

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 rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; 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:
UA EGY 4/2019

20 March 2019

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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; 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, 32/32, 34/5, 32/2, 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 alleged **arbitrary arrest and detention of transgender woman and LGBTIQ human rights defender, Ms. Malak Al-Kashif**.

In this regard, we also wish to recall our letter (EGY 17/2017), sent on 31 October 2017, 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 lesbian, gay, bisexual, trans and gender diverse people (LGBT), including of two human rights defenders, Mr. Ahmed Alaa and Ms. Sarah Hegazy. We regret that to date we have not received any reply to this communication.

According to the information received:

Ms. Malak Al-Kashif is a 19-year-old young transgender woman, who advocates for the rights of transgender persons, promotes social and economic rights, and works on countering transphobic discrimination.

After the Ramses Station train accident in Cairo on 27 February 2019, which caused the death of at least 25 people, Ms. Al-Kashif called for protests in solidarity with the victims and their families. She has denounced the State's response to the accident and has called for those responsible for the accident to be held accountable.

On the dawn of 6 March 2019, Ms. Malak Al-Kashif, was arrested by National Security forces at her home. After appearing and being interrogated by the National Security Prosecution on 7 March 2019, Ms. Malak Al-Kashif was kept by the authorities in an unknown detention place for three consecutive days.

On 10 March 2019, Ms. Malak Al-Kashif was finally located and found to be kept in solitary confinement in Al-Haram Police Station. National Security Prosecution ordered her detention in remand for 15 days and pressed charges of "aiding a terrorist organization" and "misusing social media to commit a crime punishable by law," Her next session in front of the State Security Prosecution will be on 19 March for renewal of detention.

On 10 March 2019, she was allegedly referred to a public hospital for a medical examination, during which she was subjected to a coercive anal examination by a doctor. The same day, she further faced verbal sexual harassment by a police officer.

It has been alleged that Ms. Malak Al-Kashif's arrest is related to calls to peacefully protest against the government after the Ramses Station accident. There were over 60 cases of arbitrary arrests of human rights defenders, protesters and members of political parties in relation to the peaceful protests. The charges in these cases – as in Ms. Malak Al-Kashif's case – are "aiding a terrorist organization" and "misusing social media to commit a crime punishable by law with the intention of disrupting public order." It is alleged that these arrests add to the larger wave of arrests of individuals calling for protests against the recently proposed constitutional amendments.

Ms. Al-Kashif's next hearing in front of the State Security Prosecution will be on 19 March 2019 for renewal of her pre-trial detention.

While we do not wish to prejudge the accuracy of the information made available to us, we wish to express serious concern of the arrest of Ms. Malak Al-Kahif, her initial incommunicado detention, and her continued detention which appear to be directly related to her call for protest as well as to her work in the defense of women's and lesbian, gay, bisexual trans, intersex and queer (LGBTIQ) rights. We are furthermore concerned about the risks she is facing during detention due to her gender status, more particularly the allegations of forced anal examination and verbal sexual abuse. Finally,

we express concern at the arrests of over 60 people for their exercise of the right to peaceful assembly and expression.

In connection with the above allegations, we would like to highlight that coercive anal examination is a serious human rights violation. The practice of subjecting individuals to forced anal examinations has been denounced by the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Working Group on Arbitrary Detention as amounting to torture or ill-treatment. We are particularly worried that Ms. Al-Kashif may face continuous exposure of sexual violence and torture based on her gender identity and expression whether by state actors or other inmates in detention places.

Detention in an unknown place is a serious violation in its own right and therefore the allegations are deeply concerning. Ms. Al-Kashif is exposed to an additional risk of ill treatment and violence on the basis of her gender identity. Furthermore, given that Ms. Al-Kashif's official papers are still stating her gender as male, and her registered name also states as that of a male, she is at heightened risk from being detained with men and that authorities treat her as a man. The allegations of sexual verbal abuse are deeply concerning in that regard.

