

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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the right to privacy; and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

REFERENCE:
UA EGY 17/2017

31 October 2017

Excellency,

We have the honour to address you in our capacity as 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the right to privacy; and Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 33/30, 34/18, 33/9, 34/5, 28/16 and 32/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged unlawful arrests and detention, as well as incrimination of persons based on their actual or perceived sexual orientation or gender identity and expression, and/or their actual or perceived expression and advocacy for protection of the human rights of LGBT people, including of two human rights defenders, Mr. **Ahmed Alaa** and Ms. **Sarah Hegazy**.

According to the information received:

Persecution of persons based on their actual or perceived sexual orientation or gender identity and expression, and/or their actual or perceived expression and advocacy for protection of the human rights of LGBT people

On 22 September 2017, during a large concert in New Cairo, a couple of rainbow flags were seen being raised among the audience attending the concert. It was a collective concert that included several bands, where one of them was Mashrou Laila, a Lebanese band. Pictures and personal information of those who raised the rainbow flags in the concert were shared publicly and were also picked up by local media and news outlets.

On 25 September, Egypt's Public Prosecutor ordered the Supreme National Security Prosecution to launch investigations on the incident of the raised flags during the concert.

During the period from 22 September to 25 October, arrests and detention of 70 individuals have been reported, including arrests and detention of activists defending the human rights of LGBTI persons. In some of these cases, the Egyptian security forces have used the method of online dating application entrapment in order to proceed with the arrests on the streets or at the victims' homes in several districts of Cairo Governorate, such as Al-Azbakeya, Al-Agouza, and Dokki, as well as in the city of Damietta. Charges against these individuals include debauchery, incitement to and promotion of debauchery under the Law No. 10/1961 on Combatting Prostitution, as well as charges under Article 86bis of the Criminal Code.

Article 86bis of the Criminal Code sanctions with imprisonment “*any person who establishes, founds, organizes or runs, contrary to the provisions of the law an association, corporation, organization, group or band, the purpose of which is to call by any method for interrupting the provisions of the Constitution or of the laws, or preventing any of the State's institutions or public authorities from exercising its works, or encroaching on the personal freedom of citizens or other freedoms and public rights as guaranteed by the Constitution or the law, or impairing national social space.*” The said article punishes with temporary hard labour “*anyone who assumes leadership or command of the formation of such groups, or supplies them with physical or financial assistance, while being aware of their purpose they call for.*”

According to the information received, a significant number of the defendants were not represented by a lawyer during the investigation phase, and some of them not even during the first hearings of their case.

The majority of the arrested individuals remain in detention either in prisons or in police stations, in Dokki, Al-Azbakeya, Al-Agouza, and Al-Qanater, whereas there have been also reported cases of incommunicado detentions, with police officers intentionally hiding the information regarding the place of detention from the victims' lawyers and families, as well as reported cases of forced anal examinations conducted on some of the arrestees.

At the time of this communication, the Egyptian courts of misdemeanor of Agouza, Dokki and Qasr El Nil have convicted 27 individuals with sentences ranging from 6 months to 6 years of imprisonment, whereas more cases as well as appeals were scheduled to be heard until 29 October. According to the information received, 2 defendants were acquitted by the Dokki Misdemeanor

Court on 9 October and 4 other persons released from Sharm El-Sheikh police station, as investigation was dropped.

Among those arrested and detained are two human rights defenders, Mr. Ahmed Alaa and Ms. Sarah Hegazy, who were arrested on 1 and 2 October respectively, following police house raids in Damietta and in Cairo. Both Mr. Alaa and Ms. Hegazy were charged for allegedly raising the rainbow flags during the concert. According to the information received, the Supreme National Security Prosecutor, Mr. Khaled Diaa, led the interrogation of Mr. Alaa and Ms. Hegazy and handed them charges under Article 86bis of the Criminal Code. In addition, the prosecutor imposed on both defendants detention on remand, initially until 15 October. The second phase of interrogation took place on 7 October for Mr. Alaa, and on 8 October for Ms. Hegazy. During the interrogation of Ms. Hegazy, the prosecutor allegedly compared homosexuality to Nazism, arguing that if a civilized and progressive country like Germany fights Nazism and finds it legitimate to ban it, Egypt should have the right to fight homosexuality too. In addition, Ms. Hegazy was pressured by the prosecutor to disclose her ties with civil society organizations advocating for the human rights of the LGBTI persons. The charges faced by Mr. Alaa and Ms. Hegazy could lead to 15 years of imprisonment.

