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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (89-15)
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 16/4, 15/21, 16/5, 17/2, 15/23 and 16/7.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **repeated excessive use of force and physical assaults against protesters; as well as the adoption of emergency orders resulting in further restrictions to fundamental freedoms.**

According to the information received:

Since 24 January 2013, thousands of individuals have been taking part in mass protests in Cairo as well as in many other cities to mark the second anniversary of the revolution and to call for political reforms.

It is reported that these protests were met with excessive use of force by police, regardless of whether the individual in question was exercising his right to assemble peacefully or not. Reportedly, clashes between police and demonstrators have left over 60 people dead and hundreds injured in the country since the start of the protests. On 1 February 2013, a video of a 50-year-old man, who was lying

on the ground outside the presidential palace, being stripped naked and beaten with batons and fists before being dragged into a police van, was widely disseminated.

It is further reported that these protests have been characterized by a large number of sexual assaults against female protesters. Reportedly, about 25 female demonstrators have been sexually assaulted since 24 January 2013 in Cairo's Tahrir square, in some cases with extraordinary violence.

It is reported that the number of sexual harassment cases has dramatically increased since November 2012. In two separate incidents, on 27 and 30 November 2012, Ms. Janet Abdel Alim, a rights activist, was sexually harassed in Cairo's Tahrir Square, when she intervened to protect a colleague from being sexually harassed. Ms. Janet Abdel was surrounded by a group of men, which went up to 300 during the assault that took place on 30 November 2012, who ripped her clothes, inserted hands in her pants and touched every single parts of her body. It is reported that one perpetrator during the incident on 27 November 2012 was arrested and detained for a few days before being released awaiting a formal hearing before a judge. No hearing has taken place since. It is further reported that authorities have failed to investigate the assault which took place on 30 November. It is reported that during these assaults, as well as those that have taken place since 24 January 2013, perpetrators have applied similar strategies to harass and assault women protesters.

In response to clashes and violence during recent protests, President Morsi declared, on Sunday 27 January, a state of emergency for 30 days in Port Said, Suez, and Ismailia. It is reported that the emergency powers provide the authorities with the right to arrest and detain civilians in these cities for up to 30 days without any judicial review and to bring them before military courts.

Grave concern is expressed concerning the allegations of violence during protests, which resulted in death and serious injuries, including injuries caused by sexual assaults. Concern is also expressed at the adoption of the state of emergency, which is likely to have a deterrent effect on the right of individuals to assemble peacefully. In addition we are concerned that that police has failed to fulfill its duty to distinguish between peaceful and non-peaceful protesters, with a view to allowing peaceful protesters to enjoy their legitimate right to freedom of peaceful assembly.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of the above-mentioned persons.

We also wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW), in its General Recommendation No. 19 (1992), concludes that gender-based violence is a form of discrimination against women as defined in article 1 of the Convention on the Elimination of All forms of Discrimination against

Women (ratified by your Excellency's Government on 18 September 1981), whether perpetrated by a State official or a private citizen, in public or private life. Gender-based violence impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including those of sexual violence perpetrated against women and girls, to punish perpetrators and to ensure remedy without delay. In General Recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfill this obligation; in paragraph 9, it makes clear that "under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."

We would also like to refer your Excellency's Government to its obligations under article 7 (c) of the Convention on the Elimination of all forms of Discrimination against Women, which requires States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

We would also like to recall your Excellency's Government attention to article 4 (o & p) of the United Nations Declaration on the Elimination of Violence against Women which notes that States should recognize the important role of the women's movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women, and should, moreover, facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels.

Moreover, we would like to recall the right to freedom of opinion and expression as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would further like to refer to article 22 of the ICCPR, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

We also refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary

measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Regarding the state of emergency declared for 30 days in Port Said, Suez, and Ismailia, which allows the authorities to arrest and detain civilians for up to 30 days without any judicial review and to bring them before military courts, we would like to refer your Excellency's Government to article 14 of the International Covenant on Civil and Political Rights, which states: “1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. [...] 2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved

guilty according to law. 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt. [...] 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. [...]"

As stated in Human Rights Committee's General Comment No. 32, "While article 14 is not included in the list of non-derogable rights of article 4, paragraph 2 of the Covenant, States derogating from normal procedures required under article 14 in circumstances of a public emergency should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation. The guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of nonderogable rights. Thus, for example, as article 6 of the Covenant is non-derogable in its entirety, any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the Covenant, including all the requirements of article 14.2 Similarly, as article 7 is also non-derogable in its entirety, no statements or confessions or, in principle, other evidence obtained in violation of this provision may be invoked as evidence in any proceedings covered by article 14, including during a state of emergency, except if a statement or confession obtained in violation of article 7 is used as evidence that torture or other treatment prohibited by this provision occurred. Deviating from fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times.

Regarding the fact that those arrested under the State of emergency may be tried by military courts, General Comment No. 32 stated: "The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military. [...] While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14. Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where

the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.”

Principle 5 of the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, also states: “Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

Moreover, as it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summaries of cases accurate?
2. Please provide the details, and where available the results, of any investigations and judicial or other inquiries which may have been carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please indicate which measures have been put in place to guarantee the physical and psychological integrity of individuals exercising their right to freedom of peaceful assembly.
4. Please indicate which measures have been put in place to guarantee the physical and psychological integrity of Ms. Abdel Alim, as well as other women, exercising their right to freedom of peaceful assembly.
5. Please indicate what measures have been put in place to prevent sexual harassment of women who are taking part in assemblies, demonstrations or protests, including by private individuals.
6. Please provide detailed information on the state of emergency and all the measures specifically taken to enforce the state of emergency, and explain how they comply with international human rights standards, including article 14 of the International Covenant on Civil and Political Rights and the Basic Principles on the Independence of the Judiciary, among others.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

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Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Kamala Chandrakirana
Chair-Rapporteur of the Working Group on the issue of discrimination against
women in law and in practice

Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences