



Special Rapporteur of the Human Council on the Independence of Judges and Lawyers
c/o Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

Sent by e-mail to: SRindependenceJL@ohchr.org

London, 19 September 2016

Dear Sir / Madam,

In the case of Mr. Malek Adly

The current submission relates to human rights violations. Primarily, these concern threats to the independence of judges and lawyers, but also arbitrary detention and torture or other forms of ill-treatment. This is an urgent appeal by reason of the fact that the victim was held in solitary confinement for 114 days (from 6 May until his release on 28 August 2016) in conditions described below which have led to significant deterioration in both his mental and physical health.

This request for an urgent intervention is submitted by the Bar Human Rights Committee of England and Wales, the International Bar Association's Human Rights Institute and EuroMed Rights.

Our joint complaint concerns the situation of Egyptian lawyer **Mr. Malek Mostafa Adly Elgendy (Malek Adly)** who was arrested by the Egyptian authorities on 5 May 2016. Mr. Malek Adly was held for seventeen weeks in detention throughout which period he was held in solitary confinement and subjected to acts amounting to ill-treatment or torture.

Notwithstanding Mr. Malek Adly's release from pre-trial detention on Sunday 28 August 2016, the human rights violations outlined below continue given that the criminal investigation and charges against him have not been dropped and he has not been provided with an effective remedy for the violations of his fair trial rights or for the ill-treatment he experienced while in detention.

The above organisations submit that Mr. Malek Adly's arrest, detention and criminal charges are as a direct result of the performance of his professional functions as a lawyer and we

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respectfully request that you send a communication to the Government of Egypt based on the allegations in this complaint as a matter of urgency.

We have the consent of the victim's legal representative and his wife to make the following submission to the United Nations (UN) Special Rapporteur on the Independence of Judges and Lawyers.

Victim

The victim is lawyer Mr. Malek Mostafa Adly Elgendy (Mr. Malek Adly) (male), born in 1981. He is an Egyptian national working and residing in Egypt. Mr. Malek Adly is the Director of the Criminal Justice Unit at the Egyptian Centre for Economic and Social Rights (ECESR), a non-governmental organisation that works across Egypt 'through litigation, research, data providing and campaigning to patronize and protect economic and social rights and expand their domain.'¹

Submitters

This request for an urgent intervention is submitted by the Bar Human Rights Committee of England and Wales (BHRC), the International Bar Association's Human Rights Institute (IBAHRI) and EuroMed Rights, on behalf of the victim Mr. Malek Adly.

Bar Human Rights Committee

The Bar Human Rights Committee ("BHRC") is the international human rights arm of the Bar of England and Wales. It is an independent body, distinct from the Bar Council of England and Wales, dedicated to promoting principles of justice and respect for fundamental human rights through the rule of law. It has a membership of over two hundred lawyers, comprised of barristers practicing at the Bar of England and Wales, legal academics and law students. BHRC's eighteen Executive Committee members and general members offer their services pro bono, alongside their independent legal practices, teaching commitments and/or legal studies. BHRC employs a full time coordinator.

BHRC aims:

- to uphold the rule of law and internationally recognised human rights norms and standards;
- to support and protect practicing lawyers, judges and human rights defenders who are threatened or oppressed in their work;
- to further interest in and knowledge of human rights and the laws relating to human rights, both within and outside the legal profession;
- to advise, support and co-operate with other organisations and individuals working for the promotion and protection of human rights; and

¹ For information on ECESR, see: <http://ecesar.org/en/771365-2/about-us/>

- to advise the Bar Council of England and Wales in connection with international human rights issues.

The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England and Wales. This reflects the Committee's need to maintain its role as an independent but legally qualified observer, critic and advisor.

Contact: Ms Kirsty Brimelow QC (Chair), Mr Ed Gillett (Coordinator)

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IBAHRI

Established in 1947, the International Bar Association (IBA) is the world's leading organisation of international legal practitioners, bar associations and law societies. The BAHRI, an autonomous and financially independent entity, is a leading institution in international fact-finding, supports lawyers and judges who are arbitrarily harassed, intimidated or arrested through advocacy and trial monitoring, and provides human rights training and technical assistance for legal practitioners and institutions to build their capacity to promote and protect human rights under a just rule of law.

Contact: Dr Phillip Tahmindjis, IBAHRI Director

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EuroMed Rights

The mission of EuroMed Rights is to promote and strengthen human rights and democratic reform in the Euro-Mediterranean region. Rooted in civil society, the network develops and strengthens partnerships between non-governmental organisations, disseminates human rights values, advocates for them and increases the capabilities of local partners in this regard. EuroMed Rights' vision is to serve as a leading human rights forum in the region, and a major source of knowledge and action on human rights and democratic reform.

Contact: Marc Schade Poulsen, EuroMed Rights Executive Director

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Disclosure

Mr Malek Adly agrees to have his name disclosed in a letter sent to the Government or others. He also agrees to have his name appear in a public report to the Human Rights Council.

Case Information

The incident occurred and continues to occur in Egypt, specifically in Cairo.

The Egyptian authorities arrested Mr. Malek Adly in Cairo's Maadi district on 5 May 2016 while he was on his way to meet a client. The arrest followed an arrest warrant issued against him on 19 April 2016 which concerned his alleged call for a protest to take place on 25 April 2016. His arrest came shortly after Mr. Malek Adly, as one of a group of lawyers, filed a challenge before the administrative court against the Egyptian Government's decision to transfer sovereignty of two Red Sea islands, the Tiran and Sanafir islands, to Saudi Arabia.

Mr. Malek Adly was taken to Maadi police station and later transferred to Shubra al-Kheima court in north Cairo, where he was questioned by the Public Prosecutor from 2am to 6am.² His lawyers were present during the interrogation.

Mr. Malek Adly was later transferred to al Mazraa prison at Tora, a high security prison, on 6 May 2016, where he was remanded in solitary confinement.

During his arrest, Mr. Malek Adly was submitted to treatment amounting to acts of torture or cruel, inhuman or degrading treatment or punishment, including severe beating, verbal insults, being stripped of his shirt, being blindfolded, and forced to walk in a line with a gun pointed at his chest while being filmed.³ He was referred to the forensic department to be medically examined in the absence of a prosecutorial order and his consent.

It is asserted that the victim is and was targeted because of his engagement in human rights as a lawyer.

On 7 May 2016, complaints were submitted by his lawyers, concerning the numerous violations suffered by Mr. Malek Adly whilst in detention, to the public prosecutor, the head of the prisons sector, the prosecutor in charge, Egypt's National Council for Human Rights, the head of the Lawyer's Syndicate (the Egyptian Bar Association), the Minister of the Interior and also several lawsuits have been filed before the Administrative Court.⁴

² The Cairo Institute for Human Rights and ECESR, Complaint to the African Special Rapporteur on Human Rights Defenders and other bodies of the African Commission on Human and Peoples' Rights (31 May 2016)

³ 'ECESR Publishes Complaints Filed by HRD Malek Adly's Defense Team to Different Authorities Reporting Violations During Malek's Arrest and Investigation' (8 May 2016) <http://eccsr.org/en/2016/05/08/eccsr-files-complaints-to-different-authorities-reporting-violations-against-human-rights-lawyer-and-defender-malek-adly/>

⁴ For more information: 'ECESR Publishes Complaints Filed by HRD Malek Adly's Defense Team to Different Authorities Reporting Violations During Malek's Arrest and Investigation' (8 May 2016) <http://eccsr.org/en/2016/05/08/eccsr-files-complaints-to-different-authorities-reporting-violations-against-human-rights-lawyer-and-defender-malek-adly/>; Robert F. Kennedy Human Rights, 'Urgent Action: Malek Mostafa Adly Elgendy (Citizen of the Arab Republic of Egypt)' (14 July

On 16 May 2016, a visit request by Mr. Malek Adly's legal defence team and his wife was denied. His wife and 3 other close family members were subsequently permitted weekly visits. No visits were permitted for his defence lawyers, except for one visit 3 weeks after his arrest and one just before his release.

However, these visits took place in the large visitation room with other inmates and prison guards, who stand close enough to hear the contents of Mr. Malek Adly's conversations.

On 18 May 2016, Mr. Malek Adly and his lawyer attended a judicial hearing at Shoubra Al-Kheima court which considered renewing his detention. Mr. Malek Adly's lawyers were not permitted to file a defence and Mr. Malek Adly was refused his right to defend himself by presenting his case.

On 1 June 2016, the Cairo Appeal Court refused Mr. Malek Adly's appeal to be released on bail and extended his detention by 15 days.

