

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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 and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL EGY 7/2019

19 July 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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 and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 36/6, 40/16, 34/18, 32/32, 34/5 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 **arrest, detention and prosecution under terrorism-related charges of human rights defenders, critics and peaceful protesters for the exercise of their rights to freedom of expression and peaceful assembly, in particular in the context of the February train accident at Ramses Station in Cairo and the Africa Cup of Nations hosted by Egypt.**

Mr. Mostafa Maher Ibrahim Tantawi is a human rights defender and co-founder and member of the April 6 Youth Movement, a pro-democracy and human rights protest movement established by young activists in Egypt in 2008.

Mr. Haytham Mohamadein is a lawyer, labour rights defender and member of the El Nadim Centre for the Rehabilitation of Victims of Violence and Torture, which provides psychological, social and legal support to victims of torture.

A previous communication was addressed by various Special Rapporteurs and Experts to your Excellency's Government concerning Mr. Mohamadein on 27 September 2018 (case no. EGY 14/2018). The Special Rapporteurs raised a series of concerns as to the multiple arrests of Mr. Mohamadein and the repeated extension of connected pre-trial detention periods imposed upon him, as well as the conflation of human rights activities with terrorism through the use of counter-terrorism legislation against human rights defenders such as Mr. Mohamadein.

While we appreciate the response by your Excellency's Government to this communication, received on 24 January 2019, we raise new concern as to the information provided therein concerning the case of Mr. Mohamadein, and in particular the information provided as to the basis for his prosecution in case 718/2018. We raise concern that the case was based on acts of expression online, which were deemed by the State Prosecution Office to be designed to foment chaos and overthrow the governing regime, among other aims, and further acts of expression deemed to amount to broadcasting false news and information outside Egypt regarding conditions within the country. In this regard, we would like to recall that any restrictions on freedom of expression must fall within the parameters established in article 19(3) of the ICCPR, following which they must be provided by law, and be necessary and proportionate for the achievement of a legitimate objective under the article. Furthermore, we would like to underline that any laws restricting the rights enumerated in article 19 must not only comply with the requirements of article 19(3), but must themselves be compatible with the provisions, aims and objectives of the ICCPR.

Several communications have previously been addressed to your Excellency's Government concerning the conflation of human rights activities with terrorism, and the targeting of human rights defenders within this framework, including in the recent communication sent by several Special Rapporteurs on 28 May 2019 (case no. EGY 6/2019), to which we await a response from your Excellency's Government.

According to the new information received:

The case of Haytham Mohamadein

On 30 October 2018, having served five months in detention on charges of "aiding a terrorist organisation" and "calling for illegal protests" in the case discussed above, Mr. Mahamadein was released from prison on probation.

On 12 May 2019, the human rights defender received a summons to appear at Saf police station in the Giza governorate, south of Cairo, concerning the alleged violation of his probation conditions. Upon arriving at the police station, Mr. Mohamadein was arrested.

On 13 May 2019, Mr. Mohamadein's family went to the same police station to enquire as to his whereabouts and were informed by police officers that he was not being held at the station, a statement that was later reversed, leading to the acknowledgement of his arrest on the basis of Mr. Mohamadein's alleged lack of compliance with his probation conditions.

On 16 May 2019, Mr. Mohamadein was presented at the offices of the State Security Prosecution in relation to a separate case (case no. 741/2019), accused of "aiding a terrorist organisation to achieve its goals" and "misuse of social media". While facing the Prosecutor, he was questioned as to his "suspected intention" to conduct advocacy and engage in protests during the Africa Cup of Nations, which

was to begin in Egypt on 21 June 2019. On the same day, the Prosecutor ordered Mr. Mohamadein's detention for a 15-day pre-trial period, and he was brought to the Central Security Forces Camp on the Cairo-Alexandria desert road.

On 28 May and 13 June 2019, the State Security Prosecutor renewed Mr. Mohamadein's pre-trial detention period. The most recent renewal was ordered on 8 July 2019 and the human rights defender currently remains in detention at the Central Security Forces Camp.

The case of Mostafa Maher Ibrahim Tantawi

On 14 May 2019, at midday, Mr. Maher's apartment in Cairo was raided and searched by plainclothes police officers, leading to the seizure of his mobile phone and laptop, and the arrest of the human rights defender. No warrant was provided for the search and no reasons were given for Mr. Maher's arrest.

