Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA EGY 15/2017

12 October 2017

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 33/9 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 arrest, detention and health conditions of a married couple, Ola Yusef Al-Qaradawi and Hosam Al-Din Khalaf.

According to the information received:

Mrs. Al-Qaradawi is a Qatari citizen of Egyptian descent and Mr. Al-Din Khalaf is an Egyptian citizen. Both are U.S. permanent residents. On 30 June 2017, Mrs. Al-Qaradawi and Mr. Al-Din Khalaf were arrested at their vacation home on the northern coast of Egypt by State Security agents from Egyptian State Security, a branch of the Interior Ministry. Mrs. Al-Qaradawi and Mr. Al-Din Khalaf were asked to accompany the agents to the State Security office in Burg al-Arab for questioning. The officials did not have an arrest warrant, nor were Mrs. Al-Qaradawi and Mr. Al-Din Khalaf told they were under arrest.

Mrs. Al-Qaradawi and Mr. Al-Din Khalaf were detained for two days *incommunicado*. Neither their family nor their lawyers knew their whereabouts during those first two days. On 2 July 2017, Mrs. Al-Qaradawi and Mr. Al-Din Khalaf were taken to the state Security's Prosecutor's Office, where they were told they were under investigation. They were then immediately transported to prisons in or near Cairo controlled by the Egyptian Interior Ministry. Mrs. Al-Qaradawi was transferred to al-Anater Prison (other spellings include 'Qanatir' or 'Qanater') women's prison and Mr. Al-Din Khalaf was transferred to Tora Prison.

To date, Mrs. Al-Qaradawi and Mr. Al-Din Khalaf have not been formally charged with any crime. They are held pursuant to temporary detention orders that

are renewed every 15 days, allegedly on terrorism-related charges. Neither Mrs. Al-Qaradawi and Mr. Al-Din Khalaf, nor their lawyers, have received any documents or evidence from the Government regarding the justification for their detention.

Mrs. Al-Qaradawi is currently being held in a cell which size does not correspond to the internationally accepted standards, and with no bed or toilet. There are no windows or ventilation in the cell, except for a small hole towards the hallway that lets some light in. She is held *incommunicado* and in solitary confinement. The only time Mrs. Al-Qaradawi is able to leave her cell is for approximately five minutes each day to use the bathroom.

Unlike other detainees, Mrs. Al-Qaradawi is not permitted to purchase food or water from the canteen and must rely on low-quality and insufficient prison rations. The food that she is brought is often inedible and the water she drinks is reportedly contaminated. According to her lawyers, who have only seen her during the detention renewal sessions, she has lost a significant amount of weight and appears very weak.

Similar to his wife, Mr. Al-Din Khalaf is held in solitary confinement 24 hours a day in Tora prison, Cairo. He is in a small cell without windows or ventilation. He is also prohibited from purchasing food and water, and has been denied medical treatment. Recently, he reported pain in his eyes to the prison doctor and requested a medical check-up at his own cost. However, this request was refused by prison authorities. A second request was submitted to the prosecution, to no avail.

Mrs. Al-Qaradawi and Mr. Al-Din Khalaf have been denied all contact with their family; they have not been permitted any visits or phone calls. Mrs. Al-Qaradawi and Mr. Al-Din Khalaf have only seen their legal counsel for brief moments during the temporary detention renewal "hearings"; their communications are not confidential. Mrs. Al-Qaradawi, a Qatari citizen, has also been denied consular visits. Mrs. Al-Qaradawi and Mr. Al-Din Khalaf remain at Al-Anater and Tora Prison, respectively, to this date.

While we do not wish to prejudge the accuracy of these allegations, we wish to express serious concern about the arbitrary arrest and detention of Ola Yusef Al-Qaradawi and Hosam Al-Din Khalaf. Grave concern is expressed about the physical and psychological integrity of Mrs. Al-Qaradawi and Mr. Al-Din Khalaf, which is reportedly the result of their incommunicado detention in unsanitary conditions with inadequate nutrition and lack of appropriate health care. We also express concern that their detention reflects a larger practice in Egypt for the Government to use charges of terrorism and consequent arbitrary arrest and detention as a means of persecution.

In this context, we would like to remind your Excellency's Government, that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture or other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment. We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Egypt accessed on 25 June 1986.

