

17 August 2016

STATEMENT

Bar Human Rights Committee calls for the immediate end to the detention of Irish citizen Ibrahim Halawa in Egypt

The Bar Human Rights Committee of England and Wales (“BHRC”) expresses its grave concern at the ongoing detention of Irish citizen Ibrahim Halawa in Egypt and supports calls for his immediate transfer to Ireland under Egyptian Presidential Decree Law 140.

Mr. Halawa was arrested in Cairo on 17 August 2013 following his attendance at a public protest in Cairo with his three sisters. He, alongside hundreds of other protestors, took refuge overnight in a local mosque when Egyptian Security Forces began dispersing the protestors with live fire and tear gas. When the Security Forces seized the mosque the following day, Mr. Halawa and some 493 were arrested and detained.

Mr. Halawa was a child aged 17 at the date of his arrest. He has now been detained for just under three years without trial. He has been charged with a range of serious offences, including premeditated murder, for which the Egyptian State has not yet presented any evidence. His mass trial, which he faces alongside 493 other Defendants, has been adjourned 14 times.

Arbitrary Detention

BHRC is gravely concerned that Mr Halawa's detention breaches international legal principles.

In particular, BHRC considers that the pre-trial detention of Mr. Halawa for a period of just under 3 years is highly likely to constitute a violation of the non-derogable prohibition against arbitrary detention pursuant to article 9 of the International Covenant on Civil and Political Rights ("ICCPR")¹ and in particular amounts to a violation of the right to trial without undue delay.

BHRC considers that there is no evidence that the detention of Mr. Halawa is either reasonable or necessary, or that alternatives to detention have been explored adequately or at all. Likewise, there is no evidence to show that Mr. Halawa was brought promptly before a Judge following his initial detention to determine the legality of his detention or any evidence to justify his the 7 month period in which Mr. Halawa was detained before even being charged.

While it is correct that Mr. Halawa's detention has been subject to judicial review, BHRC is concerned that these reviews are inadequate and contrary to international standards as on each occasion, the detention period is simply extended, the prosecution fail to disclose any relevant evidence, lawyers for Mr Halawa are denied access to hearings and prosecution documentation, and the judiciary fail to provide adequate reasons for their decisions.

BHRC therefore considers that Mr. Halawa has been denied an opportunity to challenge his detention in a meaningful manner and that the period of time in which he has been detained pre-trial is both unreasonable and unnecessary.

¹Egypt signed the ICCPR in 1967 and ratified in 1982.

Fair Trial

BHRC is also gravely concerned that Mr. Halawa faces the prospect of an unfair trial contrary to Articles 9 and 14 of the ICCPR and Articles 6 and 7 of the African Charter of Human and People's Rights.²

BHRC is particularly concerned that Mr. Halawa is facing a mass trial alongside with 493 other defendants, the majority of whom are adults.

This follows a pattern of mass trials occurring in Egypt over the last two years despite extensive international outcry and condemnation, including by UN human rights experts, the European Union, the African Commission and international human rights organisations, including Amnesty International and Human Rights Watch.

BHRC contends that a mass trial of this nature is inherently incapable of meeting the fair trial guarantees provided by Articles 9 and 14 of the ICCPR and Articles 6 and 7 of the African Charter. This is in the main because the sheer number of defendants impacts on the right to a fair trial including the right to cross-examine and effectively prepare an adequate defence in response to individual evidence. BHRC has very clear concerns as to how 493 defendants accused jointly of serious charges can ever hope to benefit from the entitlement to the presumption of innocence or basic fair trial minimum guarantees.

For instance, BHRC understands that Mr. Halawa's trial has been adjourned on multiple occasions in order to attempt to find a court room to simply accommodate the number of defendants. Further, in a number of hearings, Mr. Halawa's lawyers were unable to question witnesses and Mr. Halawa himself was denied the right to testify or to participate directly in the proceedings. It is clear that each of these infringe minimum fair trial standards according to international law.

² Egypt signed the African Charter in 1981 and ratified in 1984

BHRC reiterates that the right to a fair trial, including the right to a trial without undue delay and to a trial in which a defendant can properly test the evidence before him is non-derogable, and therefore cannot be justified including on the basis of a 'state of emergency'.

Rights as a child

BHRC is concerned that the Egyptian authorities have failed to adequately consider Mr. Halawa's age throughout his detention.

At the date of his arrest Mr Halawa was only 17 years old and therefore a child according to international law but has at all times been treated by the Egyptian authorities as an adult. In particular Mr. Halawa has, from the outset of his detention been detained with adults and is further being tried with adults contrary to both Articles 37 and 40 of the Convention on the Rights of the Child which requires that children deprived of their liberty are to be separated from adults, unless it is in their interests not to do so and that children receive a fair trial in accordance with their age.

Further, BHRC is concerned that the conditions of Mr. Halawa's detention fail to comply with minimum international standards for the treatment of juveniles in prison- in particular the UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Standard Minimum Rules for the Administration of Juvenile Justice.

In addition, Mr. Halawa remains subject to an offence which if convicted, could result in the death sentence. This is contrary to a fundamental prohibition in international law on the imposition of such a penalty for those who were minors at the time of their alleged offence.

Conclusion

Mr. Halawa is entitled to be tried within a reasonable time and has plainly been denied this right. His detention, in highly concerning conditions has now been ongoing for three years. His trial is continually adjourned and his detention continually renewed in circumstances where there is a real concern that there is inadequate scrutiny of the individual case against him and his individual circumstances including his age.

BHRC understands that a request is due imminently to be made to immediately transfer Mr. Halawa to Ireland under Egyptian Presidential Decree Law 140. This provision in domestic law provides for the transfer of an accused or convicted person from Egypt to their home country.

In light of the circumstances of this case, in particular, the unduly lengthy period of pre-trial detention, the lack of a reasonable prospect of a fair trial and Mr. Halawa's age, the BHRC considers that the appropriate remedy is for the immediate transfer of Ibrahim to his home country under Egyptian Law 140 or alternatively his immediate release on bail.

ENDS.

NOTES FOR EDITORS

1. For an interview with our spokesperson, please contact Ed Gillett, Coordinator, on +44 (0)7854 197862
2. For more information on the Bar Human Rights Committee (BHRC), visit our website at <http://www.barhumanrights.org.uk>
3. The Bar Human Rights Committee of England and Wales (BHRC) is the international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges and human rights defenders around the world. The BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. It is independent of the Bar Council.