On 8 June 2016, Mr. Malek Adly's lawyer filed a complaint with the head of the Prison Authority regarding Mr. Malek Adly's conditions of detention and his solitary confinement.⁵

On 29 June 2016 Mr. Malek Adly's lawyer filed a case before the Administrative Court against the Prosecutor-General, the Minister of Interior, the Assistant Minister of Interior for Prisons, and the head Prison Warden to challenge the following:

- lack of furniture and bedding in Mr. Malek Adly's cell;
- the ban on newspapers, books, and magazines;
- the ban upon him writing letters or making telephone calls;
- the ban on recreation time; and
- the ban on his attendance at the prison mosque.

Despite the urgency of the situation, the case was not scheduled to be heard until 5 September 2016 and so the conditions did not improve until Mr. Malek Adly's release. Mr. Malek Adly's detention was renewed for 15 days on 14 June 2016 and renewed again on 3 July 2016.

On 4 July 2016 the prosecution required Mr. Malek Adly to sign a request, without the notification of or consent of his lawyers, to appeal his detention renewal from the previous day. Mr. Malek Adly was brought before the Court of Appeal on the same day, and his appeal was summarily rejected.⁶ It is to be noted that a member of Mr. Malek Adly's legal team was coincidentally in the courtroom and managed to attend the hearing with him.

2016); http://rfkcenter.org/media/filer_public/07/67/0767a907-5953-44e2aa6d9cbc702e3fd4/urgent_action_torture_-_malek_adly- final.pdf

⁵ ECESR, Malek Adly's Attorney Files Complaint to Head of Prisons Authority over Arbitrary Measures towards Client's Detention, (Jun. 8, 2016), <http://ecesr.org/en/2016/06/08/malek-adly-defense-files-complaint-to-head-of-prisons-authority-over-arbitrary-measures-towards-clients-detention/>

⁶ Supra no. 4

Mr. Malek Adly attended a hearing to renew his detention on 18 July 2016, on 31 July 2016 and again 14 August 2016. On each occasion, his detention was renewed for a further 15 days.

A judicial hearing to consider Mr. Malek Adly's complaint regarding his solitary confinement of the 3 August was postponed to the 4 September 2016.

On 25 August 2016, the Shubra El Khima Court ordered the release of Mr. Malek Adly. The prosecutor appealed this order. The appeal was heard on 27 August before the Benha Felonies Court when the release order was upheld.

Mr. Malek Adly was released from pre-trial detention on 30 August. However, the charges against him have not been discontinued.

As set out above, the authorities took no action to prevent the arbitrary arrest and detention; to the contrary they endorsed it. The authorities have taken no action to investigate or punish the perpetrators of the initial prohibited treatment inflicted upon arrest or the subsequent mental and physical conditions caused by the solitary confinement in conditions described above. We are unable to provide any further evidence since copying of the case file is not permitted.

The facts as set out above have been provided to us by Mr Malek Adly's lawyer. We have been able to ask questions of Mr. Malek Adly's lawyer in order to clarify the information.

Criminal charges

Mr. Malek Adly is facing the following criminal charges under Egypt's Criminal Code Law 58 01 of 1937, last modified 1992:⁷

- 'Joining a group which aims to interrupt the application of the constitution and prevent one of the state bodies from conducting its works', under Clause II part I of Article 86 bis, which carries the sanction of 'imprisonment for a period not exceeding five years'.
- 'Propagating for those purposes and holding by intermediary printouts which comprise advocacy of the foregoing', under Clause II part 2 of Article 86 bis, which carries the same sanction at the above criminal charge.
- 'Attempting to overthrow the regime by force', under Clause I of Article 87, for which the sanction is 'Permanent or temporary hard labour (...)'.
- 'Spreading false news and rumours which disturb the public order' under Article 102 bis, which carries the sanction of: 'Detention and paying a fine of not less than fifty

⁷ Unofficial English translation of the Criminal Procedure Code accessible at:
<http://hrlibrary.umn.edu/research/Egypt/criminal-code.pdf>

pounds and not exceeding two hundred pounds’.

- ‘Using force and violence against a public servant to force him to refrain from performing his duties’ under Clause I of Article 137 bis A, which carries the ‘penalty [of] imprisonment for a period not exceeding ten years’.

