

09 November 2021

STATEMENT

Continued prosecution and detention of Alaa Abd El Fattah, Mohamed El-Baquer and others before the Egyptian State Security Court raises concern about Egypt's profound rule of law crisis

Alaa Abd El Fattah, a blogger and human rights defender, is currently accused of 'belonging to a terrorist group', 'funding a terrorist group', 'spreading false news undermining national security' and 'using social media to commit publishing offences'.¹ Alaa Abd El Fattah has, over much of the past decade, been repeatedly arrested and detained following participation in peaceful protests and the exercise of free speech through his published writing. The Bar Human Rights Committee of England and Wales ("BHRC") has been following his case with serious concern over many years and considers that his case is emblematic of the profound crisis in respect for the rule of law and fundamental human rights in Egypt.

Mohamed El-Baquer is a human rights lawyer and the founder and director of the Adalah Center for Rights and Freedoms, whose prosecution and detention has been the subject of previous concern by BHRC and others². He was arrested on 29 September 2019 whilst attending an investigation on behalf of his client. Mohamed Ibrahim Radwan (also known as blogger Mohamed Oxygen) was first arrested in April 2018 after reporting irregularities in the 2018 Egyptian Presidential election on his blog *Oxygen Egypt*.³

BHRC is concerned that these individual cases, in which there have been a number of egregious human rights violations, among similarly situated human rights lawyers⁴ and defenders, are illustrative of a pattern of continued contempt for fundamental rights, including through the holding by judges and prosecutors of thousands of people in pre-trial detention on politically-

¹ In the Criminal Case no. 1356 of 2019-Supreme State Security Prosecution

² See our joint statement of July 2021: <https://barhumanrights.org.uk/joint-statement-global-coalition-calls-for-release-of-detained-egyptian-human-rights-lawyer-mohamed-el-baquer/>

³ See 'Egyptian blogger Mohamed Oxygen's detention extended as authorities file new charge', Committee to Protect Journalists, 11 November 2020: <https://cpj.org/2020/11/egyptian-blogger-mohamed-oxygens-detention-extended-as-authorities-file-new-charge/>

⁴ See 'Targeting the last line of defence: Egypt's attacks against lawyers', Tahrir Institute for Middle East Policy and International Commission for Jurists, September 2020: <https://timep.org/reports-briefings/special-reports/targeting-the-last-line-of-defense-egypts-attacks-against-lawyers/>

motivated charges, often solely for exercising their rights to free expression and association, through peaceful assembly⁵.

The apparently systematic targeting of these human rights defenders by the misuse of terrorism legislation appears to have a clear objective: to create a chilling effect on free speech and to suppress any criticism of the Egyptian Government and wider authorities, as well as to weaken civil society. This is in clear violation of Egypt's obligations under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and indeed of the Egyptian Constitution.

Current proceedings

On 18 October 2021, Alaa Abd El Fattah, along with Mohamed El-Baqer and Mohamed Ibrahim Radwan, were referred by the Supreme Security Prosecution to the Emergency State Security Court⁶ for further allegations of 'intentionally spreading false news inside and outside the country'. The Emergency State Security Court (ESSC) has jurisdiction over issues relating to the Egypt-wide state of emergency which was in operation between 10 April 2017 and 26 October 2021.

In a further hearing on 8 November, the defence lawyers again raised applications for them and their clients to have copies of the case files, containing material evidence, and for lawyer-client meetings. The Judge is reported to have left the Courtroom in apparent anger. When he returned to the Court, the defence lawyers made applications relating to the fairness of the proceedings against them, including a complaint about judicial obstruction of their proper defence. Instead of responding to the substantive applications before it, the Court set a verdict and sentencing date for 20 December. This is a striking failure to have any regard for due process, or even the appearance of due process, heightened by the lack of any available appeal. Each of them remains in detention.

Fair trial norms

As noted above, neither Alaa Abd El Fattah, Mohammed El-Baqer or Mohamed Ibrahim Radwan have been presented with the evidence against them in any of the pending cases; they have not been permitted to prepare their defence and their requests for the prosecution's evidence and for time to speak with his lawyers, on both 1 and 8 November, were denied without reasons. Such manifest disregard of fair trial standards and due process, protected by Article 14 ICCPR, appear to be routinely denied in many similar cases.

The lack of an Independent Tribunal

The ESSC is neither an independent nor an impartial court, which are fundamental requirements of Article 14 ICCPR. The composition of the ESSC is determined by the President of Egypt, who appoints its judges and has absolute power to alter their judgments and sentences. While derogations from Article 14 are permitted in times of emergency pursuant to Article 4 ICCPR, these must be strictly required by the exigencies of the situation.

⁵ <https://www.hrw.org/middle-east/n-africa/egypt>

⁶ Case No. 1228 pf 2021

Effective Indefinite Detention

Under the Egyptian Criminal Procedure Code, the maximum period of pre-trial detention permitted is two years. Alaa Abd El Fattah's case clearly illustrates a pattern of abuse of 'rotation' to extend detention indefinitely through the presentation of new or adjoining charges, brought at the expiration of the permitted detention period or completion of terms of imprisonment following conviction. This commences a fresh pre-trial detention period. This approach not only wholly undermines pre-trial detention limits, where additional allegations of criminal conduct were already known, it is also an abuse of the charging system striking at the heart of the integrity of the criminal legal process. We are concerned that the continuing pre-trial detention of all three individuals is both arbitrary and punitive, in violation of the Article 9 ICCPR right to liberty.

