

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

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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 situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 218/2
EGY 2/2013

16 January 2013

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 promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 15/18, 16/4, 16/5, and 17/2.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the arrest and detention of Mr. **Mohamed Sabry**, a freelance journalist and blogger based in the eastern Sinai region. Mr. Sabry is also a member of a human rights group campaigning against the use of military courts to try civilians.

According to information received:

On 4 January 2013, Mr. Mohamed Sabry was arrested and detained by members of the armed forces while filming a report for Reuters in a military zone in Rafah near the Egyptian-Gaza border. He was working on a report tackling land ownership issues in the border area. Mr. Sabry was allegedly prevented from contacting his lawyer and his family before having been placed into detention. Mr. Mohamed Sabry was charged with trespassing and filming in a prohibited military zone (Articles 80(e)2 and 80(e)4 of the Penal Code). He is currently detained at the Central Prison of Arish and was scheduled to appear before a military court on 9 January 2013.

Under the provisions of Article 198 the new Constitution of Egypt, the trial of civilians in military courts is allowed when the act in question 'harms the Armed Forces'. Reportedly Mr. Sabry is the first civilian facing a military trial in Egypt since the adoption of the new Constitution.

Additionally, we wish to raise the case of Mr. **Bassem Youssef**, well-known satirist and host of a CBC TV show *El-Bernameg*. Mr. Youssef is currently under investigation on charges of denigrating the head of state, following a complaint which accused him of insulting President Morsi.

Complaints were also reportedly filed against the daily newspaper *Al-Masri Al-Youm* and several of its journalists, including Mr. **Yousri Al-Badri** and Ms. **Dooa El-Adl**. The President's office filed a complaint against the paper, accusing them of 'spreading false news endangering public peace and security and affecting the presidency'. Additionally, Ms. El-Adl, the paper's cartoonist, is reportedly facing investigation in connection with a cartoon which was deemed to have offended religion. Ms. Dooa El-Adl, who is the most visible female cartoonist in Egypt, was reportedly questioned for criticizing Islamists in Egypt. In a cartoon published on 20 December 2012, Ms. El-Adl portrayed Adam and Eve standing under the tree after they were kicked out of heaven because of their vote in the referendum. Standing next to them is a happy angel telling them in Arabic, "If you had voted yes in this referendum the way I did, you would have enjoyed heaven." She also published another cartoon, portraying an Islamist inside the poll box, kicking out votes against the constitution.

Investigations reportedly have also been initiated against Mr. **Abdel Halim Qandil**, the editor of the weekly *Sawt El-Umma* (Voice of the Nation) and an outspoken critic of the current government, on charges of insulting President Morsi. Mr. Abdel Halim Qandil was the subject of an earlier allegation letter, sent jointly by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur in violence against women on 7 June 2005. We acknowledge the receipt of a response from your Excellency's Government dated 19 July 2005.

Concern is expressed that the arrest and detention, as well as the scheduled trial in front of a military court of Mr. Sabry is related to his activities as a journalist and blogger, carried out in defence of human rights, in particular the right to freedom of opinion and expression. Further concern is expressed due to the fact that Mr. Sabry was allegedly prevented from contacting his lawyer and family. Additional concerns are expressed as it appears that Mr. Sabry's arrest and detention appears to follow a pattern of judicial harassment against journalists and the media, despite earlier election pledges by President Morsi to respect press freedom. In this connection, we wish to express our serious concerns about the investigations currently under way against Mr. Bassem Youssef, Mr. Yousri Al-Badri, Ms. Dooa El-Adl and Mr. Abdel Halim Qandil, for the sole offence of exercising their right to freedom of opinion and expression, including peaceful criticism of acts of the Government.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Mohamed Sabry is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his 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), which your Excellency's Government ratified on 14 January 1982.

We would also like to refer your Excellency's Government in particular to article 9(4) of the ICCPR, which states: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." We would also like to refer to article 14(1), according to which "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

Furthermore, we would like to refer your Excellency's Government to article 14(3) of the ICCPR, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing." In its General Comment No. 32, the Human Rights Committee further indicated that "'Adequate facilities' must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory."

In General Comment No. 32, the Human Rights Committee stated that: "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."

We would also like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief in accordance with article 18 of the UDHR and the ICCPR.

Furthermore, we would like to recall to your Excellency's Government the principles set forth in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. Article 6 (i) of the Declaration provides that "[T]he right to freedom of thought, conscience, religion or belief includes the freedom 'to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.'"

Additionally, 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."

Concerning the provisions contained in article 19 of the ICCPR, we also 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 (ICCPR) 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.

We would further like to call your Excellency's Government's attention to the principle enunciated in Article 19 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, whereby any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, Governments may not prevent journalists or representatives of intergovernmental or non-governmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict except where their presence poses a clear risk to the safety of others.

While we do not wish to prejudge the accuracy of the above allegations, 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 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.
- 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.

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, 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 Mr. Sabry or on his behalf?
3. Please provide information concerning the legal grounds for the arrest and detention of, and prosecution against, Mr. Sabry and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
4. Please provide the details, and where available the results, of any judicial investigation, or any criminal charges, medical examinations, and other inquiries carried out in relation to this case.
5. Please provide information concerning the national legislation related to freedom of opinion and expression, including freedom of the press, its conformity with article 19 of the International Covenant on Civil and Political Rights and with other relevant provisions included in international treaties.
6. Please also provide the details of the investigations initiated against the other journalists mentioned above, including Mr. Bassem Youssef, Mr. Yousri Al-Badri, Mr.

Doaa El-Adl, and Mr. Abdel Halim Qandil and how these proceedings are compatible with the international norms and standards of the right to freedom of opinion and expression and the related right to peaceful assembly and association and the right to freedom of religion or belief.

7. Please indicate what measures have been taken by your Excellency's Government to ensure that freedom of religion or belief is protected in Egypt.

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.

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

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

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

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