

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 situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the right to privacy; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
AL EGY 14/2018

27 September 2018

Excellency,

We have the honour to address you in our capacities 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 situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the right to privacy; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 33/30, 34/18, 34/5, 35/11, 37/2, 31/3, 34/19, 32/19 and 32/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the human rights defenders **Mr. Shadi al-Ghazali Harb**, **Ms. Amal Fathy**, **Mr. Wael Abbas**, **Mr. Mohamed Ibrahim Radwan**, and **Mr. Haytham Mohamadein**, who are all being detained on charges relating to freedom of expression and association.

Mr. Shadi al-Ghazali Harb is a doctor and human rights defender, who has been particularly active in defending the rights of young people. He was the subject of one previous communication, EGY 5/2011, sent by Special Procedures on 4 February 2011. We regret that we have not received a response from your Excellency's Government to this communication.

Ms. Amal Fathy is a human rights defender, a former member of the April 6 Youth Movement and a member of the Egyptian Commission for Rights and Freedoms (ECRF), which provides legal assistance for prisoners of conscience and political detainees and campaigns against enforced disappearance, torture and extrajudicial killings. Ms. Fathy was the subject of one previous communication, EGY 9/2018, sent by Special Procedures on 24 May 2018. We regret that we have not received a response to this communication from your Excellency's Government.

Mr. Wael Abbas is a journalist, blogger, and human rights defender, who has documented cases of corruption and police brutality. He was the subject of one previous communication, EGY 10/2018, sent by Special Procedures on 14 June 2018. We regret that we have not received a response from your Excellency's Government to this communication.

Mr. Mohamed Ibrahim Radwan, also known as "Mohamed Oxygen", is a human rights defender and blogger. Through his social media accounts and on his blog, he has written and published content on human rights issues. At the beginning of 2018, he had denounced National Security's alleged involvement in cases of torture and enforced disappearances and had been critical of March's presidential elections.

Mr. Haytham Mohamadein is a lawyer, a labour rights defender and a member of El-Nadim Centre for the Rehabilitation of Victims of Violence, an organisation that campaigns against the use of torture and provides legal and medical assistance to victims of human rights violations. He has regularly appeared in the media in his capacity as a defender of workers' rights.

According to the information received:

Mr. Shadi al-Ghazali Harb

On 15 May 2018, Mr. al-Ghazali Harb was arrested after having presented himself to Giza's general prosecution office, where he had been summoned by a warrant from North Giza Court. He had been initially granted a 50,000 EGP bail (2,400 EUR), but was subsequently taken to Dokki police station, where he was detained overnight.

On 16 May 2018, the prosecution ordered that he be detained for 15 days at Qanater prison while an investigation into charges relating to Cases 621 and 1697 of 2018 is carried out. He is accused of "joining a group established in violation to the provisions of the law and the Constitution with the aim of disrupting state institutions, spreading false news, and humiliating the President".

Mr. al-Ghazali Harb has been detained in solitary confinement since the beginning of his pre-trial detention, and as of 25 July, his pre-trial detention had been renewed six times. He was denied a bed and access to the outdoors during the first fifteen days of his detention and continues to be denied access to his family and legal counsel. Mr. al-Ghazali Harb's cell is understood to be dirty and lacking sufficient ventilation.

Ms. Amal Fathy

Ms. Fathy remains in detention following her arrest on 11 May 2018 on charges under Case 7991 and Case 621 of 2018.

On 21 June 2018, the Criminal Court of South Cairo approved Ms. Fathy's release on bail regarding Case 7991, under which she stands accused of "broadcasting a video harming national security", "posting a video inciting to overthrow the regime and spreading false rumours", and "misusing social media".

Despite her bail having been approved pursuant to Case 7991, she nonetheless remains in detention pending the investigation pursuant to Case 621, under which she is facing charges of "joining a terrorist group", "publishing false news to disrupt public security and harm national interests" and "using the internet to call for acts of terrorism". Since June 2018, the prosecution has ordered that Ms. Fathy's detention be extended every fifteen days.

Ms. Fathy is suffering from acute stress as a result of her seemingly arbitrary detention. When she appeared in front of the prosecution on 2 July 2018, she was unable to walk unaided and was subsequently diagnosed with paralysis in her left leg. Although she is receiving some prescribed medication for her physical and psychiatric health, her condition continues to deteriorate.

On 8 August 2018, the prosecution referred Ms. Fathy to trial for case No. 7991 and on 11 August, the first hearing took place. In the 12-minute video Ms Fathy published online on 9 May 2018, in which she highlights the prevalence of sexual harassment against women in Egypt, she refers to having been sexually harassed by security at the National Bank (Al-Bank Al-Ahli). A lawyer representing the bank attended the hearing on 8 August and presented a compensation claim amounting to 101,000 EGP (4,877 EUR) against Ms. Fathy. The declaration of civil action by the bank against Ms. Fathy required that the trial be postponed.

Her lawyer's request to obtain an official copy of the case file and her medical reports from Qanater women's prison also warranted the postponement of the trial. The Maadi Misdemeanors Court postponed Ms. Fathy's trial until 8 September.

On 8 September 2018, Ms. Fathy's trial was again postponed to 22 September 2018. On 22 September 2018, Maadi Misdemeanors Court scheduled the verdict issuance for 29 September 2018.

Mr. Wael Abbas

Mr. Abbas was arrested on 23 May 2018 from his home and detained in relation to charges of "joining and aiding a terrorist group" and "publishing false information" under Case 441 of 2018.

His pre-trial detention has been repeatedly extended by the prosecution. No trial date has been set and he continues to be detained at the Cairo Prison in Torah. His lawyer is only permitted to visit every 15 days, after obtaining a permit from the authorities. He is not being allowed to communicate confidentially with his

lawyer. The visits take place in the prison warden's office, often in the presence of other officers.

Mr. Abbas suffers from a medical condition due to a congenital heart defect, with which he was born. His lawyers have repeatedly requested that he be brought to a specialist doctor at an outside hospital, but this request has not been granted.

Mr. Mohamed Ibrahim Radwan

At 3am on 6 April 2018, members of the security forces detained Mr. Ibrahim Radwan at his home in Cairo's Maadi district. No reason was given for his detention. Shortly after his detention, he was transferred to an unknown detention facility, where he was kept in incommunicado detention for 10 days. The authorities initially gave no reason for detaining him.

On 16 April, he was brought before the prosecution in El-Tagamu El-Khamesh in New Cairo without a lawyer. A 15-day detention period was ordered pending an investigation on charges of "publishing false news" and "joining an illegal group" under Case 621 of 2018.

His pre-trial detention has been repeatedly extended by the prosecution since then, he remains in an unknown location and no trial date has been set.

Mr. Haytham Mohamadein

On 5 September 2013, Mr Mohamadein was travelling by bus from Cairo to Suez, where he had intended to meet with representatives of factory workers, who had requested his legal assistance. He was arrested at a check-point in Suez by military personnel after they instructed him to get off the bus. Mr. Mohamadein was detained in Suez for two days. The General Prosecutor in Suez ordered his release on 7 September 2013.

On 22 April 2016, Mr. Mohamadein was arrested by police at his home after having called on civil society to protest alleged human rights abuses committed by security forces, to denounce allegedly unjust government policies, and to protest the government's decision to cede the sovereignty of two Red Sea islands to Saudi Arabia. He was detained on charges of "joining a banned group, participating in an illegal protest and plotting the overthrow of the ruling government". Mr. Mohamadein remained in detention until 14 October 2016, when he was released.

In the early hours of 18 May 2018, members of the police and the National Security Agency detained Mr. Mohamadein at his home in El Saf in Giza Governorate. No warrant was presented to him at the time.