Conditions of Detention

The State has a duty of care for individuals held in detention arising from article 10 ICCPR. It is a feature of many similar cases that credible allegations of serious ill-treatment in detention are raised⁷. Alaa Abd El Fattah, Mohamed El-Baqer and Mohamed Ibrahim Radwan are currently held at the maximum-security Tora prison. Alaa Abd El Fattah has stated that upon arrival he was beaten, stripped, and threatened. A joint Communication to Egypt by a number of UN Special Procedures (28 September 2020),⁸ documents that he is not permitted to go outside, and a common feature of their respective prison conditions is that they are routinely denied access to reading material, a watch or clock, adequate clothing, and hot water. This treatment, together with the poor conditions of detention, likely amount to torture, cruel, inhuman and/or degrading treatment in violation of Article 7 ICCPR. It appears to violate Article 10(1), which provides that all those deprived of their liberty shall be treated with humanity and respect for their inherent human dignity.

Physical and Psychological Abuse

The prolonged period of consecutive arrests and detentions that Alaa Abd El Fattah has experienced, coupled with poor detention conditions and sporadic communications with his family and lawyers appear designed to negatively impact upon his physical and psychological wellbeing. Mohamed El-Baqer and Mohamed Ibrahim Radwan have also been detained now for over two years each. The use of consecutive rather than concurrent arrests plays 'cat and mouse' with a detainee, with predictably adverse consequences for their health. Mohamed Ibrahim

⁷ See <https://www.amnesty.org/en/latest/press-release/2021/01/egypt-abused-and-denied-health-care-prisoners-lives-at-risk/>

⁸ 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. There have been in total 6 Communications made to Egypt by UN Special Procedures concerning Alaa Abdel Fattah. REFERENCE: AL EGY 12/2020 28 September 2020; REFERENCE: UA EGY 11/2019 23 October 2019; REFERENCE: UA EGY 17/2017 31 October 2017; REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24) EGY 17/2013 6 December 2013; REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (89-15) EGY 16/2013 3 December 2013; REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16) EGY 13/2011 22 December 2011

Radwan has reportedly attempted to end his life due to the intolerable conditions.⁹ This may also amount to a violation of Article 7 ICCPR.

Conclusion

The UN Special Rapporteur on Human Rights defenders stated in January 2021: “The use [in Egypt] of prolonged pre-trial detention and misuse of anti-terrorism and national security laws to criminalise the work of civil society actors must end.”¹⁰

The Egyptian authorities must take clear and far-reaching steps to improve its poor human rights record, including compliance with fair trial rights. Human rights lawyers and defenders, as well the media and civil society more broadly must be able to voice dissent without fear of targeted, arbitrary and prolonged detention through systematic measures which undermine the integrity of the criminal justice system and breach domestic and international legal obligations.

BHRC calls on the Egyptian authorities to release Alaa Abd El Fattah and other human rights lawyers and defenders including Mohamed El-Baqer and Mohamed Ibrahim Radwan without any further delay, noting that the recent ending of the State of Emergency provides an immediate opportunity to drop these baseless criminal cases.

Bar Human Rights Committee of England and Wales

Ends

⁹ ‘His life is in danger’, Arabic Network for Human Rights Information, 1 August 2021,

<https://www.anhri.info/?p=25548&lang=en>

¹⁰ Mary Lawlor <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26682&LangID=E>

Notes:

1. The Bar Human Rights Committee of England and Wales (BHRC) is the independent, 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. 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 autonomous of the Bar Council. For more information on BHRC, visit our website at <http://www.barhumanrights.org.uk>
2. Alaa Abd El Fattah is a high-profile political prisoner in Egypt, a human rights defender, blogger, and a software developer. Together with his wife they created the award-winning Egyptian blog aggregator Manalaa and Omraneya. In 2021 he published a book, 'You Have Not Yet Been Defeated', a collection of his essays, social media posts and interviews from 2011 until the present. He has spent most of those years in prison.
3. *Emergency State Security Courts (ESSC)* The latest state of emergency has been in place in Egypt since 10 April 2017 following Decree No. 157/2017, until 26 October 2021. The Emergency State Security Courts (ESSC) were established under the State of Emergency Law No. 162 of 1958. Decree No. 2165/2017 on 7 October 2017 placed a number of crimes, including those related to protest, assembly, terrorism and labour law, under the jurisdiction of the Emergency State Security Courts (ESSC) for the duration of the emergency. The end of the state of emergency does not mean the end of the ESSC, they will continue with the existing cases referred to them. For a human rights-based assessment of both the state of emergency in Egypt and the ESSC see the report by the International Committee for Justice, Egypt: A Return to a Permanent State of Emergency? Available at: <https://www.icj.org/wp-content/uploads/2018/09/Egypt-Return-to-State-of-Emergency-Advocacy-Analysis-brief-2018-ENG.pdf>