On 11 October, the Supreme National Security Prosecutor renewed Ms. Hegazy's detention on remand for another 15 days. According to the information received, Ms. Hegazy's psychological state had deteriorated leading the defendant to briefly collapse during the long interrogation of 7 hours. In addition, Ms. Hegazy was allegedly beaten and sexually harassed by fellow detainees at the Al-Sayedya Zeinab Police Station in Cairo, when police officers informed the other detainees about the reasons of Ms. Hegazy's arrest.

During the same period, the media and political and religious representatives have reportedly used this incident in order to embark on a hate campaign against homosexuality and LGBT people in Egypt, and allegedly calling the authorities to inter alia put an end to the "sexual perversion in Egypt" and to the "sodomist war on the society's ethics and values". It has been also reported that some media and news outlets have portrayed some of the defendants as being part of a "network of homosexual prostitution", and that the intention of the Coptic Church was to organize a conference entitled "The Sexual Pervasion Volcano" with the view to raising awareness among parents and deacons on "how to help the youth", and on how to "treat and recover from homosexuality."

On 25 September, the Deputy of the Al-Azhar Mosque, Mr. Abbas Shoman, allegedly described the event as an "outrageous anomaly" and "a crime of moral terrorism", and that the raising of the rainbow flags is "an attack on the heavenly laws and norms of humanity".

On 27 September, a member of the National Human Rights Council, Mr. Salah Salem, allegedly stated that homosexuality is against Islam and Christianity and made a reference to Egypt's refusal to accept relevant recommendations during its review under the Universal Periodic Review in 2014.

On 30 September, the Supreme Media Council issued a ban over the appearance of homosexuality in any visual, audio or readable media outlets in addition to a general ban on rainbow flags or any "signs" that promote homosexuality. In a public statement on the same day, the Head of the Supreme Media Council, Mr. Makram Mohammed Ahmed, allegedly stated that homosexuality is a disgrace and a disease that needs to be cured and called for the criminalization of all actions which are against the nature of things.

Draft bills on amending Law No.10/1961 and on criminalization of homosexuality

According to information received, on 11 October, a draft bill amending the Law No.10/1961 was proposed to the Egyptian parliament by a number of parliamentarians. In the explanatory note of this draft bill, the parliamentarians reportedly stated the following: "While people call for respecting personal freedoms, we find such calls as irrelevant to our society. For us, an individual is not absolutely free in terms of how he fulfils his sexual needs, as there must religious and legal boundaries that would limit such freedom. Such boundaries should serve to affirm that personal freedoms do not violate the rules of nature or human dignity." According to the explanatory memorandum, the draft bill includes amendments aiming at increasing both the penalty and fine of "abnormal actions" such as sodomy. The suggested amendments target specifically the articles 1, 3 and 4 of the Law No.10/1961 which relate directly to the charges of debauchery, habitual debauchery and incitement to debauchery. They would raise the minimum period of imprisonment from 1 year to 2 years and the maximum from 3 to 5 years, and up to 7 years, if the other person involved in the "practice of sodomy" is below the age of 21.

On 26 October, a new draft bill was proposed for discussion before the legislative committee of the Egyptian parliament. According to the formal procedures of the parliament, any proposed draft bill should have the signatures of at least 60 members in order to be discussed before the legislative committee. This draft law is reported to have gathered around 67 signatures and it comprises 7 articles. Articles 2 and 3 criminalize homosexual conduct between two or more individuals, whether male or female, both in public and private spheres, as well as incitement to same-sex relations. They impose sentences of imprisonment between 1 and 3 years for the first conviction, and 5 years in the case of reoccurrence. Article 4 criminalizes audio and video publicity and advertising, including through social media, of LGBT social activities and gatherings with 3

years of imprisonment, whereas Article 5 criminalizes the act of carrying, promoting or selling any “sign or symbol” of the LGBT community with imprisonment sentence between 1 and 3 years.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern about these allegations of the recent crackdown and systematic persecution of individuals on the basis of their perceived sexual orientation or gender identity in Egypt. Such persecution violates international human rights standards, and in particular non-discrimination, equality before the law, the right to liberty and security, physical integrity, freedom of expression, freedom of peaceful assembly and of association, the right to fair trial, the right to privacy and the absolute protection against torture and inhumane or degrading treatment or punishment, as laid down in articles 2, 7, 9, 10, 14, 17, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which Egypt is party since 14 January 1982. These rights are of universal nature and apply to everyone, irrespective of their sexual orientation or gender identity.

