

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the right to privacy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Working Group on discrimination against women and girls

REFERENCE:
UA EGY 14/2019

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Excellency,

We have the honour to address you in our capacity as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the right to privacy; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/18, 42/22, 34/5, 37/2, 34/19 and 41/6.

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 Eman Al-Helw, woman human rights defender and Hossam Ahmad, trans-man**.

In this regard, we would also like to recall other similar communications, including allegation letter EGY 7/2019 sent to your Excellency's Government on 19 July 2019 regarding reports of 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. We regret that no response has yet been received to this communication and look forward to receiving the Government's replies to the aforementioned communication and the present one soon.

Several other communications had previously been addressed to your Excellency's Government concerning the conflation of human rights activities with terrorism, and the targeting of human rights defenders under the counter-terrorism legislation.

According to the information received:

Eman Al-Helw is an Egyptian actress and a woman human rights defender who has been active in the defence of the rights of actors in the Egyptian film industry.

She was arrested on 28 February 2019. She was kept by the authorities in an unknown detention place for four consecutive days, before appearing at the State Security Prosecution on 4 March 2019. The Prosecution ordered her detention in remand for 15 days and pressed charges of “participating in a terrorist group” and “using an internet account (Facebook) to commit a crime punishable by law”. On 18 March, the Prisons’ Authority allegedly ordered a full physical examination [REDACTED], which was conducted by doctors at a general hospital. This examination was reportedly undertaken against her will and without medical grounds.

Hossam Ahmad is an Egyptian trans-man. He was also arrested on 28 February 2019 and was kept by the authorities in an unknown detention place for four consecutive days before appearing at the State Security Prosecution on 4 March 2019. The Prosecution ordered his detention in remand for 15 days and pressed charges of “participating in a terrorist group” and “using an internet account (Facebook) to commit a crime punishable by law”. He is being held in a women’s holding cell in the Abdeen Police Station and has reportedly faced harassment and bullying from other inmates and visitors. Mr. Ahmad has also allegedly been denied hormone therapy since his arrest and the Prisons’ Authority also forced him to undergo a full physical examination [REDACTED] without an order from the prosecution. As a trans-man, Hossam Ahmad has a medical certificate issued by a general hospital describing his condition and medically qualifying him for gender-affirming treatment. The medical certificate states that he has not undergone any surgical procedures.

Eman Al-Helw and Hossam Ahmad are being detained in relation to State Security case No. 1739/2018. They have allegedly been arrested in relation to criticisms of the government on social media and calls to peacefully protest against the Egyptian authorities after the Ramses Station train accident that killed 22 and injured 43 persons in February 2019. In this context, 116 people have reportedly been arbitrarily arrested between 27 February and 2 March 2019.

The charges pressed against Eman Al-Helw and Hossam Ahmad of “participating in a terrorist group” is punishable by severe penalties of up to life imprisonment under article 12 of the 2015 Anti-Terrorism Law. The charges of “using their Facebook accounts to commit a crime punishable by law” could, under the 2018 Cybercrime Law, result in an additional sentence of up to two years’ imprisonment and a fine of no less than LE 100,000.

Since their arrest on 28 February 2019, their pre-trial detention has been regularly renewed for periods of 15 to 45 days. On 3 December, Eman Al-Helw and Hossam Ahmad were informed about their imminent release but on 4 December the Criminal Court of al Tagamoa al Khamis, headed by Chancellor Shabib Al-

Damrani decided to accept the prosecution's appeal on the decision to release them and renewed their pre-trial detention for 45 additional days. None of them has yet been brought before a judge. According to information at our disposal Ms. Al-Helw and Mr. Ahmad are detained in a cell in the basement of Abdeen Police Station and have not been outdoors or seen the sunlight for more than 8 months. They have reportedly not been transferred to a regular prison on the basis of presumptions about their sexual orientation or gender identity, as the Egyptian authorities assume that they do not fit in with the general population.