Thereafter, the human rights defender was held incommunicado, at an unknown location, until 16 May 2019, at which time he was seen by his lawyer at the offices of the State Security Prosecution in connection with case No. 741/2019 for "aiding a terrorist organisation in achieving its goals" and "misuse of social media". As in the case of Mr. Mohamadein, while facing the Prosecutor, Mr. Maher was questioned as to his "suspected intention" to protest during the then upcoming Africa Cup of Nations and to use the tournament to draw attention to criticisms of the Government. On the same day, the Prosecutor ordered his pre-trial detention for a period of 15 days and he was transferred to New Cairo Qattamiya Police Station. Upon attempting to visit the human rights defender at the station, and to provide Mr. Maher with food and clothes, the family of Mr. Maher were denied access to him.

On 21 May 2019, Mr. Maher was transferred to Tora Prison in Cairo, where he was held in solitary confinement. Attempts by the family of Mr. Maher to visit him at this prison were also denied.

On 12 June 2019, Mr. Maher's pre-trial detention was renewed for a further period of 15 days by the Supreme State Security Prosecution. A further renewal of 15 days was ordered on 9 July 2019. Mr. Maher remains detained at Tora Prison, where he is now being held in a shared cell. His health has degraded and he has felled unconscious several times in his cell. Allegedly, he has been denied medical assistance when he has requested it.

Concerning the conflation of peaceful public protest and Government criticism with terrorism

Throughout March 2019, mass detentions and arrests were carried out, targeting individuals expressing solidarity with the victims of the accident which took place in Ramses Station in Cairo on 27 February 2019. Those arrested, numbering at

least 196, were targeted on the basis of their suspected intention to engage in demonstrations denouncing the Egyptian Government's role in and response to the accident. They were arrested on the basis of Article 3(1) of Law 162 of 1958, which provides for the arrest and detention of persons deemed dangerous to public security and order. The individuals were variously attached to three separate cases: no. 488/2019, no. 277/2019 and no. 1739/2018, some of which also involve individuals arrested prior to the Ramses Station accident. All three cases include charges of "joining a terrorist group" and "publishing false news to destabilize the country". Large numbers of those arrested and linked to these cases were subjected to periods of incommunicado detention at unknown locations, potentially amounting to enforced disappearances. These periods varied between 3 and 20 days. In several of the cases, torture and other ill-treatment occurred, including beatings, the use of electric shocks, hanging in stress positions and sexual assault.

We express grave concern at the arrests of Messrs. Mohamadein and Maher, their prosecution under case no. 741/ 2019, the repeated extension of their periods of pre-trial detention and the conditions under which they are being held, which we fear fall short of international human rights standards. We raise strong concern that the judicial processes to which they are currently subjected are directly connected to their legitimate human rights work and that they stand as emblematic cases within the above detailed broader wave of arrests, which appear to be aimed at restricting the rights of freedom of peaceful assembly and freedom of expression in Egypt and to form part of the continuing shrinking of civic space in the country. In this regard, we raise concern at the alleged targeting of human rights defenders and other individuals on the basis of their suspected intention to engage in peaceful acts of assembly.

We express serious concern at the allegations of enforced disappearances and torture and other ill-treatment perpetrated in the context of the mass arrests detailed above, which would stand in flagrant violation of international human rights law.

We raise serious concern at the charges of terrorism, which link the cases detailed above and which would represent the use of counter-terrorism legislation to restrict human rights and to target those seeking to promote and protect human rights in Egypt in response to their crucial work.

