

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur in the field of cultural rights, Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 37/12, 36/6, 34/18, 31/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged detention, torture and short-term enforced disappearance of poet Galal el Behairy and the issuance of an arrest warrant against musician Ramy Essam, in connection with their song and video "Balaha" that has been recently released on social media.

According to the information received:

On 26 February 2018, musician Ramy Essam released on YouTube and shared in social media a music video for his song called "Balaha". The song and music video criticizing the authoritarian regime of Egypt has garnered over 3.7 million views on Youtube alone. "Balaha" was jointly created by Mr. Essam, who composed the music, and Galal El Behairy, who wrote the lyrics. Mr. Essam currently resides abroad and Mr. El Behairy resides in Egypt.

On 28 February 2018, the host of popular television talk-show "On My Own Responsibility", Mr. Ahmed Mousa, condemned Mr. El Behairy's work, particularly his recently published book titled "Earth's Finest Women"; and accused it of being blasphemous. Subsequently, other television hosts called for Mr. Essam and Mr. El Behairy to face trial in connection with the song.

On 2 March 2018, the Minister of Culture initiated an official investigation against Mr. El Behairy. On the same day, a well-known lawyer, who often sues critics of the regime, initiated legal action against Mr. El Behairy and Mr. Essam.

On 3 March 2018, Mr. El Behairy was arrested by the National Security Police and his whereabouts remained unknown until he appeared before the State Prosecution on 10 March 2018. At the time of his appearance, he showed signs of having been subjected to torture and beating, and was taken for forensic medical examination. He is currently detained in Tora Prison in Cairo.

Mr. El Behairy was charged with a series of offenses in connection with the lyrics of the song Balaha and the contents of his book, including: being a member of a terrorist group, spreading false news, abuse of social-media networks, blasphemy, contempt of religion, and insulting the military. His case is being investigated by the High State-Security Prosecutor. He faces similar charges, in a separate case brought by the Military Prosecutor in connection with the contents of his book. It has been reported that he will be sentenced in a military court on 9 May.

An arrest warrant was also issued against Mr. Essam on the same charges in connection to the song and video Balaha.

Mr. Essam released a statement concerning these events, declaring that “We wanted to start a dialogue about where Egypt is now and where it could be. Our art is not created to make people fight. It is music, it is how we feel. It is a song.”

We express our concern that the disappearance, arrest, detention and prosecution of Mr. El Behairy and the arrest warrant issued against Mr. Essam may be solely related to the peaceful exercise of their right to freedom of artistic expression and creativity, resulting in undue restrictions on the right of all persons in Egypt to enjoy and have access to the arts and to take part in cultural life. We express equal concern at the criminalization of the legitimate exercise of artistic expression through charges that are not compatible with international human rights law. Serious concern is also expressed at the allegations of severe beating and torture inflicted on Mr. El Behairy during his detention, and further allegations that his whereabouts remained unknown for a period of seven days.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency’s Government to take all necessary steps to secure the right of everyone to take part in cultural life in accordance with article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your country on 14 January 1982. Under this provision, States Parties have also undertaken to respect the freedom indispensable for creative activity.

In this connection, we would like to draw the attention of your Excellency’s Government to General Comment No. 21 of the Committee on Economic, Social and Cultural Rights, which recalls the right of everyone “to have access to, and to participate in, varied information exchanges, and to have access to cultural goods and services, understood as vectors of identity, values and meaning”; as well as the right to “enjoy the

freedom to create, individually, in association with others, or within a community or group, which implies that States parties must abolish censorship of cultural activities in the arts and other forms of expression” (E/C.12/GC/21, paragraphs 44, 48 and 49). As stated in General Comment No. 21, contribution to cultural life is also to be understood as a right to take part in the development of the society to which one belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person’s cultural rights (para. 15 (c)).

The Special Rapporteur in the field of cultural rights presented to the Human Rights Council in March 2018 a report on the potential of actions in the field of arts and culture to promote fuller enjoyment of human rights (A/HRC/37/55), and was gratified that the report received the support of your Excellency’s Government on the floor of the Council. During the interactive dialogue, Egypt highlighted the role of culture in promoting tolerance and “building a democratic society that gives voice to all in an equal manner”.