He was taken to an unknown location until he was brought before the Supreme State Security Prosecution in the district of Tagammu El-Khamis on 19 May. The

prosecutor ordered that Mr. Mohamadein be detained for 15 days pending the outcome of an investigation on charges of “aiding a terrorist organisation to achieve its goals” and “calling for illegal protests” under Case 718 of 2018. He was subsequently taken to the Central Security Forces Camp “Kilo 10.5” on the Cairo-Alexandria desert road. At the end of May, Mr. Mohamadein was transferred to Qanater Men’s Prison.

Mr. Mohamadein’s detention period has been repeatedly extended by the prosecution and no trial date has been set. His lawyer is only permitted to visit him every 15 days, after obtaining a permit from the authorities. He is not granted privacy during his meetings with his lawyer.

We express grave concern at the extended periods of arbitrary detention of Mr. Shadi al-Ghazali Harb, Ms. Amal Fathy, Mr. Mohammed Ibrahim Radwan, Mr. Wael Abbas and Mr. Haytham Mohamadein and the use of repressive legislation to criminalize their legitimate exercise of fundamental rights. Concern is also expressed about the repeated renewals of their periods of detention following proceedings that allegedly fail to comply with due process guarantees under international human rights law. In light of allegations about the incommunicado detention of Mr. Radwan, we are seriously concerned that this condition may expose him to the risk of torture and other inhuman and degrading treatment and other human rights violations. Serious concerns are also raised for the health conditions of Ms. Fathy and Mr. Abbas, which appear to be deteriorating, and that the denial of necessary medical treatment that they have experienced may be in violation of international standards regarding treatment of persons in custody, as well as exposing them to serious and long-term health risks. We reiterate our concerns at the implications of these arrests on civil society in Egypt in general and at the fact that these form part of a broader crackdown on civic space in the country.

We are particularly concerned at this use of counter-terrorism legislation to conflate human rights activities with terrorist activities. The arrest and detention of Ms. Fathy, Mr. Abbas and Mr. Mohamadein appear to showcase an alarming pattern with regard to the use by the authorities of counter-terrorism legislation to suppress dissent and to curtail human rights work, in particular with regard to the legal assistance for prisoners of conscience and political detainees and campaigns against enforced disappearance, torture, extrajudicial killings and cases of corruption and police brutality.

While we do not wish to prejudge 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 the situation described above. Please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal basis for the repeated renewals of the detention periods of Mr. Shadi al-Ghazali Harb, Ms. Amal Fathy, Mr. Mohamed Ibrahim Radwan, Mr. Wael Abbas and Mr. Haytham Mohamadein and explain how this is in conformity with international human rights law, particularly article 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR) and articles 6 and 7 of the African Charter on Human and Peoples' Rights (ACHPR).
3. Please provide detailed information on the measures taken to provide to Mr. Shadi al-Ghazali Harb, Ms. Amal Fathy, Mr. Mohamed Ibrahim Radwan, Mr. Wael Abbas and Mr. Haytham Mohamadein, the guarantees of due process and fair trial, and effective access to a private consultation with the legal counsel of their choosing as established in international human rights law, and in particular articles 9 and 14 of the ICCPR and Article 7 of the ACHPR.
4. Please provide information about the location of detention of Mr. Radwan, and about measures taken to ensure his physical and mental integrity.
5. Kindly provide detailed information on measures taken to ensure the physical and mental integrity of all the detained human rights defenders, but particularly Mr. Wael Abbas and Ms. Amal Fathy, including measures taken to facilitate their access to necessary medical services and treatment.
6. Please provide information about the allegedly inadequate prison conditions of Mr. Shadi al-Ghazali Harb, and in particular the reason for subjecting him to solitary confinement.
7. Please indicate what measures have been taken to ensure that human rights defenders in Egypt are able to carry out their legitimate work in a safe and enabling environment without fear of judicial harassment of any kind, and to guarantee the protection of their rights to freedom of association and expression as required by international human rights law.
8. Please provide information on why charges related to joining and aiding a terrorist group, using the internet to call for acts of terrorism and aiding a terrorist organisation to achieve its goals have been levied against Ms. Fathy, Mr. Abbas and Mr. Mohamadein and indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).

