

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 torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE:
AL EGY 12/2020

28 September 2020

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 rights to freedom of peaceful assembly and of association; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 42/22, 43/4, 41/12, 43/20 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention and severe conditions of detention of Mr. **Alaa Abdel Fattah** and of women TikTok social media users.

Mr. Abdel Fattah is a software developer, prominent blogger, and a human rights activist. He was one of the leading voices and campaigners during the 2011 protests. He is well-known for founding a prominent Arabic blog aggregator and has been involved in numerous citizen journalism initiatives.

Mr. Abdel Fattah has been the subject of three communications sent by Special Procedures mandate holders (EGY 13/2011 sent on 22 December 2011, EGY 16/2013 sent on 3 December 2013 and EGY 17/2013 sent on 6 December 2013). We thank your Excellency's Government for its responses dated 27 December 2013, 30 December 2013 and 21 January 2014, but we remain concerned given the new allegations detailed below.

According to the information received:

The case of Alaa Abdel Fattah

In June 2014, Mr. Alaa Abdel Fattah was convicted in absentia to fifteen years in prison on charges of violating Egypt's protest law and attacking a police officer. Following an appeal, he was sentenced in February 2015 to five years in prison and a five-year probation period after his release.

In March 2019, Mr. Alaa Abdel Fattah was released from prison after completing his five-year prison sentence and started probation, during which, Mr. Abdel Fattah was required to spend 12 hours at the police station every day from his release date.

On 20 September 2019, he was arrested again while fulfilling his probation obligations at the El-Dokki Police Station. Upon being detained, he was taken to be questioned before the Supreme State Security Prosecution. He was then remanded into pretrial detention on allegations of belonging to a terrorist organization and spreading false news.

Upon the arrival of Mr. Abdel Fattah to the Tora Maximum Security Prison 2, he was allegedly subjected to ill-treatment. According to the information received, he was blindfolded, stripped of his clothing, kicked, beaten, insulted and threatened by prison guards. One officer told him that prison was “made for people like him” and that he would be in prison for the rest of his life. Mr. Abdel Fattah was reportedly warned that if he reported the abuse, he would receive the same treatment again. Mr. Abdel Fattah was held in poor conditions. He was denied access to books and newspapers; not allowed to exercise outside; he was not provided with a proper mattress and denied blankets during the winter.

On 10 March 2020, amid the spread of Covid-19 across the country, Egyptian authorities suspended all prison visits and did not provide an alternative, effectively cutting off communication from detainees with their relatives and lawyers. Mr. Abdel Fattah was among those affected by these measures.

In May 2020, pretrial detention hearings were resumed, and Mr. Abdel Fattah’s pretrial detention was renewed without explanation. He was not brought before a court and his lawyer was not allowed to present a defense for his release.

On 12 April 2020, Mr. Abdel Fattah began a hunger strike to protest the refusal of Egyptian authorities to release him as a pretrial detainee. Throughout the months of April and May 2020, Mr. Abdel Fattah’s relatives made over 20 unsuccessful attempts to deliver medicine, rehydration sachets, vitamins, and a letter to Mr. Abdel Fattah at Tora Prison. They have not been able to get information about Mr. Abdel Fattah and were allegedly told by prison authorities that “State Security [had] responded [to their request] and [that] Alaa Abdel Fattah [would] not be allowed [...] anything”.

On 18 May 2020, Mr. Abdel Fattah’s family received a letter from him in which he stated that he would be ending his hunger strike. He also noted that pretrial detention hearings were being resumed by the court system once again and he would stop challenging the constitutionality of his detention and to the purview and discretion of his legal team.

The prosecution of women TikTok users

A number of female TikTok users have lately been accused of behaviour incompatible with public morals and charged by the Public Prosecution of violating family principles and values in Egyptian society, violating the sanctity of private life, and accused of prostitution, debauchery, incitement to immorality and for publishing videos and photos to disrupt public life, in accordance with Cybercrime Law No. 175/2018. TikTok is a short-form, video-sharing application that allows users to create and share videos of 3 to 15 seconds.

