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CONSEIL DES DROITS DE L'HOMME

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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; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24)
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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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 16/4, 24/5, 16/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged torture and ill-treatment during arrest and the alleged risk of torture and ill-treatment of **Mr. Alaa Abd El Fattah** while in detention.

Mr. Abd El Fattah is a well-known blogger and human rights activist. He has been the subject of a recent communication sent to your Excellency's Government on 3 December 2013 (16/2013) by the mandates of the Working Group on Arbitrary Detention; 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; and the Special Rapporteur on violence against women.

According to the information received:

On 26 November 2013, the well-known activist group, "No to Military Trials for Civilians", organized a demonstration in front of the Shoura Council (the Upper House of the Egyptian parliament) to protest against an article in the draft constitution which would allow for military trials of civilians. It is reported that

the peaceful protest was met with excessive force by the police, who arrested demonstrators and used water cannons and tear gas against them.

Later that day, Mr. Abd El Fattah, received a warrant for his arrest on the grounds of incitement and organization of the protest as stipulated in the newly adopted Law No. 107 “For organizing the right to peaceful public meetings, processions and protests”, introduced by Presidential Decree on 24 November 2013. According to the information received, Mr. Abd El Fattah was previously detained under the tenure of President Mubarak and again by the Supreme Council of the Armed Forces in 2011, and that he was reportedly detained for almost two months. Furthermore, Mr. Abd El Fattah allegedly also faced trumped up charges designed to intimidate people from participating in protests under the Morsi government in 2013.

It is reported that the group “No to Military Trials for Civilians” has publicly taken responsibility for the organization of the protest on 26 November and that Mr. Abd El Fattah did not take part in the organization of this protest. It is further alleged that the Ministry of Interior is attempting to set a precedent which allows for anyone to be arrested on the accusation of organizing a protest. It is reported that Mr. Abd El Fattah publicly stated that he would report to the police and notified the prosecutor general of this intention by telegram and registered letter.

On 28 November 2013, at around 10:00 p.m., police forces arrived at Mr. Abd El Fattah’s house, some wearing plainclothes. It is reported that they had no search warrant and that when Mr. Abd El Fattah’s wife demanded to see an arrest warrant both Mr. Abd El Fattah and his wife were severely beaten, leaving Mr. Abd El Fattah with a head injury and external bleeding.

It is reported that following this raid, Mr. Abd El Fattah was arrested and that he spent the night on the floor of a cold cell, blindfolded with his hands cuffed behind his back. It is also reported that the material that was used to blindfold Mr. Abd El Fattah caused him an eye infection.

According to the information received, on 30 November 2013 and 1 December 2013, Mr. Abd El Fattah was presented to the prosecutor who extended his detention for another 14 days. It is reported that he was then transferred to a hospital for treatment. After the treatment, Mr. Abd El Fattah was reportedly transferred to the Tora prison in the Cairo neighborhood of Maadi, where he is allegedly being held in 24 hours solitary confinement. It is alleged that Mr. Abd El Fattah is at imminent risk of further torture and ill-treatment while in detention.

Grave concern is expressed regarding the allegations of torture and ill-treatment of Mr. Alaa Abd El Fattah during his arrest and while in detention. Further concern is expressed regarding the imminent risk of further torture and ill-treatment while in detention.

Without in any way implying any conclusion as to the facts of the case, we would like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Alaa Abd El Fattah. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by your Excellency's Government on 25 June 1986.

With regard to the alleged beating of Mr. Abd El Fattah during his arrest and the alleged risk of torture and ill-treatment while in detention, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

In this context, we would like to draw your Excellency's Government's attention to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

With regard to the allegation that Mr. Abd El Fattah is held in solitary confinement, we would like to draw the attention of your Excellency's Government to paragraph 6 of General Comment No. 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the International Covenant on Civil and Political Rights (adopted at the 44th session of the Human Rights Committee, 1992). In this

regard, we would also like to draw your Excellency's Government's attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged" (adopted by the General Assembly by resolution 45/111 of 14 December 1990).

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 International Covenant on Civil and Political Rights, 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 like to refer to article 21 of the International Covenant on Civil and Political Rights, which provides that "The right of peaceful assembly shall be recognized. 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 this connection, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 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 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; 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.

In addition, we would like to refer to the 2006 report to the General Assembly (A/61/312) (of the then 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".

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. Alaa Abd 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 above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place or if they have been inconclusive, please explain why.
4. Please provide full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

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 Mr. Alaa Abd El Fattah 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.

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opinion and expression

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