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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
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Mandates of the 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; and Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)
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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 situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 17/2, 16/4, 16/5 and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information received regarding the detention and trial of **Mr. Ahmad Sayed Mohammad Sayed**, a human rights defender and member of the Arab European Center of Human Rights and International Law (AECHRIL), a non-governmental organisation established in 2003 to promote human rights and protect vulnerable groups in Egypt.

According to the information received,

Inhabitants of the town of Al Dakhila in Wadi Jadid governorate organised a demonstration on 19 June 2011, to voice their opposition to the policies of the President of the Al Dakhila town council. Mr. Sayed, an Al Dakhila resident, had been employed by AECHRIL to monitor the legitimate exercise of the right to peaceful assembly in the context of the aforementioned demonstration. The demonstration reportedly became violent, with an unspecified number of protestors being wounded after clashes with staff of the President's office.

It is reported that on 21 June 2011, while Mr. Sayed was interviewing a number of people who had attended the protest, he was arrested by Al Dakhila police officers. During his detention at Al Dakhila Police Department, it is alleged that Mr. Sayed was subjected to kicks and punches to different parts of his body; that he did not receive any food or water for 26 hours; that he was not allowed to go to

the bathroom for 26 hours; and that he was forced to stand for considerable periods of time facing a wall.

It is reported that the treatment he received in detention left Mr. Sayed with head injuries and bruises on various parts of his body. Following detention at the police station, he was transferred to the Wadi Jadid prison. His case was referred to the Asyut military prosecutor on 22 June 2011, and he was subsequently tried before a military court. The case number communicated by the source is 2854-2011. On 3 August 2011, Mr. Sayed was sentenced to two years in prison by the military court for inciting citizens to assemble and attack the President of the Al Dakhila town council.

It is reported that the defence was not allowed by the court to call witnesses during Mr. Sayed's trial. It is also reported that the court refused to accept as evidence a letter from AECHRIL confirming the status of Mr. Sayed as its employee and explaining that Mr. Sayed was responsible for monitoring the legitimate exercise of the right to peaceful assembly in the context of the protest. According to the source, Mr. Sayed's involvement in the protest was limited to monitoring it. The information received indicates that the court did not address allegations of torture and ill-treatment brought forward by the defence to which Mr. Sayed was subjected during detention at Al Dakhila Police Department.

Mr. Sayed is currently serving his two-year sentence. His lawyer has appealed the military court's decision, but the court is yet to review the appeal.

Concern is expressed that the arrest, detention and prison sentence of Mr. Ahmad Sayed Mohammad Sayed may be directly linked to his legitimate work as a human rights defender, in particular his role as a monitor of the right to peaceful assembly. Concern is further expressed that the ill-treatment to which Mr. Sayed was reportedly subjected while in detention constitutes a violation of his right to physical and mental integrity. Concern is expressed that his sentence may represent an attempt to deter him from continuing his human rights activities. Concern is finally expressed that Mr. Sayed, being a civilian, was tried before a military court, and that the military court may have violated Mr. Sayed's right to a fair trial, according to information received.

While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Ahmad Sayed Mohammad Sayed. 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).

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Sayed 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 UDHR and articles 9 and 14 of the ICCPR.

With regard to the allegation that Mr. Sayed was brought to trial before a military court, we wish to stress that everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures in accordance with 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). We would further like to draw your Excellency's Government attention the General Comment No. 32, in which the Human Rights Committee stated that "[t]rials 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." (para. 22). The same view was held in the Committee's communication No. 1172/2003 (*Madani vs. Algeria*), in which it added that "[t]he State party must further demonstrate how military courts ensure the full protection of the rights of the accused pursuant to article 14."

In this regard, we are concerned at the information received indicating that fair trial safeguards have not been observed, notably the right of Mr. Sayed to cross-examination. Article 14(3)(e) of the International Covenant on Civil and Political Rights (ICCPR), which Egypt ratified on 14 January 1982, guarantees the right of accused persons to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. As an element of the right to a fair trial and an application of the principle of equality of arms, this guarantee is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution (Human Rights Committee General Comment No. 32, para. 39).

While it is primarily for the domestic legislatures of States parties to determine the admissibility of evidence and how their courts assess it, we would like to seek clarification on the reasons why the court refused to admit as evidence a letter confirming Mr. Sayed's status. We wish to underline that according principle 2 of the aforementioned Basic Principles on the Independence of the Judiciary and para. 1.1 of the Bangalore Principles on Judicial Misconduct (adopted in The Hague on 26 November 2002), the judiciary shall decide matters before them impartially, on the basis of the assessments of facts presented to them and in accordance with the law. Impartiality as stated in principle 2.2. of the Bangalore Principles requires the judge to ensure "that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary."

Regarding allegations indicating ill-treatment of Mr. Sayed while in detention by the police, 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.”

We would like to draw the attention of your Excellency’s Government to article 13 of the CAT, which requires that “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

In this context, we would also like to draw the attention of your Excellency’s Government to paragraph 7 b and e of Human Rights Council Resolution 16/23 adopted in April 2011, 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,” and “(t)o ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation, and urges States to establish, maintain, facilitate or support rehabilitation centres or facilities where victims of torture can receive such treatment and where effective measures for ensuring the safety of their staff and patients are taken.”

Furthermore, 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.”

In connection with Mr. Sayed’s legitimate work as a human rights defender monitoring the right to peaceful assembly, 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 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 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.

With regards to the role of human rights defenders in monitoring demonstrations, we would like to refer to the 2007 report to the General Assembly (of the Special Representative of the Secretary-General on the situation of human rights defenders) (A/62/225, paras. 91 and 93) that underline how "monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly. [...]"

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Ahmad Sayed Mohammad Sayed 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.

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. Ahmad Sayed Mohammad Sayed 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 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.
3. Please provide information concerning the legal grounds for the arrest and detention of Mr. Sayed 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 explain why Mr. Sayed has been tried before a military court and how this is compatible with the international standards mentioned above.
5. Please indicate the reasons why Mr. Sayed's defence was not allowed to call witnesses during his trial and why evidence provided by the defence was refused by the court. Please also explain how this is compatible with the international standards mentioned above.
6. 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.

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

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

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