We are deeply concerned about the reported cases of unlawful arrests, on the streets, cafes and through home raids, of individuals on the suspicion of being gay or lesbian, and we deeply regret the use of social media and dating applications by the Egyptian security forces with the purpose of entrapping and building cases against those unlawfully arrested and detained with charges of debauchery, incitement and promotion of debauchery, joining a banned group and supporting its ideas. In this respect, we note with regret that although in Egypt homosexuality is not criminalized, the Egyptian authorities may use provisions of the Law No. 10/1961 on Combating Prostitution and those of the Criminal Code with the purpose of suppressing and sanctioning behaviours and actions that are considered a violation of the societal norms and beliefs, and a threat to the “social peace”. These provisions have been reportedly used to target particularly persons based on their perceived sexual orientation or gender identity, as well as human rights defenders and defenders engaged in the promotion and defence of the human rights of lesbian, gay, bisexual and transgender persons. Reports indicate that between 2013 and 2017, at least 232 persons have been arrested in Egypt and charged with “debauchery” and “incitement and promotion of debauchery”.

In this context we wish 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which 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. Article 12 of the Declaration provides that the State shall take all necessary measures to ensure the protection of

everyone 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 addition, we are also concerned about allegations of violations of due process rights in a number of cases, where the arrested individuals did not have legal representation both during the investigation phase as well as during trial. In those cases where legal representation had been secured, the legal counsels were allegedly prevented from consulting with their clients in private. In addition, there have reported cases of denial of contact between the detained individuals and members of their families, as well as allegations of incommunicado detention of some of the arrestees.

We are alarmed by the reported cases of incitement to hatred against homosexuality by Egyptian media, online and offline, as well as by political and religious leaders of the country, which open the door for egregious human rights violations and abuses specifically targeting persons on the basis of their actual or perceived sexual orientation or gender identity.

We are also deeply concerned at allegations of public humiliation of those arrested, as well as of forced anal examinations conducted on some of the defendants. The practice of forced anal examinations is invasive, intrusive, humiliating and it is inconsistent with fundamental ethical principles and professional medical duties. It violates human dignity and the right to privacy and it is considered a form of cruel, degrading, and inhuman treatment that can amount to torture.

Finally, serious concern is also expressed with regard to the alleged initiatives by a number of members of parliament to propose a draft bill amending the Law No.10/1961 by raising the terms of imprisonment of debauchery, habitual debauchery and incitement to debauchery, as well as a draft bill criminalizing consensual same-sex conduct and incitement to and promotion of homosexuality.

Sexual orientation and gender identity are prohibited grounds of discrimination under international law. In 2016, the Committee on Economic, Social and Cultural Rights explained that “State parties also have an obligation to combat homophobia and transphobia, which lead to discrimination” (E/C.12/GC/22, para. 23). Both the Committee on Economic, Social and Cultural Rights and the Human Rights Committee have found that States have a legal obligation to ensure to everyone the rights recognized by the Covenants without discrimination on the basis of sexual orientation or gender identity (E/C.12/GC/20, para. 32, and CCPR/C/GC/35, para. 3).

We would also like to draw the attention of your Excellency’s Government to the following paragraph from UN resolution A/HRC/RES/34/7 of the Human Rights Council of March 2017: “Recognizing that the right to privacy can enable the enjoyment of other rights and the free development of an individual’s personality and identity, and an

individual's ability to participate in political, economic, social and cultural life, and noting with concern that violations or abuses of the right to privacy might affect the enjoyment of other human rights, including the right to freedom of expression and to hold opinions without interference, and the right to freedom of peaceful assembly and association”.

We would like to recall that arbitrary arrest and detention of individuals is a clear breach of international law, in particular the right not to be deprived arbitrarily of 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).

In addition, we would like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156 (February 2014), which, “[r]eminds all States that prolonged incommunicado detention or detention in secret places can 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 and to ensure that secret places of detention and interrogation are abolished”.