In that report, the Special Rapporteur noted that the right to freedom of artistic expression and creativity includes the right to freely contribute to artistic expressions and creations, to have access to and enjoy the arts, and to disseminate their expressions and creations. This also includes the right of individuals and groups, through their artistic and cultural expression, to contribute to social debates, challenge assumptions about accepted beliefs and revisit culturally inherited ideas and concepts (para.19). She further noted that limitations to freedom of artistic expression must meet the high threshold of article 19 (3) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982, and should be imposed for the sole purpose of promoting general welfare in a democratic society. When resorting to such limitations, decision makers, including lawmakers and judges, should take into consideration the nature of artistic creativity (as opposed to its value or merit) as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers and to express their own belief and world vision (para. 21). In addition, she noted that investments in the field of culture and in the conditions that allow people to learn, develop their creativity, experience the humanity of others and exercise their critical thinking are necessary to create cultural democracies and foster civic engagement (para.22).

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 either orally, in writing or in print, in the form of art, or through any other media of his choice. We would moreover like to refer to the principle enunciated in Human Rights Council Resolution 12/16 which calls on states to refrain from imposing restrictions which are not consistent with article

19(3), including on discussion of government policies and political debate and expression of opinion and dissent.

Regarding the imposition of sanctions, including criminal sanctions, deprivation of liberty and the closing of public space, the Special Rapporteur in the field of cultural rights and the Special Rapporteur on freedom of expression recommended to distinguish between a) expression that constitutes a criminal offence; (b) expression that is not criminally punishable but may justify a civil suit or administrative sanctions; and (c) expression that does not give rise to criminal, civil or administrative sanctions but still raises a concern in terms of tolerance, civility and respect for the rights of others (A/66/290, para. 18; A/HRC/23/34, para. 31). What may be morally objectionable (from one point of view) may not necessarily be legally inadmissible or condemnable. Criminal sanctions should be the very last resort measures only, to be applied in strictly justifiable situations. We would like to draw your Excellency's Government attention to a particularly useful suggestion in the Rabat Plan of Action, to use a six-part threshold test for those expressions that are criminally prohibited (A/HRC/22/17/Add.4).

Furthermore, the repeal of blasphemy laws has been called for by the Special Rapporteurs on freedom of religion or belief and freedom of opinion and expression, and is a recommendation of the Rabat Plan of Action and Human Rights Committee General Comment No. 34. Blasphemy laws empower authorities to sanction those who articulate what are often the views of the minority.

In addition, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee 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, and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We would further like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance and in particular article 2 which states that no State shall practice, permit or tolerate enforced disappearances, and article 7 that 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. We further highlight that according to article 10 (2) of the Declaration, accurate information on the detention of persons deprived of liberty and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information.

Moreover, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which

Egypt acceded to on 25 June 1986, and Article 7 of the International Covenant on Civil and Political Rights, which provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” In particular, we would like to draw the attention of your Excellency’s Government to Rule 43 (d) of the reviewed Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”) which strictly prohibits the use of corporal punishment.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 persons 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 the details of the legal proceedings against Mr. El Behairy and Mr. Essam, and the legal basis upon which they are accused or detained, and explain how these are compatible with the international norms and standards on the right to freedom of opinion and expression, the right to take part in cultural life and the freedom indispensable for creative activities;
3. Please provide information of any measures taken to ensure the due process and fair trial rights of Mr. El Behairy;
4. Please provide the details, and where available, the results of any investigation, including judicial or medical, carried out into the alleged acts of torture and enforced disappearances against Mr. El Behairy. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide information of any measures adopted to guarantee the physical and psychological integrity of Mr. El Behairy.
6. Please indicate if Mr. El Behairy has been granted access to family visits and to a lawyer since his arrest. If not, please explain why.

7. Please provide information of any measures adopted to challenge the negative public depictions of Mr. El Behairy and Mr. Essam made by Government officials and non-state actors, and the calls to criminalize, punish and revoke their citizenship as a result of their artistic expressions.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We are considering publicly expressing our concerns in the near future as, in our view, the information upon which the press release may 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.

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

We would also 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.

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

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Karima Bennoune  
Special Rapporteur in the field of cultural rights

Bernard Duhaime  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

David Kaye  
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