While we do not wish to prejudge the accuracy of the information made available to us, we wish to express serious concern over the allegations of arrests of Eman Al-Helw and Hossam Ahmad, their initial incommunicado detention, and their continued detention which appear to be directly related to their legitimate exercise of freedom of expression and their call for peaceful protest as well as to their work in the defense of human rights. We are furthermore concerned about the allegations concerning the treatment that they have faced in detention due to their actual or perceived sexual orientation or gender identity, particularly the [REDACTED], harassment and bullying, as well as the risk of recurrence. We also express concern at the allegation that Hossam Ahmad was denied access to hormone therapy, which is an essential element of his gender-affirming treatment. Finally, we express concern at the alleged arrests of 116 people for their exercise of the right to freedom of expression and of peaceful assembly and expression.

Detention in an unknown place is a serious violation in its own right and therefore the allegations are deeply concerning. Eman Al-Helw and Hossam Ahmad are exposed to an additional risk of ill treatment and violence on the basis of their actual or perceived sexual orientation or gender identity. Furthermore, given that Mr. Hossam Ahmad's official papers are still stating his gender as female, and his registered name also states as that of a female, he is at heightened risk that authorities and others treat him as a woman. The allegations of harassment and bullying against Mr. Hossam Ahmad are deeply concerning in that regard and we are worried that he may face continuous abuses based on his gender identity and expression whether by State actors or other inmates in detention places. We would also like to highlight that coercive invasive examination may violate the right to privacy and amount to ill-treatment or even torture.

Moreover, we are concerned about the detention conditions that Eman Al-Helw and Hossam Ahmad have been subjected to, particularly allegations of detention in an underground cell for the last 8 months with no natural light or outdoors activity, which may severely impact their physical and psychological health.

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 health, the right to privacy and 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, 10, 12 and 25 of the Universal Declaration of Human Rights (UDHR), Articles 2, 7, 9, 10, 14, 17, 19, 21, 22, and 26 of the International Covenant on Civil and Political Rights (ICCPR) and articles 2 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) , 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, 6, 7 and 12.

With regard to the practice of coercive invasive examination, the Special Rapporteur on torture has described “invasive forensic examinations” as being “intrusive and degrading” with the potential to “amount to torture or ill-treatment” ((A/HRC/31/57, para. 36)).

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. All transgender detainees, regardless of whether they undergo surgery or have changed gender on legal documents, should be treated on the basis of their self-identified gender. In addition, we wish to recall Rule 14 of the Nelson Mandela Rules which require adequate natural light in cells and Rule 23.1 which requires at least one hour of suitable exercise in the open air daily.

We would also like to refer to the Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles and in particular Principle 9(H), which, on the basis of applicable international human rights law, indicates that States shall: “Adopt and implement policies to combat violence, discrimination and other harm on grounds of sexual orientation, gender identity, gender expression or sex characteristics faced by persons who are deprived of their liberty, including with respect to such issues as placement, body or other searches, items to express gender, access to and continuation of gender affirming treatment and medical care, and “protective” solitary confinement”.

Additionally, the principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. Sexual orientation and gender identity are prohibited grounds of discrimination under international law. 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 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 favourable environment for the defence 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 on the legal grounds for the arrest and detention of Eman Al-Helw and Hossam Ahmad and explain how these measures are compatible with Egypt's international human rights obligations.
3. Please provide the details of measures taken to protect Eman Al-Helw and Hossam Ahmad from harassment, bullying, sexual and gender based violence, intrusion on their privacy, and cruel, inhuman or degrading treatment, and where available, the results of any investigation carried out in relation to the allegations of [REDACTED]. If

no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please explain where Eman Al-Helw and Hossam Ahmad were held from 28 February to 4 March and how this action relate to Egypt's international human rights obligations.
5. Please provide information about the measures taken to provide adequate conditions of detention to Eman Al-Helw and Hossam Ahmad and to ensure their physical and mental health while in detention, including by providing the hormone therapy necessary for the continuation of Mr. Hossam Ahmad's gender affirming treatment.
6. Please provide information on the legal basis for the intrusions on the privacy of Eman Al-Helw and Hossam Ahmad and explain how these measures are compatible with Egypt's international human rights obligations, including an explanation on the necessity and proportionality of such measures.
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 threats or acts of intimidation, harassment, and prosecution of any sort.
8. 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 and the Nelson Mandela Rules.
9. Please explain policies and methods in place to adequately address self-identification, classification, risk assessment and placement of LGBT persons in custody.

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.

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orientation and gender identity

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