Some of the women Tiktok users have reportedly been requested to show their private information on their mobile phones and requested to provide details of their bank accounts to the Prosecutor's office. The Cairo Economic Court sentenced the some of the individuals to two to three years in prison, while others have been heavily fined, in the amount of 300,000 LE (approximately USD \$17,000).

Without prejudice to the accuracy of the abovementioned allegations, we are deeply concerned by the allegations of arbitrary detention, ill-treatment and conditions of detention and lack of fundamental safeguards during detention of Mr. Alaa Abdel Fattah.

We reiterate that the State has a duty of care for individuals in their custody arising from article 10 of the ICCPR, which obliges to ensure humane conditions of detention and respect for the dignity of individuals deprived of their liberty. In this regard, we express grave concern at the alleged abuse Mr. Abdel Fattah was subjected to while in detention, possibly torture and other cruel, inhuman or degrading treatment or punishment in contravention of articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Moreover, we wish to reiterate to your Excellency's Government the crucial importance of contact between detainees and legal counsel and relatives as a safeguard against ill-treatment, and we express concern at the refusal by the authorities to facilitate any form of contact in that regard. Lastly, we are concerned that the refusal by the authorities might constitute a form of punishment.

In addition, we express our concern regarding the disproportionate sanction applied to female TikTok users and of the accusation of violating family principles and values and public morals, which affects the positioning of women in the society in general and that such sanction refers to a gender-based discrimination. In this regard, we would like to remind your Excellency's Government of Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Egypt on 18 September 1981, which requires States to modify the social and cultural patterns of conduct of men and women. We would also like to remind your Excellency's Government about its obligation under Article 17 of the ICCPR, which guarantees all persons of the right to privacy without arbitrary or unlawful interference, which should be applied on an equal basis with men (CCPR/C/21/REV.1/ADD.10).

We are further concerned about the criminalisation of women using social media. The grounds for restricting speech on the basis of morals cannot be used to protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition. The concept of morality must be understood in the light of the universality of human rights. The use of vague legal provisions such as those set forth in the Cybercrime Law No. 175/2018 criminalising speech on the basis of “Egyptian family values” are of equal concern and in this regard, we remind your Excellency’s Government that the requirement of legality in article 19 (3) of the ICCPR which entails that laws restricting speech must be drafted with sufficient precision so as to permit individuals to regulate their conduct accordingly.

The ground to restrict speech on the basis of morals cannot be used to protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition. The concept of morality must be understood in the light of the universality of human rights. We express serious concerns at the use of vague legal provisions such as those set forth in the Cybercrime Law No. 175/2018 criminalising speech on the basis of “Egyptian family values”. In this regard, we remind your Excellency’s Government that the requirement of legality in article 19 (3) of the ICCPR entails that laws restricting speech must be drafted with sufficient precision so as to permit individuals to regulate their conduct accordingly.

Lastly, we express concern that according to information made available to us, there does not seem to have been any action taken by the authorities to investigate, identify and bring those responsible of torture or ill-treatment in detention to justice, which is an obligation arising under articles 7 and 12 of the CAT, as well as to remedy possible breaches of international human rights law, as required under the obligation to provide effective remedies to victims of alleged human rights violations.

We also express concern at the disproportionate nature of the sanction. In this regard we regret that the protection of family values is included in a criminal law provision, noting that the criminalisation of speech should be a measure of last resort.

Lastly, we note with general concern the chilling effect that the criminalisation of breaches of family values might have on the exercise of the freedom of expression of women on social media.

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 about the factual and legal grounds for the charges, as well as the new cases opened against Mr. Alaa Abdel Fattah.
3. Please provide information on why charges related to terrorist acts and spread of false information have been levied against Mr. Alaa Abdel Fattah, and how the proceedings against Mr. Alaa Abdel Fattah comply with Egypt's obligations under international human rights law. In particular, please provide specific information about Mr. Alaa Abdel Fattah's access to legal assistance.
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the allegations of torture and/or cruel, inhuman or degrading treatment of Mr. Alaa Abdel Fattah. If no investigation has been initiated, please explain why and how this is compatible with the international human rights obligations of Egypt.
5. Please provide information on the conditions of detention of Mr. Alaa Abdel Fattah in the Tora Maximum Security Prison 2.
6. Please provide information about the criminalization of women users of social media under the Cybercrime Law No. 175/2018 and any measures which have been taken to ensure that the law is not issued in arbitrary manner against women.
7. Please explain the reasons for the arrest of women Tiktok bloggers and the respect to their rights to freedom of expression and right to privacy.

