

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA EGY 1/2020

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/18, 42/22, 34/5, 40/16 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 deprivation of liberty and criminal prosecution of journalists Solafa Magdy, Hossam El-Sayad and Mohamed Salah by the Egyptian authorities.

Ms. **Solafa Magdy** is an Egyptian journalist. She is an expert in mobile journalism and founder of Everyday Footage, a school that trains young women journalists and researchers in mobile reporting. She was an active participant in the UN sponsored Reham Al Farra Fellowship in September 2019, and met with senior UN officials in that context. Mr. **Hossam El-Sayad** is an Egyptian journalist and Ms. Magdy's spouse. Both Ms. Magdy and Mr. El-Sayad actively defend prisoners of conscience and victims of human rights violations through their writings and social media activities. Mr. **Mohamed Salah** is an Egyptian journalist.

According to the information received:

On 26 November 2019, plainclothes Egyptian security forces arrested journalists Ms. Solafa Magdy, Mr. Hossam El-Sayad and Mr. Mohamed Salah at a cafe in the Dokki area of Giza, Greater Cairo. During the arrest, security forces confiscated mobile phones, laptop computers and Ms. Solafa Magdy's vehicle.

During the initial interrogation, National Security Agency (NSA) officers questioned all three of the journalists in an unknown location about their previous journalistic work, employers and incomes. Moreover, they were questioned on

their activism defending a fellow journalist, Ms. Esraa Abdel Fattah who is currently in detention and who was subject to previous communications by Special Procedures (EGY 11/2019 and EGY 10/2015 which your Excellency's Government has not replied to by the date of the present letter). During the interrogation, NSA officers reportedly verbally and physically assaulted Ms. Solafa Magdy after she refused to give them the access code to her mobile phone.

On 27 November 2019, State Security prosecutors ordered the pre-trial detention of the three journalists. Ms. Magdy was charged with "collaborating with a terrorist organisation" and "spreading false news", Mr. El-Sayad was charged with "membership in a terrorist organisation", and Mr. Salah was charged with "membership of terrorist organisation" and "spreading false news". All three individuals were added to the case no. 2019/488, which includes a number of other journalists, including Ms. Esraa Abdel Fattah who had been arrested on 13 October 2019.

Mr. El-Sayad and Mr. Salah are currently detained in Tora prison in Cairo, and Ms. Magdy is being held in Al Qanateer women's prison in Qalyubia. The investigations into the three form part of case no. 488 of 2019, which relates to the March 2019 anti-government protests and which includes several prominent activists and politicians in Egypt.

On 9 December 2019, the General Prosecutor of the State Security ordered the pre-trial detention of the three journalists for a further 15 days. The lawyers representing Ms. Magdy and Mr. El-Sayad filed a petition to the Attorney General to release the couple -or at least one of them- taking into consideration the physical and mental health of their son. The petition referred to relevant provisions of the Egyptian Child Law (Law 12/1996) and the Law on Detention Procedures (Law 150/1950), which reportedly allow for the deferral of the detention of a couple with a dependent child under 15 years old.

On 14 December 2019, Ms. Magdy began a hunger strike in protest at her detention and ill-treatment and to denounce the conditions of her detention in Al-Qanateer prison, as well as restrictions placed on the visits by her family to fifteen minutes.

Without prejudice to the accuracy of the information received, we express our serious concern at the detention of the three journalists for what appears to be the exercise of their journalistic profession and defence of human rights. If true, this would in and of itself constitute an attack on individuals' freedom of expression that is incompatible with article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982, see CCPR/C/GC/34 paras. 23 and 42.

Furthermore, we express serious concern that the detention may constitute an arbitrary deprivation of liberty and thus be unlawful under international human rights law. As indicated by the Human Rights Committee, a detention is arbitrary, *inter alia*, if it is punishment for the legitimate exercise of the rights as guaranteed by the Covenant, CCPR/C/GC/35, paras. 12 and 17. Consequently, the deprivation of liberty in violation of the right to freedom of expression would amount to an arbitrary detention in violation article 9 of the ICCPR.

In this context, 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, 2, 6, 9, paragraph 1, and 12, paragraph 2 of the Declaration.

Information that NSA Officers physically and verbally assaulted Ms. Magdy to extract information from her is of particular seriousness. If proven correct, this would constitute inhuman or degrading treatment or even amount to torture under Article 7 of the ICCPR. We recall in this regard that such acts under no circumstance are justifiable. 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 ratified on 14 January 1982.

Moreover, we express our concern that the situation described in this letter seems to be part of pattern of systemic repression of dissent in the country. On recent examples, see UA EGY 14/2019, UA EGY 13/2019, UA EGY 7/2019. This pattern seems to suggest the targeted application of national security legislation to silence dissent. As indicated numerous times by UN Special Procedures mandate holders and by the UN Human Rights Committee, national security does not provide a blanket competence to restrict human rights. To the contrary, the State has a burden of proof to demonstrate that the use of national security measures is necessary, appropriate and proportionate in each particular instance, CCPR/C/GC/34 paras. 30 and 46 and A/70/371 paragraph 46(c). In this regard, 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.

Furthermore, we express concern over the charges of "spreading false news". As indicated by the UN Special rapporteur on freedom of expression in a 2017 joint

statement with regional human rights mechanisms on fake news and disinformation, echoing the approach by the UN Human Rights Committee, the use of criminal sanction is generally inappropriate to address false news, and imprisonment is never compatible with the ICCPR, see CCPR/C/GC/34 para. 47.

Lastly, we remind your Excellency's Government of the duty of the State to provide effective remedies to victims of human rights violations under the ICCPR art. 2 (3). This entails, *inter alia*, a duty to cease the unlawful conduct and provide reparations, see CCPR/C/21/Rev.1/Add. 13 para. 16. In this case, the State should thus discontinue the criminal proceedings and ensure the immediate release of the three individuals concerned. Furthermore, it entails the duty to investigate alleged human rights violations in an effective, prompt, independent and impartial manner, see *id.* paras 15 and 18. This reflects the correlative duties of the State under the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), acceded to by Egypt 25 June 1986, articles 12 – 14 for situations falling under the scope of the Convention.

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 the observations of your Excellency's Government 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 and factual basis for the charges against the three journalists, as well as the reasons for the extension of their pre-trial detention.
3. Please provide information on the measures taken by your Excellency's Government to conduct effective, prompt, impartial and independent investigations into the allegations that officials of the NSA used physical and verbal violence to coerce information from Ms. Solafa Magdy.
4. Please provide information on what measures have been taken by your Excellency's Government to ensure practices relating the use of counter-terrorism legislation is aligned with requirements under international human rights law.

5. Please provide information on how the counter-terrorism efforts of your Excellency's Government 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, 72/180 and 73/174, in particular with international human rights law, refugee law, and humanitarian law.
6. Please provide information on the extent to which your Excellency's Government has taken steps to repeal the criminalisation of "false news" or cease the practice of prosecuting these types of offences. If no such steps have been taken, please provide a justification for the reasons thereof.
7. Please provide detailed information as to the specific measures that have been put in place to ensure human rights defenders, including journalists covering human rights issues in Egypt, can carry out their legitimate work in a safe and enabling environment without fear of judicial harassment of any kind.
8. Please provide information on what measures are being taken to ensure that the rights to effective remedies of the three journalists are ensured.

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 responsible for 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.

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

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

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