Conditions of detention

Throughout the period of Mr. Malek Adly’s detention he was held in solitary confinement and denied visits from lawyers and originally from his wife. According to reports, he was denied adequate clothing and food.⁸

He was held in solitary confinement in a small room with no ventilation or natural lighting or furniture and had only a rough blanket on which he had to sleep. Mr. Malek Adly was denied the right to leave his cell for exercise and to receive medical treatment for blood pressure problems. As a result, he was admitted to hospital on four occasions during the period of his detention; he suffers from breathing problems.⁹ His health has significantly deteriorated.¹⁰ Mr. Malek Adly was not allowed access to the prison mosque to pray or to any religious preaching taking place inside of the prison.¹¹ He was not allowed access to any forms of media, books, telephone calls and letters.¹²

Perpetrator

The perpetrators of the human rights violations are national security personnel. In addition, neither the prison wardens nor the prosecution took any action to end the violations. The incidents occurred in the police station and then the prison; the human rights violations continue to occur. The alleged perpetrators are state agents.

Additional Information

Human Rights Violations and Domestic Laws

The arrest of Mr. Malek Adly and the charges laid against him are as a result of his professional work as a lawyer and are in reprisal for the legitimate exercise of his right ‘to

⁸ ‘NGOs Demand State Stop Retaliatory Actions Taken Against Malek Adly’, Daily News Egypt, (2 May 2016) <http://www.dailynewsegypt.com/2016/05/20/advocacy-ngos-demand-state-retaliatory-actions-taken-malek-adly/>

⁹ Malek Adly’s Life in Danger, Cairo Institute For Human Rights Studies (19 May 2016) <http://www.cihrs.org/?p=18618&lang=en>

¹⁰ The Cairo Institute for Human Rights Studies, ‘Malek Adly’s Life in Danger’ (19 May 2016) <http://www.cihrs.org/?p=18618&lang=en>

¹¹ Robert F. Kennedy Human Rights, ‘Urgent Action: Malek Mostafa Adly Elgendy (Citizen of the Arab Republic of Egypt)’ (14 July 2016) 6 http://rfkcenter.org/media/filer_public/07/67/0767a907-5953-44e2-aa6d-9cbc702e3fd4/urgent_action_torture_-_malek_adly-_final.pdf

¹² Ibid

take part in public discussion on matters concerning the law, the administration of justice and the promotion and protection of human rights'.¹³ In summary, Mr. Malek Adly's arrest and detention are arbitrary.

Conditions of Detention and Arbitrary Detention

Egypt is a member of the UN and the African Union and has ratified many UN Human Rights Conventions including the International Covenant on Civil and Political Rights (ICCPR) which was ratified by Egypt on 14 January 1982.

The arbitrary nature of Mr. Malek Adly's detention is in contravention of the right set forth in, inter alia, Article 9, paragraph 1, of the ICCPR which states that 'No one shall be subjected to arbitrary arrest, detention or exile'.

Mr. Malek Adly has been held in solitary confinement and denied the protection of Egypt's constitutional guarantees and the minimum guarantees to be afforded to all persons under any form of detention or imprisonment,¹⁴ including the right to communicate and consult with his legal counsel¹⁵ and the right to defend himself.¹⁶ His treatment is in clear violation of his fundamental right to be treated at all times with dignity.

In relation to the dire conditions of detention suffered by Mr. Malek Adly, we highlight Article 55 of the *Constitution of The Arab Republic of Egypt 2014* ("the Constitution"), which stipulates that:

'All those who are apprehended, detained or have their freedom restricted shall be treated in a way that preserves their dignity. They may not be tortured, terrorized, or coerced. They may not be physically or mentally harmed, or arrested and confined in designated locations that are appropriate according to humanitarian and health standards.'¹⁷

Article 18 of the Constitution further provides that:

'Refusing to provide any form of medical treatment to any human in emergency or life-threatening situations is a crime.'

Regarding these violations, we note that the Robert F. Kennedy Human Rights has submitted an urgent action and petition to the UN Working Group on Arbitrary Detention and an urgent action to the UN Special Rapporteur on Torture.¹⁸

¹³ *United Nations Basic Principles on the Role of Lawyers* (UN Basic Principles), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 23.

¹⁴ See, for example, the *United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (UN Body of Principles) adopted by General Assembly resolution 43/173 of 9 December 1988 Scope of the Body of Principles, accessible at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx>

¹⁵ Ibid, UN Body of Principles, Principle 11

¹⁶ Ibid, UN Body of Principles, Principle 18

¹⁷ Unofficial English translation of the Constitution of the Arab Republic of Egypt, 2014, accessible at: https://www.constituteproject.org/constitution/Egypt_2014.pdf

¹⁸ 'Robert F. Kennedy Human Rights Brings Case against Egypt before United Nations Seeking Release of Tortured Human Rights Lawyer from Solitary Confinement', R.F Kennedy Human Rights, (4 July 2016),

Freedom of expression

Freedom of expression is guaranteed by Article 64 of the Constitution which states that: ‘All individuals have the right to express their opinion through speech, writing, imagery, or any other means of expression and publication.’

