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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 Working Group on Arbitrary Detention; the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 218/2 G/SO 217/1 G/SO 214 (3-3-16) G/SO 214 (53-24)
EGY 20/2013

27 December 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 16/16, 17/2, 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 enforced disappearances of Messrs. Khaled al-Qazzaz, Ayman al-Serafy, and Abdelmeguid Mashali and the alleged incommunicado detention of Messrs. Essam al-Haddad and Ayman Ali.**

According to the information received:

On 3 July 2013, five aides of Mr. Mohamed Morsi, namely, Messrs. Khaled al-Qazzaz, Ayman al-Serafy, Abdelmeguid Mashali, Essam al-Haddad and Ayman Ali, were allegedly arrested. They have reportedly been held incommunicado ever since.

On the evening of 17 December 2013, Messrs. Khaled al-Qazzaz, Ayman al-Serafy and Abdelmeguid Mashali were reportedly transferred by the Egyptian security forces to an unknown location from the military facility where they were held. Families of the three individuals were not informed of where they have been transferred to. It was reported that they might have been transferred to Tora Maximum Security Prison, also known as "al-Aqrab".

According to the source, Messrs. Essam al-Haddad and Ayman Ali are still held incommunicado. In addition, their lawyers went to the Supreme State Security Prosecutor's Office in Nasr City, an area of Cairo, to ask about them but have not been given any information.

It was further reported that families of the five individuals have been denied their right to appoint lawyers. According to the source, the Ministry of Justice reportedly provided instructions not to give any lawyer power of attorney to represent Mr. Essam al-Haddad.

At the time of the present communication, the fate and whereabouts of Messrs. Khaled al-Qazzaz, Ayman al-Serafy, and Abdelmeguid Mashali remain unknown.

Concerns are expressed that the alleged enforced disappearances of Messrs. Khaled al-Qazzaz, Ayman al-Serafy, and Abdelmeguid Mashali and the alleged incommunicado detention of Messrs. Essam al-Haddad and Ayman Ali might be related to their collaboration with Mr. Mohamed Morsi.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons 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, and articles 9 and 14 of the International Covenant on Civil and Political Rights

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the fundamental principles set forth in the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which sets out necessary protection by the State, and in particular:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);
- article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction);
- article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance);
- article 7 (no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances); and

- article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest).

Furthermore, with respect to the allegations according to which Messrs. Khaled al-Qazzaz, Ayman al-Serafy, Abdelmeguid Mashali, Essam al-Haddad and Ayman Ali, have reportedly been held incommunicado since 3 July 2013, and that Messrs. Khaled al-Qazzaz, Ayman al-Serafy and Abdelmeguid Mashali were reportedly transferred by the Egyptian security forces to an unknown location, we would like draw the attention of your Excellency's Government to paragraph 12 of General Assembly Resolution A/RES/61/153 of 14 February 2007, which "reminds all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person."

In this context, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

In this connection, we would also like to refer your Excellency's Government to article 14(1) of the International Covenant on Civil and Political Rights, which states: "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. [...]" Article 14(3) further states that: "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 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."

The right to be assisted by a lawyer of one's choice is also set forth in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular in:

- Principle 1, which states: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.”;

- Principle 5, which states: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”;

- Principle 7, which states: “ Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”; and

- Principle 8, which states: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement 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 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. Please provide information on the fate and whereabouts of Messrs. Khaled al-Qazzaz, Ayman al-Serafy, and Abdelmeguid Mashali.
3. Please provide the details on any investigation or other queries which may have been carried out in relation to the above mentioned persons. If no queries 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 Messrs. Essam al-Haddad and Ayman Ali and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the United Nations Basic Principles on the Role of Lawyers.

We undertake to ensure that your Excellency's Government's response will be available in the report we will submit to the Human Rights Council for its consideration.

We would like to bring to the attention of your Excellency's Government that should the sources submit the allegations concerning Messrs. **Khaled al-Qazzaz, Ayman al-Serafy, Abdelmeguid Mashali, Essam al-Haddad** and **Ayman Ali** as cases to the Working Group on Enforced or Involuntary Disappearances, they will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

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

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

Ariel Dulitzky
Chair-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
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