We would appreciate receiving a response within 60 days. Passed this delay, 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 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 would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render.

The Government is required to respond separately to the present communication and to the regular procedure.

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

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

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

Nils Melzer
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punishment

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

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 the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer your Excellency's Government to articles 7, 9, 10, 14, 19, 17 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982, which guarantees the right not to be subjected to torture or cruel, inhuman and degrading treatment, the right to liberty, including the right to not be subjected to arbitrary arrest or detention, the right to be treated with humanity and respect for their inherent dignity while detained, the right to fair trial and due process and the right to freedom expression.

According to article 9 of the ICCPR, anyone deprived of liberty shall be immediately informed about the reasons for the arrest, promptly notified about the charges and brought before a judge. Under article 9.3, pretrial detention must not be the rule but an exception, which needs to be necessary, proportional and only in the interest of justice. Anyone arrested shall have right to challenge the legality of the detention, which requires effective access to meaningful legal assistance. Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary (See General Comment No.35 of the Human Rights Committee, paras. 17 and 53). Article 10 requires for all persons under any form of deprivation of liberty to be treated with humanity and with respect for the inherent dignity of the human person. These safeguards against arbitrary detention are reinforced by article 14, which establishes *inter alia* the right to be tried by an independent and impartial tribunal, to be presumed innocent and to have adequate times and facilities to prepare the defense for trial. Article 14 also prohibits compelling a defendant to testify against himself or to confess guilt. Additionally, referring to article 17 of the ICCPR, which is relevant insofar as it prohibits "arbitrary or unlawful interference with [a person's] privacy, family, home or correspondence" as well as "unlawful attacks on his honour and reputation."

Moreover, article 19(1) of the ICCPR protects everyone's right to freedom of opinion without interference. Article 19(2) of the ICCPR guarantees freedom of expression, which it defines as the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Article 19(3) establishes permissible limitations on freedom of expression: restrictions on the right to freedom of expression must be "provided by law," and necessary "for respect of the rights or reputations of others" or "for the protection of national security or of public order, or of public health and morals." The General Assembly, the Human Rights Council and the Human Rights Committee have concluded that the same rights available offline apply online as well.

We would like to recall that, as established by the Human Rights Committee in its General Comment No. 31 (paragraph 18), States have an obligation to investigate and

punish serious human rights violations, including summary or arbitrary killings, torture and other cruel, inhuman or degrading treatment, and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties. Additionally, the Human Rights Committee in its General Comment No. 34 (paragraph 23) stated that States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted. (CCPR/C/GC/34).

In regard to the criminalization of social media users we would like to recall your Excellency's Government of General Comment 34 (paragraph 25) which establishes that a norm, to be characterized as a "law", must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.

We would like to further refer your Excellency's Government to General Comment no. 36 on the right to life of the Human Rights Committee which has provided that "States parties also have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their life and bodily integrity" (para 25). This duty "includes providing them with the necessary medical care and appropriately regular monitoring of their health" (*id.*).

The Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111, underline that prisoners shall be treated with the respect due to their inherent dignity and value as human beings (Principle 1). As outlined by the UN Standard Minimum Rules for the Treatment of Prisoners (see the revised version adopted on 5 November 2015 and renamed "Mandela Rules"), no prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification (Rule 1).

Furthermore, the Interim Guidance COVID-19 Focus on persons deprived of their liberty issued March 2020 by the World Health Organization and the Office of the United Nations High Commissioner for Human Rights states that as a measure of prevention of an outbreak in places of deprivation of liberty, prisoners should be able to maintain their ability to meet with legal counsel confidentially and that suspending hearings may in fact exacerbate the risk of coronavirus in places of detention.