These allegations appear to be in contravention of the absolute prohibition of torture and other cruel, inhuman or degrading treatments or punishment, the rights of every individual to liberty and security of person, physical integrity, fair trial, non-discrimination, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and the right to freedom of association, as laid down, inter alia, in Articles 5, 7, 9 and 10 of the Universal Declaration of Human Rights (UDHR) and Articles 2, 7, 9, 10, 14, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which the State 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 would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular Articles 1, 2 and 7.

With regard to conditions of detention we wish to remind Your Excellency's Government that the authorities are obliged to prevent and combat violence against lesbian, gay, bisexual and transgender detainees by other detainees (see the report by the Special Rapporteur on torture, A/HRC/31/57). In this regard, we wish to recall the Bangkok Rules, which establish standards for appropriate gender-specific conditions of detention. At the same time when LGBT detainees are separated from the rest of the

prison population, there is a risk that their access to activities, vocational training, or work will be restricted or even denied. We also wish to recall the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 7, which focuses on self-identification and states: “No person shall be received in a prison without a valid commitment order. The following information shall be entered in the prisoner file management system upon admission of every prisoner: (a) Precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender”.

Sexual orientation and gender identity are prohibited grounds of discrimination under international law. The criminalization of sexual relations between consenting adults, and of transgender expression has been condemned as violating international human rights norms enshrined in treaties to which Egypt is party, including the ICCPR, CAT, ICESCR, CEDAW and CRC, and human rights treaty bodies as well as the High Commissioner for Human Rights have repeatedly called for such discriminatory laws to be repealed (A/HRC/29/23, A/HRC/19/41). The Human Rights Committee and the Working Group on Arbitrary Detention have clarified multiple times that detention on discriminatory grounds, including on the basis of sexual orientation and gender identity, is per se arbitrary, and violates the ICCPR, to which Egypt is a State party (CCPR/C/GC/35, A/HRC/22/44).

We would also like to refer to General Assembly Resolution 68/181, which 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 in their efforts to create a favorable environment for the defense of human rights.

Finally, we would also like to remind your Government of Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Egypt on 18 September 1981, which provides that states parties will take all appropriate measures to eliminate discrimination against women in political and public life.

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 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 information about the legal bases of the arrests and detentions of the individuals involved in protests related to the Ramses Station Accident, whether any charges have been brought against the individuals detained and how these arrests and detentions are compatible with international legal standards.
3. Please indicate what measures have been taken to ensure that human rights defenders, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment, and prosecution of any sort.
4. Please provide information on the legal grounds for the arrest and detention of Malak Al-Kashif and explain how these measures are compatible with Egypt's international human rights obligations.
5. Please provide the details of measures taken to protect Ms. Malal Al-Kashif from sexual and gender based violence and cruel, inhuman or degrading treatment, and where available the results, of any investigation carried out in relation to the allegations of verbal abuse and coercive anal examinations already carried out by police officers. If no inquiries have taken place, or if they have been inconclusive, please explain why.
6. Please explain where Malak Al-Kashif has been held from 7 to 10 March and how this action relate to Egypt's international human rights obligations.
7. Please explain if there are specific training and capacity-building programmes designed to sensitize law enforcement authorities and detention facility staff to the specific circumstances and unique needs of female and lesbian, gay, bisexual and transgender prisoners and standards such as the Bangkok Rules
8. What measures are in place to ensure access to physical and mental health care in detention, specifically for gender diverse persons?

9. Please explain policies and methods in place to adequately address self-identification, classification, risk assessment and placement of gender diverse persons
10. Please provide detailed information on measures taken to ensure that LGBT people benefit from their inherent human rights, in particular the right to be free from torture and ill-treatment, the right to privacy, the right to liberty and security of the person, the right to physical integrity, the right to privacy, and non-discrimination, the right to fair legal proceedings, the right to freedom of conscience and belief and freedom of expression, and that LGBT defenders are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical, judicial or other harassment.

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 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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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

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and expression

Clement Nyaletsossi Voule
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