In connection with the above alleged facts and concerns, 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 same issues as to the legal and factual bases for the arrest, continued pre-trial detention, and the charges brought against Mr. Mohamadein in case n. 741/2019, as well as how these comply with the standards of international human rights law. Please provide further information on the locations at which he has been detained since his arrest, the grounds for his questioning as to his “suspected intentions” to engage in protest during the Africa Cup of Nations, and steps that have been taken to ensure that he has been able to meet with family members and legal representation.
3. Please provide detailed information on the same points outlined in question 2, here with regard to Mr. Maher. Please also provide additional information on the bases for raiding Mr. Maher’s apartment and seizing his mobile phone and laptop. Additionally, please provide detailed information as to the basis for his being held in solitary confinement upon being transferred to Tora Prison on 21 May 2019. Lastly, please provide detailed information as to the physical integrity of Mr. Maher’s and what efforts have been made to ensure his effective access to all necessary medical assistance while in detention.
4. Please provide detailed information as to the specific measures that have been put in place to ensure human rights defenders in Egypt can carry out their legitimate work in a safe and enabling environment without fear of judicial harassment of any kind, along with specific information as to steps taken to support and promote the work of human rights defenders in the country.
5. Please provide detailed information on any investigations which have been undertaken with regards to the potential cases of enforced disappearances detailed above. Please also explain what steps have been taken in order to prevent the occurrence of enforced disappearances in Egypt and to bring the perpetrators of enforced disappearances to justice. If no investigations have taken place, please explain why not.
6. Please provide detailed information on any investigations which have been undertaken with regards to the alleged acts of torture and ill-treatment detailed above. Please also explain what steps have been taken in order to bring the perpetrators to justice. If no investigation has taken place, please explain why not.
7. Please provide information in details of how your Excellency’s Government’s counter-terrorism efforts comply with the United Nations Security Council resolutions [1373 \(2001\)](#), [1456\(2003\)](#), [1566 \(2004\)](#), [1624 \(2005\)](#), [2178 \(2014\)](#), [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](#), in particular with the necessity to respect and observe international human rights law.

We would appreciate receiving a response within 60 days. Beyond this period, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence 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 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.

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

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

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

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

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

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982, which states that no one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment and article 9 and 14 of the ICCPR, which guarantee the right to liberty and security of person and the right to a fair trial.

We would also like to recall articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), to which Egypt acceded in 1982, which guarantee the right to freedom of opinion and expression and the right to peaceful assembly respectively. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued.

We bring your Excellency's Government attention to the "principal of legal certainty" under international law (ICCPR Article 15(1); ECHR Article 7(1)) which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations (A/73/361, para.34). The report also underscores that the use of counter-terrorism law to quell legitimate activities are protected by international law is inconsistent with the State's treaty obligations.

We furthermore wish to draw to the attention of your Excellency's Government articles 2, 12 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, acceded to by Egypt on 25 June 1986, which place an obligation on states to prevent acts of torture or cruel, inhuman or degrading treatment or punishment occurring on their territory, or on any other territory under their jurisdiction, and to ensure a prompt and impartial investigation into allegations when there are grounds to believe that such acts have occurred.

We would also 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 an international norm of jus cogens, as mirrored, inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

With regards to the period of time placed in solitary confinement, we would like to recall **the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the General Assembly of 5 August 2011 (A/66/268)**, in which solitary confinement, in accordance with the Istanbul Statement on

the Use and Effects of Solitary Confinement, is defined as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. It is observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days under conditions of total or almost total isolation) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering.

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. Further, the Declaration establishes that any person deprived of liberty shall be held in an officially recognised place of detention (article 10.1) and that an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention (article 10.3).

We also wish to draw your Excellency's Government's attention to paragraph 27 of General Assembly resolution 68/156 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" (A/RES/68/156).

We would also like to refer to Human Rights Council resolution 24/5, in which the Council "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections and including persons espousing minority or dissenting views or beliefs, human rights defenders,[...] and others[...] seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions of the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law" (OP2).

We would like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights. (OP 10).

In this regard, we would like to bring to the attention of your Excellency's Government that in his report to the General Assembly on the impact of counter-terrorism measures on civil society, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to

ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. (A/70/371, para 46(c)).

We also wish to refer to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, specifically Principle 10, which states that “anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him”, principle 11, which states that “a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority” and that “a detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law”, and Principle 15 which states that “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days” (See also Principle 15 and Rule 58 of the Mandela Rules).

We would also 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.

Further to this, we wish to bring to the attention of your Excellency's Government several further provisions of the UN Declaration on Human Rights Defenders. In particular, we would like to refer to article 5(a), which underscores the right to meet or assemble peacefully.

We finally refer to article 12 of the International Covenant on Economic Social and Cultural Rights, ratified by Egypt in January 1982, which establishes the right to physical and mental health. General Comment No. 14 of the Committee on Economic, Social and Cultural Rights further highlights States' obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health services (para. 34). In this connection, the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), adopted unanimously by the UN General Assembly (A/Res/70/175), establish States' responsibility to provide every prisoner with food of nutritional value adequate for health and strength and drinking water (Rule 22) as well as with adequate and prompt access to healthcare (Rules 24 to 35).