9. Please indicate any measures that have been taken to address sexual harassment and gender-based violence in Egypt, and to ensure that women human rights defenders are able to carry out their legitimate work in support of women's equality and human rights in a safe and enabling environment.

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

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(s) responsible for the alleged violations.

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 allegation letter 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 letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Joseph Cannataci
Special Rapporteur on the right to privacy

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Ivana Radačić
Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to articles 7, 9, 10, 14, 17, 19, 21 and 26 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982, guaranteeing that no one be subjected to cruel or degrading treatment, that everyone have the right to liberty and security of person, that everyone have the right to a trial within a reasonable time, that everyone have the right to be released subject to guarantees to appear for trial, that everyone have the right to a fair and public trial before an independent and impartial tribunal without undue delay and with legal assistance of their choosing, and that everyone shall be granted these rights free of discrimination. Articles 19 and 21 guarantee that everyone shall have the right to freedom of expression and the right to freedom of assembly.

With respect to the charges brought against the aforementioned individuals, we would like to highlight that restrictions to the right to freedom of expression must under article 19(3) be provided by law, and be necessary and proportionate for the achievement of a legitimate objective. Laws restricting the rights enumerated in article 19 must not only comply with the strict requirements of article 19(3) but must also themselves be compatible with the provisions, aims and objectives of the Covenant. As highlighted by the Human Rights Committee, article 19(3) may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights (CCPR/C/GC/34).

We would also like to recall that many of these rights are guaranteed also by the African Charter on Human and Peoples Rights, in particular the right to be free from discrimination (article 2), the right to liberty and security of person (article 6), due process and fair trial rights (article 7), freedom of expression (article 9) and freedom of association (article 10) and assembly (article 11).

With respect to the use to counter terrorism and extremism justifications to restrict the legitimate exercise of freedom of expression, we would like to underline that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under ICCPR and non-violent exercise of these rights is not a criminal offence. Counter terrorism legislation should not be used as an excuse to suppress peaceful minority groups and their members.

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017),

2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

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.

The above mentioned allegations also appear to be in contravention of principles 1, 11, and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which state that all persons under any form of detention shall be treated in a humane manner and with respect for the inherent dignity of the human person, that a detained person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial authority, and that a detained person shall be entitled to communicate and consult with his legal counsel.

We also wish to refer to principle 7 of the Basic Principles for the Treatment of Prisoners, which states that efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged. Moreover, 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 in itself violates the absolute prohibition of torture and other ill-treatment, furthermore 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. Further, article 25 of the African Commission on Human and Peoples Rights Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa calls on States to ensure that the use of solitary confinement is restricted.

We would also like to refer to Human Rights Council resolution 22/6, which urges States to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and rule of law.

Furthermore, 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, 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. We also

wish to refer to article 5, 6, and 12, which state that everyone has the right to meet peacefully at national and international levels to promote and protect human rights, to know, seek, and impart information about human rights, and that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone against any arbitrary action as a consequence of his or her legitimate exercise of their human rights.

In this regard we would particularly also like to call Your Excellency's Government's attention to the Convention on the Elimination of all Forms of Discrimination against Women, ratified by Egypt on 18 September 1981, which provides for the right of women to participate in political and public life without discrimination. We would also like to draw your attention to General Assembly resolution 68/181, whereby States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights.

With respect to the denial of Mr. Abbas' right to communicate confidentially with his lawyer, we would like to refer to article 17 of the ICCPR, which protects the right to privacy and provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy. According to the Human Rights Committee, lawyers need be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications (General Comment No. 32). In *Mme Nazira Sirageva v. Uzbekistan (907/2000)* and *Karina Arutyunyan v. Uzbekistan (917/2000)*, the Human Rights Committee found violations of ICCPR article 14(3)b because the accused were only allowed to see their lawyers in the presence of officials, and not in private.