

Mandates of the Special Rapporteur on the situation of human rights defenders; 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:
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; 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 25/18, 26/7 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest, solitary confinement, torture and ill-treatment, as well as on-going prosecution and serious due-process violations in relation to Mr. **Malek Mostafa Adly Elgendy**, a prominent human rights lawyer in Egypt, allegedly as a result of the performance of his professional functions.

Mr. **Malek Mostafa Adly Elgendy** is a human rights lawyer and Director of the Criminal Justice Unit at the Egyptian Center for Economic and Social Rights. Mr. Malek Adly was the subject of two communications sent on 4 February 2011 (EGY 5/2011, A/HRC/18/51), regarding his arrest at a protest, and on 4 May 2016 (EGY 6/2016, A/HRC/33/32), concerning a group of human rights defenders that were the target of governmental reactions to protests against the Egyptian government's decision to acknowledge Saudi Arabian sovereignty over the islands of Sanafir and Tiran. We regret to note that no reply by your Excellency's Government has been received to either of the communications.

According to the information received:

On 5 May 2016, Egyptian authorities arrested Mr. Malek Adly in Cairo's Maadi district, while he was on his way to meet with a client. The arrest followed a warrant issued on 19 April 2016, in connection with his alleged call for a protest on 25 April 2016.

Mr. Adly was charged with joining a group which aims to interrupt the application of the Constitution and prevent governmental bodies from conducting its works; advocating for the interruption of the application of the constitution; attempting to overthrow the regime by force; spreading false news which disturb the public

order; and using force and violence against a public servant to force him to refrain from performing his duties. The arrest came shortly after Mr. Adly, together with a group of lawyers, filed a challenge against the Egyptian Government's decision to transfer sovereignty of two Red Sea islands over to Saudi Arabia.

Mr. Adly was taken to Maadi police station and then transferred to Shubra al-Kheima court, where the Public Prosecutor questioned him from 2am to 6am in the presence of his lawyers. On 6 May 2016, Mr. Adly was transferred to Al Mazraa, a high security prison, where he was placed in solitary confinement.

During this time, Mr. Adly was allegedly subjected to torture and other cruel, inhuman or degrading treatment or punishment, including being severely beaten, verbally insulted, stripped of his shirt, blindfolded, and forced to walk in a line with a gun pointed at his chest while being filmed. He was also medically examined in the absence of a prosecutorial order and without his consent.

On 7 May 2016, Mr. Adly's lawyers submitted complaints regarding the numerous violations Mr. Adly suffered to the Public Prosecutor, the head of the Prisons Sector, the Prosecutor in Charge, Egypt's National Council for Human Rights, the head of the Lawyer's Syndicate (the Egyptian Bar Association), and the Minister of the Interior. Several lawsuits were also filed before the Administrative Court.

On 16 May 2016, a visit request by Mr. Adly's legal defence team and his wife was denied. His wife and other family members were subsequently permitted weekly visits. However, no visits were permitted for his defence lawyers, except for one visit three weeks after his arrest and one just before his release. All visits, including those conducted with Mr. Adly's defence team, took place in a large visitation room with other inmates and prison guards, who were close enough to hear the contents of Mr. Adly's conversations.

On 18 May 2016, Mr. Adly and his lawyer attended a judicial hearing at Shoubra al-Kheima court concerning the renewal of his detention. Mr. Adly's lawyers were not permitted to file a defence and Mr. Adly was refused the right to present his own case and defend himself. On 1st June 2016, the Cairo Appeals Court refused Mr. Adly's appeal to be released on bail and extended his detention by 15 days.

On 8 June 2016, Mr. Adly's lawyer filed a complaint with the head of the Prison Authority regarding Mr. Adly's detention conditions and his solitary confinement.

On 29 June 2016, M. Adly's lawyer filed a case before the Administrative Court against the Prosecutor General, the Minister of the Interior for Prisons, and the

head Prison Warden challenging the lack of furniture and bedding in Mr. Adly's cell.

Despite the urgency of the situation, the case was not scheduled for hearing until 5 September 2016, and the conditions did not improve before Mr. Adly's release. Mr. Adly's detention was renewed on 14 June 2016, and renewed again on 3 July 2016.

On 4 July 2016, the prosecution required Mr. Adly to sign a request to appeal his detention renewal from the previous day, and did not notify his lawyers. Mr. Adly was brought before the Court of Appeal on that day, and his appeal was summarily rejected. A member of Mr. Adly's legal team was coincidentally in the room for an unrelated matter and managed to attend the hearing with Mr. Adly.

