

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**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 Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; 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; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16)
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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; 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; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 17/2, 16/4, 15/21 and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the continued detention of, and the charges against, Mr. **Alaa Abd El-Fattah**, a human rights blogger who had publicly criticized the fact that the military prosecution was leading the investigation into the violence which erupted in Maspero Square on 9 October 2011.

Mr. Alaa Abd El-Fattah openly opposed oppressive polices under the Mubarak regime and has publicly criticized (on-line and through contributions to newspapers and talk shows) human rights violations committed by the Supreme Council of the Armed Forces (SCAF) since its coming to power on 11 February 2011. He was previously detained in May 2006 for 45 days in relation to his support for the movement for the freedom of the judiciary.

The events in Maspero Square were the subject of a joint urgent appeal sent on 11 October 2011, by the Independent Expert on minority issues; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights to freedom of peaceful assembly and of association.

The communication concerned violations alleged to have been committed during a demonstration which was held in front of the Maspero building in Cairo on 9 October 2011. It is reported that the demonstration turned violent, resulting in the death of 27 persons. Over 30 protestors were reportedly arrested immediately following the demonstration while approximately 11 others were summoned for questioning after the event. A response from your Excellency's Government was received on 19 October 2011, and the Independent Expert and Special Rapporteurs wish to acknowledge your Excellency's Government's cooperation in this regard. In the response, it is indicated that the demonstration turned violent due to a small group of protesters. In this respect, as we have received conflicting information according to which violence erupted as a result of military forces' intervention, further clarification from your Excellency's Government would be highly appreciated. While we commend the willingness of your Excellency's Government to investigate the incident, concerns remain about the measures undertaken to this end.

According to the new information received:

On 30 October 2011, Mr. El-Fattah was arrested by military police. It is alleged, that Mr. El-Fattah was interrogated regarding his involvement in the demonstration and refused to answer questions on the basis that the Military Prosecution did not have the authority to interrogate civilians.

Mr. El-Fattah was sentenced to 15 days in prison and on 3 November 2011, an appeal of this sentence was reportedly rejected. He was subsequently moved from El Este'naf (Appeal) prison to Torah prison where he is currently detained.

Mr. Abd El-Fattah had criticized the fact the Military Prosecution were in charge of the investigation into the violence outside the Maspero building. He reportedly argued that such an investigation represents a conflict of interests as the investigating authority is directly affiliated with the Supreme Council of the Armed Forces (SCAF) who is alleged to have been the main perpetrator of the violence. Furthermore he opposed the fact that such an investigation allows for the trial of civilians before military courts.

On 22 November 2011, it is reported that, an order was issued by the head of the SCAF referring the case of the Maspero clashes from the military to the civilian courts. The case was however transferred to the High State Security Prosecution, as opposed to the general prosecution. The High State Security Prosecution is reportedly an exceptional prosecution body that while having a civilian composition, functions under emergency law and does not allow for appeals but only pardons from the Head of State. It is alleged that the right to a fair trial is not guaranteed to civilians under such procedures.

On 27 November 2011, it is reported that, the High State Security Prosecution extended the detention of Mr. Alaa Abd El-Fattah for another 15 days pending the end of the investigation of charges against him. The charges include "vandalism", "unlawful assembly" and "resisting arrest" and allegedly relate to his participation in the events of 9 October 2011.

It is reported that on 13 December 2011, the High State Security Prosecution prolonged Mr. El-Fattah's detention for another 15 days.

Concern is expressed that the extension of the sentence of Mr. Alaa Abd El-Fattah, the charges brought against him, as well as his arrest and interrogation, may be a direct result of his human rights work and in particular his public criticism of human rights violations at the hands of State actors. Further concern is expressed that the charges brought against Mr. El-Fattah may be an attempt to silence him and other human rights defenders. Further concern is expressed regarding his physical and psychological safety while in detention. Finally concern is expressed regarding the general situation of human rights defenders in Egypt and that they are being targeted as a result of their human rights activities and the legitimate exercise of their right to freedom of expression and to freedom of peaceful assembly.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. El-Fattah is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the 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."

Moreover, we wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that article 19, paragraph 3 of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Furthermore, we appeal to your Excellency's Government to take all necessary steps to ensure the respect of the right to freedom of peaceful assembly, as recognized in article 21 of the ICCPR, which provides that "No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety,

public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

In addition, we would like to draw your Excellency’s Government’s attention to the Resolution 15/21 of the Human Rights Council in which the Council “calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely [...] including persons espousing minority or dissenting views or beliefs and human rights defenders [...] seeking to exercise or to promote these rights.”

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.”

In addition, we would like to refer to the 2006 report to the General Assembly (A/61/312) (of the Special Representative of the Secretary-General on the situation of human rights defenders) and in particular to paragraph 98 which states that “in conformity with article 15 of the Declaration [on Human Rights Defenders], the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials.”

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

- article 6, point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; and

- 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.

We are further concerned that the case of the Maspero clashes was transferred to the High State Security Prosecution. The exceptional nature of this body operating under emergency law and the information received according to which it does not allow appeals but only pardons are equally matters of great concern. With regard to the former, we wish to refer to the Basic Principles on the Independence of the Judiciary which states that everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures (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). Principle 5 further stipulates that 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.

With regard to the latter, we wish to recall that fair trial safeguards apply with full force, even if a person is tried by military or special courts. The right of appeal is an important guarantee of the right to a fair trial. Article 14(5) of the ICCPR provides that everyone shall have the right to have his or her conviction and sentence reviewed by a higher tribunal according to law.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. El-Fattah is 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.

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 Mr. El-Fattah in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the cases accurate?
2. Has a complaint been lodged by or on behalf of Mr. Alaa Abd El-Fattah?

3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information concerning the legal grounds for the arrest and detention of Mr. El-Fattah and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
5. Please indicate what measures have been taken to ensure that the legitimate right to defend human rights peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed and respected.
6. Please explain the reason why the Maspero case was transferred to the High State Security Prosecution. Kindly provide information on the rules governing this body, to what extent they comply with international standards referred to above and specify whether individuals dealt with under such procedures have a right of appeal.

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.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

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Special Rapporteur on the independence of judges and lawyers

Frank La Rue
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