Freedom of expression is guaranteed under, inter alia, Article 19 of the ICCPR and forms an integral part of a lawyer’s professional role, safeguarding the public function they play in commenting on matters relating to the administration of justice, human rights and the rule of law. This right is closely connected with protecting the independence of lawyers.

Independence of Lawyers

We note that the Constitution enshrines the independence of the legal profession (Article 198): ‘The legal profession is a free profession which participates with the Judicial Authority in the establishment of justice and the rule of law, and ensures the right to defence’.

Mr. Malek Adly is one of numerous Egyptian lawyers unlawfully detained as a result of their legal work and the cases they have undertaken. Lawyers, Mr. Haitham Mohamadian and Mr. Sayed El Banna are similarly being held in arbitrary detention. Mr. Sayed El Banna was arrested on 21 April with the same charges as Mr. Malek Adly, except for Mr. Adly’s charge of assaulting a policeman. Mr. Mohamadian was arrested on 21 April with the same charges but is also included in another case in Giza governorate. All 3 of them were arrested as part of the mass arrests which followed the protests relating to the transfer islands agreements.

Whilst Mr Malek Adly was the only one of the three involved in litigation related to the islands, it is believed that the other two are being detained because of their activism concerning defending the rights of the oppressed. Beyond these three lawyers, there is a worrying increase in the number of layers being arbitrarily arrested and detained.

This is indicative of an environment where the Government has routinely failed to guarantee the security of lawyers and, moreover, state officials are themselves the perpetrators of actions which cause the intimidation, hindrance, harassment and improper interference with lawyers’ professional functions.¹⁹

By public statement²⁰ and in private correspondence we have reminded the Egyptian Government of its obligations under international and domestic law and under the UN Basic Principles on the Role of Lawyers. The Egyptian authorities continue to refuse to afford Mr. Malek Adly’s his rights under international and national²¹ law and fail to respect the guarantees set out in the UN Basic Principles.

<http://rfkcenter.org/news/news/robert-f-kennedy-human-rights-brings-case-against-egypt-united-nations-seeking-release-tortured-human-rights-lawyer-solitary-confinement/>

¹⁹ UN Basic Principles, Principle 16 (a).

²⁰ ‘Bar Human Rights Committee condemns arrest and detention of Egyptian lawyers and activists (16 May 2016)

<http://barhumanrights.org.uk/bar-human-rights-committee-condemns-arrest-and-detention-egyptian-lawyers-and-activists>; IBAHRI private correspondence with the Egyptian Government (30 June 2016).

²¹ Specifically, these are under the Egyptian Constitution Article 52 which prohibits torture, Article 55 which regulates pre-trial detention, Article 56 concerning prisons and Article 84 concerning the right to exercise. In addition to the Prisons law: 43 and 44 concerning the solitary confinement, 14 concerning the right to have furniture in the cell, 30 concerning the right

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We note that the Special Rapporteur requested a visit to Egypt in 1999/2000 and has sent subsequent reminders in 2014 and 2015. As far as we are aware Egypt has yet to consent to the visit request.

In light of the urgency of Mr. Malek Adly's situation, we respectfully and formally request that you enter into urgent dialogue with the Egyptian Government with a view to securing an end to Mr. Malek Adly's criminal investigation and the discontinuation of the charges - or production of credible evidence which supports criminality (in contrast to attempts to restrict the legitimate work of Mr. Malek Adly as a lawyer). In addition, we request that your communication addresses the urgent requirement that Mr. Malek Adly be permitted to continue his work as a lawyer free from intimidation and harassment.

Further, we respectfully request that, as part of your communication, you call upon the Egyptian authorities to ensure a prompt, effective and impartial investigation into all allegations of torture and ill-treatment during the period of Mr. Malek Adly's detention and that his complaints are addressed as a matter of urgency.

Yours sincerely,



Kirsty Brimelow QC

Chairwoman, Bar Human Rights Committee of England and Wales (BHRC)

On behalf of BHRC, IBAHRI and EuroMed Rights

to read, 38 concerning corresponding. As well as the Prisons regulations: 15 concerning the right to read, 60 concerning the right to corresponding and 85 bis/2 concerning the right to exercise.

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