Mr. Adly's detention was further renewed on 18 July 2016, 31 July 2016, and again on 14 August 2016. However, on 25 August 2016, The Shoubra al-Kheima Court ordered the release of Mr. Adly. Though the prosecutor appealed the order, Mr. Adly's release was upheld, and he was released from pre-trial detention on 30 August 2016.

For the seventeen weeks that Mr. Malek Adly was held in detention, he was allegedly placed in solitary confinement, denied most visits, and subjected to acts amounting to ill-treatment and torture. He was held in a small room with no ventilation or natural lighting or furniture and had only a rough blanket to sleep on. Mr. Adly was denied the right to leave his cell for exercise or to receive medical treatment for his blood pressure and respiratory problems. As a result, he was admitted to the hospital on four separate occasions, and his health has deteriorated significantly. Mr. Adly was also denied access to the prison mosque for prayer. He was not allowed access to any forms of media, books, telephone calls and letters, and was denied access to adequate clothing and food.

While we take note of the release of Mr. Adly, we express concern at his previous arrest, solitary confinement, torture and ill-treatment, and prosecution in violation of basic due-process guarantees, which appear to be directly related to the legitimate performance of his duties as a lawyer and human rights defender. We express further concern that the pressure placed upon lawyers in Egypt appears to be symptomatic of a worrying pattern of interference by the government into the independence of judges and lawyers.

While we do not wish to prejudice the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by this situation.

In particular, we would like to refer your Excellency's Government to articles 7, 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982, as well as to some international standards widely acknowledged as further developing them.

Article 7 of the ICCPR, together with articles 1, 2 and 16 of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), ratified by your Excellency's Government in 1986, establishes the absolute and non-derogable prohibition of torture and other ill-treatment. Article 9, for its part, determines that no one shall be subjected to arbitrary arrest or detention, which includes the right not to be held in pre-trial detention unless such measure is absolutely necessary and proportionate for a legitimate aim. Finally, article 14 establishes the minimum guarantees of due-process, including the rights to adequate time and facilities for the preparation of legal defence and to communicate with counsel of own choosing.

Moreover, with regards to the solitary confinement, we would like to refer to the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), in which it is stated that the use of prolonged solitary confinement, as defined as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day, for more than 15 days, in itself runs afoul of the absolute prohibition of torture and other ill-treatment. Due to the prisoner's lack of communication, and the lack of witnesses, solitary confinement enhances the risk of other acts of torture or ill-treatment.

We would also like to refer to the Committee against Torture and the Human Rights Committee that has consistently found that conditions of detention can amount to inhuman and degrading treatment.

In this vein, it is pertinent to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, which expand the minimum guarantees on criminal procedures outlined above. In particular, they establish the principle of equality of arms, which includes access to legal representation without delay, interception or censorship, and in full confidentiality (Principles 18 and 22). Further, and in relation to the independence of lawyers, the Basic Principles stipulate that governments have the duty to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and that lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics (Principles 16 and 17).

Likewise, in accordance with Principle 23, lawyers are entitled to freedom of expression, belief, association and assembly. In particular, they are entitled to take part in

public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.

We would also like to reiterate 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, also known as the UN Declaration on Human Rights Defenders. In particular, articles 1 and 2 the Declaration state that everyone has the right 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. Furthermore, article 9 provides for the right to provide legal assistance in defending human rights and fundamental freedoms.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 person(s) in compliance with international instruments.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal ground for the arrest and charges against Mr. Adly, and the current status of his criminal proceedings.
3. Please provide information on any measures taken to guarantee the physical and psychological integrity of Mr. Adly and in particular detailed information on the detention conditions under which he was held from 5 May to 30 August 2016, including the reasons behind the solitary character of such deprivation of liberty.
4. Please provide detailed information regarding the conduction of the criminal proceedings of Mr. Adly, and in particular, please explain the reasons behind the above mentioned obstacles posed to his adequate legal defence.

5. Please provide information on the measures that your Excellency's Government has taken, or intends to take, to ensure the independence of the legal profession and to enable lawyers to perform their professional functions freely and without any intimidation, threat, harassment or improper interference.

While awaiting a reply, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Adly are fully respected, including freedom from arbitrary detention, respect for due-process guarantees, and unhindered exercise of his duties as a lawyer. Further, we request that your Excellency's Government adopt effective measures to prevent the recurrence of any act of torture or ill-treatment in the case of Mr. Adly, and that those responsible for these acts in the past are held accountable.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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