hospital for treatment, as the bureaucracy in procedures and the requirement of more

37. Ibid, p. 17
38. Ibid, p. 5
39. Ibid, p. 5, 20
than one approval may cause the health condition of many prisoners to worsen, which may lead to their death. As we have seen in Habash's case, according to the Public Prosecution's statement, the doctor in the fourth time had begun procedures to transfer Habash before his death. Perhaps if it was not that bureaucratic, the doctor could have requested an ambulance to transport him to save his life.

- The prison administration's negligence in treating Habash and in overseeing the sanitation supplies in the prison may amount to manslaughter

AFTE argues that the prison administration's negligence in dealing with the case of Shady Habash may amount to manslaughter. In addition, there is criminal suspicion related to the circumstances that led to the presence of methyl alcohol in Habash's possession for the purpose of using it as a disinfectant to prevent Covid-19. Not only was Habash's right to health as a prisoner and as an Egyptian citizen violated, which is represented in the failure to provide adequate healthcare for his urgent case and that resulted in his death, but also his right to a safe and healthy environment was violated, as neglect and corruption in the medical and supervisory duties in prisons resulted in the presence of a toxic product that is not suitable for human use with prisoners, which is the methyl alcohol that Habash consumed, believing that it was the ethyl alcohol used in disinfection and also in the manufacture of alcoholic drinks.

As we mentioned earlier in this report, methyl alcohol is not used for disinfection at all, and there is no legal or reasonable justification for its presence in the prisoners' possession. It should be noted that family visits to prisoners were banned due to the Covid-19 pandemic.

Some human rights organizations argue that the responsibility of prison doctors in cases of medical negligence in prisons may amount to murder by refraining, not just manslaughter. "Medical negligence that causes the death of a prisoner may be characterized as manslaughter if it results from the doctor's recklessness, lack of caution, or non-observance of laws, decisions, regulations, and bylaws, thus causing the death as a result of negligence. However, the death of a prisoner may be considered a murder by refraining, if the activity in the crime is a negative behaviour represented in refraining from intervention to prevent the death. The preponderant opinion in jurisprudence tends to equate between positive and negative activities in the crime, so it supports the occurrence of murder by refraining in case there is legal obligation or agreement to take specific action that prevents death. So, the prison administration that has refrained from treating a seriously ill prisoner may thus have committed murder by refraining." 40

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40. Ibid, p. 19
3. A history of deaths as a result of medical negligence in prisons

The case of Shady Habash is evidence of the corruption of the prison administration in Egypt and of the risks that surround all prisoners without exception, in light of the absence of legal methods that enable families and prisoners to file complaints or claim their rights. But Habash’s case was not the first. It was the third death in Ward 4 of Tora Prison in less than ten months, as prisoners Omar Adel and Mustafa Qassem died there earlier.41

- **Omar Adel:** On 22 July 2019, approximately six months before Habash’s death, prisoner Omar Adel, 29, died days after he was imprisoned in a solitary “disciplinary cell”, although the prison authorities were aware that his physical and psychological condition would endanger his life if he is placed in solitary confinement.42 Adel was sentenced to 10 years in prison by a military court.

Adel had a medical report stating that he had a respiratory problem, in addition to over weight that caused him breathing problems, which means that he required medical care and adequate detention conditions. The head of the prison’s investigation department was aware of Adel’s medical report before he was admitted to the “disciplinary cell”. Adel pleaded the prison administration to let him out of solitary confinement, but they did not allow him until his death.43

- **Mustafa Qassem:** On 13 January 2020, Mustafa Qassem, 64, died in Tora Prison. He had been arrested in 2013 and was sentenced to 15 years in a maximum security prison in a case known in local media as the “Rabaa sit-in dispersal”. He went on a hunger strike until his condition worsened days before his death. He was diabetic. The prison administration did not provide him with the adequate medical care required for his chronic illness and his hunger strike, despite the pleas he sent to parties outside the prison, including the US administration.44