We would like to recall the opinion No. 25/2009 by the Working Group on Arbitrary Detention on Egypt, which found that forced anal examinations are medically worthless for the determination whether or not a person has engaged in same-sex sexual conduct or whether the person has been involved in the practice of habitual debauchery or the prostitution of men, and that they contravene the prohibition of torture and other cruel, inhumane and degrading treatment (A/HRC/16/47/Add.1, paragraphs 28 and 29).

The Human Rights Committee also found that States have a legal obligation to ensure to everyone the rights recognized by the Covenant without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, paragraph 3).

The Human Rights Council, through resolutions 17/19 and 27/32, has expressed grave concern at acts of violence and discrimination committed against individuals because of their sexual orientation and gender identity.

On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights has emphasized that States have obligations to, *inter alia*, prohibit discrimination on the basis of sexual orientation and gender identity; protect individuals from violence, torture and discrimination on the basis of their sexual orientation; provide redress to victims; and, provide training to law enforcement personnel and judges in gender-sensitive approaches to addressing violations related to sexual orientation and gender identity. In addition, the High Commissioner for Human Rights has recommended that States ensure that anti-discrimination legislation includes

sexual orientation and gender identity among prohibited grounds (A/HRC/29/23, para. 78 and 79).

Finally, we would like to draw the attention of your Excellency's Government to the former Special Rapporteur on Torture's 2009 report to the Human Rights Council, which states that "If testing is indispensable, the way in which it is undertaken needs to be least intrusive and respect the dignity of the person subjected to the testing. [...] If forcible testing is done on a discriminatory basis without respecting consent and necessity requirements, it may constitute degrading treatment, especially in a detention setting" (A/HRC/10/44, paras. 64 and 65).

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 seriousness of the matter, we would appreciate a response on the steps taken by your Excellency's Government to respond to these allegations, to put an end to arrests and detentions of persons perceived to be lesbian, gay, bisexual or transgender, and to effectively protect their human rights without discrimination, in compliance with Egypt's international legal obligations.

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 any updated information regarding the investigations and judicial proceedings launched after the incident of the lifting of the rainbow flags, and provide updated information on the cases of Mr. Ahmed Alaa and Ms. Sarah Hegazy, including the charges against them.
3. Please provide information on the legal grounds for the arrest, detention, and forced medical examinations of the arrested and detained individuals, and how these are compatible with the international human rights obligations of Egypt.
4. Please provide the details, and where available the results, of any investigation carried out in relation to the allegations of unlawful arrests, detention, torture or ill-treatment, and forced medical examinations of persons on the basis of their actual or perceived sexual orientation or gender identity. If no inquiries have taken place, or if they have been inconclusive, please explain why.

5. Please provide information on the measures undertaken to ensure due process as well as fair trial to all defendants, and where available the results of any investigation carried out in relation to the allegations of denial of access of persons detained to family and lawyers. If no inquiries have taken place, or if they have been inconclusive, please explain why.
6. Please indicate the measures adopted with the view to combating discrimination, stigmatization and to effectively addressing hate speech and incitement to hatred against of persons based on their actual or perceived sexual orientation or gender identity and expression, and against persons based on their actual or perceived expression and advocacy on the protection of the human rights of LGBT people.
7. Please provide information regarding the draft bill amending the Law No.10/1961 and its accompanying memorandum, as well as the draft bill that includes provisions criminalizing consensual same-sex conduct and incitement to and promotion of homosexuality, and the result of any assessment that has been made of the compatibility of these draft bills with the international human rights obligations of Egypt.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence. In particular, we urge your Excellency's government to immediately release all those arrested and detained as a result of the law enforcement operations against persons based on their actual or perceived sexual orientation or gender identity and expression, and/or their actual or perceived expression and advocacy for protection of the human rights of LGBT people, following the incident of the lifting of the rainbow flags at the concert in Cairo, and to drop all charges against them.

Moreover, we urge your Excellency's government to take all appropriate measures to ensure redress for all those arbitrarily arrested, detained and physically and psychologically abused, and to ensure the accountability of any person responsible of such violations. We strongly urge your Excellency's government to take all appropriate measures to put an end to the practice of forced anal examinations imposed on persons arrested on "debauchery", "incitement to debauchery", "promotion of debauchery" and any other charges related to the actual or perceived sexual orientation and/or gender identity.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release

will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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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