With regard to the prolonged solitary confinement suffered by Mrs. Al-Qaradawi and Mr. Al-Din Khalaf, we would like to recall the updated United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015) which clarify that prolonged (i.e. in excess of 15 days under conditions of total or almost total isolation) or indefinite solitary confinement is prohibited, as it may cause severe mental and physical pain or suffering.

We would also like to draw your attention to articles 3, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 4, 9 and 14 of the International Covenant on Civil and Political Rights, which Egypt ratified on 14 January 1982. Both the Universal Declaration and the Covenant, enshrine protections for the right to liberty and security of the person, the right to not be subject to arbitrary detention, as well as the right to a fair and public hearing before an independent and impartial tribunal in the determination of rights and obligations. We would like to refer your Excellency's Government to the Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court (A/HRC/30/37). These principles and guidelines, elaborated by the Working Group on Arbitrary Detention at the request of Member States of the Human Rights Council, provide universal guidance applicable to persons deprived of their liberty. In addition, the Human Rights Committee has established in its General Comment No. 35, article 9 (Liberty and security of person) (CCPR/C/GC/35), that procedures for carrying out legally authorized deprivation of liberty should be established by law and States should ensure compliance with such legally prescribed process. Also, the Committee indicated that incommunicado detention preventing a prompt appearance before a judge is a violation to article 9.3 of the Covenant.

Furthermore, according to the Committee's General Comment No. 35, article 9 requires compliance with domestic rules that define the procedure for arrest by identifying the officials authorized to arrest or specifying when a warrant is required. It also requires compliance with domestic rules that define when authorization to continue detention must be obtained from a judge, where individuals may be detained, when the detained person must be brought to court, as well as the legal limits on the duration of detention. It also requires compliance with domestic rules providing safeguards for detained persons, such as making a record of an arrest and permitting access to counsel. In addition, the Committee further developed and analyzed the rights and guarantees

protecting from arbitrary detention, including to be immediately informed about the reasons for the arrest and of any criminal charges, the need for judicial control of detention and the right to take proceedings for release from unlawful or arbitrary detention.

We would also like to refer to the article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Egypt the 14 January 1982, which recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and establishes that States have an obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services. (CESCR, General Comment No. 14, para.34). Furthermore, we wish to underline that the right to non-discrimination of any kind, including on political grounds, is a critical component of the right to health under article 2.2 of the ICESCR.

Moreover, we would like to refer your Excellency's Government to Principle 9 of the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, indicating that all prisoners should have access to the health services available in the country. Moreover, as stated in the Mandela Rules, the provision of health care is the responsibility of the state authorities, and prisoners should enjoy the same standards of health care that are available in the community (Rule 24(1). Rule 27(1) furthermore provides that all prisons shall ensure prompt access to medical attention in urgent cases. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.

Finally, we would like to refer your Excellency`s government to The Basic Principles on the Role of Lawyers, which specify that Governments shall ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention (Principle 7); and that all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality (Principle 8).

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 person(s) 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 your observations 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 concerning the measures taken to ensure the physical and psychological integrity Ola Yusef Al-Qaradawi and Hosam Al-Din Khalaf, and in particular what additional remedial measures have been taken to ensure his access to adequate health care, taking into account their current medical condition.

3. Please provide your comments regarding allegations about the conditions of detention of Ola Yusef Al-Qaradawi and Hosam Al-Din Khalaf, including inadequate sanitation and ventilation of their cells.

4. Please, kindly explain why requests for medical treatment for Hosam Al-Din Khalaf have been repeatedly denied.

5. Please elaborate on the basis for refusing Ola Yusef Al-Qaradawi and Hosam Al-Din Khalaf phone calls, and visits from family members and their lawyers.

6. Please provide further information and details about the legal basis for the arrest, and detention of Ola Yusef Al-Qaradawi and Hosam Al-Din Khalaf. In this connection, please provide information regarding how those detained are given access to their rights to access to legal assistance requested and to initiate proceedings before a court to challenge the legality of the detention.

7. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

8. Please provide full details of any penal, disciplinary, administrative or other measures taken by your Excellency's Government in compliance with its duty to investigate, prosecute and punish all acts of torture committed with the involvement of its officials.

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 responsible of the alleged violations. In light of the nationality of the above-named individual, Ola Yusef Al-Qaradawi, a copy of this letter will be shared with the government of Qatar.

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 urgent appeals in no way prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Nils Melzer
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