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41. “We demand an investigation into the death of filmmaker Shady Habash, and we hold the prosecution accountable for the failure to release pretrial detainees”, Committee for Justice, 4 May 2020; Link: [https://www.cfjustice.org/%d8%b4%d8%a7%d8%af%d9%8a-%d8%ad%d8%a8%d8%b4/?lang=ar](https://www.cfjustice.org/%d8%b4%d8%a7%d8%af%d9%8a-%d8%ad%d8%a8%d8%b4/?lang=ar)


44. “After the death of Mustafa Qassem and others in Egyptian prisons: Human rights organizations call on the Red Cross to inspect prison conditions in Egypt,” the Arab Network for Human Rights Information, 16 January 2020; Link: [https://bit.ly/3hQ9Qc](https://bit.ly/3hQ9Qc)
Although the construction of prisons in Egypt has been expanded since 2014, the readiness of prisons to treat prisoners has not changed. Several organizations have documented the increasing number of deaths in Egyptian prisons since then, reaching hundreds in some estimates.

Ahmed - a pseudonym\(^45\) - tells about his experience in Giza Central Prison, one of the central prisons established in 2014, which also include 15 May and Al-Nahda prisons. The prison covers some districts in Giza, such as Agouza, Dokki, and Imbaba. Unlike public prisons, central prisons do not allocate time for prisoners to practise physical exercise and do not even have space for that. They only have small spaces for visitors. They also do not have clinics, as prisoners remain under the custody of their relevant police stations. In the event that a prisoner suffers a health crisis, his relevant police station is notified, and then it sends a force to take him to the nearest hospital.

This process usually takes a longer time than that the urgent case needs. This may lead mild cases to deteriorate due to the delay in medical response, thus exposing serious cases to death.

Ahmed recounts his experience, saying: “I had a health crisis in Giza Central Prison, where I had a high fever. We informed the prison administration, and my cellmates continued to plead for four days until the police station managed to provide a vehicle to transfer me. We went to Sheikh Zayed Hospital where I was injected. The doctor there told the police force that accompanied me that it was necessary to keep me in the hospital, but keeping a prisoner in the hospital requires a guard to stay in front of the prisoner’s room. The police station could not provide a guard, as the guard force was affiliated with the traffic police in Sheikh Zayed, and the police station’s officer would return to the station after I undergo the medical examination. This failure in providing adequate medical care for me made my condition worsen.”

Ahmed continues: “With continued pressure from the Doctors Syndicate and my syndicate, they sent a doctor to check my condition. That was more than ten days after the start of my disease. During such time, other health conditions may deteriorate and may die as a result of not receiving proper medical care.”

Hussein - a pseudonym\(^46\) - is a former prisoner in Tora Prison. He also tells about medical negligence during the pre-trial detention period he spent in the prison. “I was released from Tora prison shortly before Habash’s death, but I witnessed other deaths that resulted from medical negligence and the lack of proper medical care in the prison. There were only two

\(^{45}\) Testimony of a prisoner who spent his jail term in Giza Central Prison, documented by AFTE. His name was changed at his request

\(^{46}\) Testimony of a former prisoner in Tora Prison, documented by AFTE. His name was changed at his request
doctors in the prison's clinic, one of them a dentist and the other a plastic surgeon. There were only three types of medicine in the clinic, an analgesic, an antipyretic, and an antibiotic (Flumox). If any prisoner complains of any disease, he will only be given one of these drugs.

Previous reports documented testimonies of prisoners who said the prison administration was intransigent in their treatment. For instance, the prison administration refused the entry of medicine for a hepatitis patient. The medicine was brought by the patient's family who submitted the analyses and certificates required for the prisoner's case. Another testimony talked about intransigence and negligence in transferring a female cancer patient to receive chemotherapy outside the prison, thus leading to her death.

Testimonies also indicate the difficulty in obtaining medicine inside the prison, the lack of many types of medicine, and the fact that some prisoners take the medicine circulated among their fellow inmates based on a self-diagnosis of the symptoms they suffer. The task of dispensing medication is often taken over by unqualified informants who run the prison's affairs, although it is legally necessary to have a qualified pharmacist to dispense and store medicine.

Those informants exploit the task of dispensing medication to control the prisoners and also in barter. Pharmacies, including those inside the prison hospital, are often closed after the prison doors are closed. Therefore, patients may not receive their medication on time, especially in emergency cases.

These testimonies draw a grim picture of violation of prisoners' rights in Egyptian prisons. Similar testimonies in more than one prison nationwide indicate the existence of general institutional problems in prison administration and in dealing with prisoners. These problems lead to the violation of prisoners' rights and subjecting them to inhuman treatment. This has also to do with the lack of monitoring and inspection of prisons by independent bodies, which negatively impacts the prisoners' conditions in general and their health conditions in particular.

The lack of monitoring is primarily represented in the complete subordination of prison doctors to the prison administration in terms of supervision, control, and punishment. Consequently, the prison doctors lack the independence necessary to fulfil their work and to express their medical opinion away from institutional biases. Medical reports prepared by those doctors may cause the continuation of the patients' suffering, their recovery, or their death.

47. The Egyptian Initiative and Al-Nadeem Centre, op. cit., pp. 19-20
49. The Egyptian Initiative and Al-Nadeem Centre, op. cit., pp. 15-16
The lack of monitoring and accountability is also represented in the difficulty of ensuring legal accountability in cases of medical negligence, due to the failure to offer medical examination to prisoners upon their admission to the place of detention or imprisonment. This leads to not having a medical record for prisoners since the first day they entered the prison. Moreover, the patient, his family, or his lawyer are not allowed to see the medical record folder, if any, which makes it difficult to prove that the disease began or exacerbated in the prison or to prove negligence in its treatment. Prisoners have the right to access their medical record folders or authorize a third party to do so.\textsuperscript{50}

Moreover, the complaint procedures are complex and unknown even to the prisoners themselves. Many prisoners refrain from submitting complaints because it is the prison director who investigates the complaints. This may expose the prisoners to the risk of retaliation, as the complaint might be against the prison director himself or one of his employees.

\textsuperscript{50} Rule 26, the Mandela Rules, op. cit.
4. Recommendations

In conclusion of this report, AFTE calls on the concerned official authorities to implement the following recommendations. It also urges all national and international key players to pursue the investigation into the death of Shady Habash and adopt the following recommendations in their efforts to protect freedom of expression as well as the prisoners’ rights.

First: regarding freedom of expression:

1. The concerned bodies, topped by the Public Prosecution, must abide by the articles of the Egyptian constitution that protect freedom of expression.

2. The security services and the Supreme State Security Prosecution should stop using the articles of the anti-terrorism law to prosecute political opponents and critics of the current government's policies.

3. The Public Prosecution should release those remanded in custody on terrorism charges, while they are questioned about the exercise of their constitutional right to peaceful expression of opinion.

Second: fair trial and pre-trial detention:

4. The Public Prosecution must immediately launch an investigation into why Shady Habash remained in pre-trial detention after the expiration of the maximum two-year period, in violation of the law, and announce the results of the investigation.

5. The Public Prosecution must immediately release all those who have served the maximum period legally permitted for pre-trial detention, and consider the immediate release of all those remanded in custody unless their presence outside the prison would pose a threat to society.

6. Official statistics of the number of pre-trial detainees nationwide must be made public.

Third: prisoners’ right to health:

7. The Public Prosecution must announce the results of the investigation into Habash’s death and determine the criminal responsibility for his death in prison, including the reasons for the presence of methyl alcohol, which is not suitable for human consumption, in his possession.

8. The Public Prosecution should follow up the prisons’ commitment to providing healthcare to prisoners, especially the emergency cases.
9. The Interior Ministry and the Prisons Authority should adhere to the prison regulations, put an end to the National Security Agency’s interference in matters related to healthcare in prisons, and make the medical records available for sick prisoners, their relatives, and their lawyers.