

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Mr Mads Andenas (Norway)

Mr José Guevara (Mexico)

Ms Shaheen Ali (Pakistan)

Mr Sètondji Adjovi (Benin)

Mr Vladimir Tochilovsky (Ukraine)

HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY

COPY TO:

UNITED NATIONS SPECIAL RAPPOREUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION, MR DAVID KAYE;

UNITED NATIONS SPECIAL RAPPOREUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION, MR MAINA KIAI;

UNITED NATIONS SPECIAL RAPPOREUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, MR MICHEL FORST.

in the matter of  
**Alaa Abd El Fattah**  
(the “Petitioner”)

v.

**Egypt**

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Petition for Relief Pursuant to Commission on Human Rights Resolutions 1997/50, 2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/1

Submitted by:

Media Legal Defence Initiative  
The Grayston Centre  
28 Charles Square  
London N1 6HT

Electronic Frontier Foundation  
815 Eddy Street  
San Francisco CA 94109

## **BASIS FOR REQUEST**

The Petitioner is a citizen of the Arab Republic of Egypt (“Egypt”), which acceded to the International Covenant on Civil and Political Rights (“ICCPR”) on 14 January 1982.<sup>1</sup> The Constitution of the Arab Republic of Egypt 2014 (the “Constitution”) states that Egypt shall be bound by the international human rights agreements, covenants and conventions it has ratified, which shall have the force of law after publication in accordance with the conditions set out in the Constitution.<sup>2</sup> Egypt is also bound by those principles of the Universal Declaration of Human Rights (“UDHR”) that have acquired the status of customary international law.

The Petitioner has been arbitrarily arrested and detained while he was exercising – or in situations connected to the exercise of – his right to freedom of opinion and expression (Article 19 ICCPR and UDHR), freedom of association (Article 21 and 22 ICCPR and Article 20 UDHR), and the right to take part in the conduct of public affairs (Article 25 ICCPR and Article 21 UDHR). Egypt has also not complied with the international norms relating to the Petitioner's right to a fair trial (Article 9 and 10 UDHR and Article 9 and 14 ICCPR).

For the reasons stated herein, the Petitioner’s arrest and detention violate the fundamental guarantees enshrined in international law and constitute Category II and Category III arbitrary detention as defined by the Working Group on Arbitrary Detention. He should be immediately released from detention.

Therefore, the Petitioner hereby requests that the Working Group on Arbitrary Detention (the “Working Group”) consider this Petition to be a formal request for an Opinion of the Working Group pursuant to Resolutions 1991/42 and 1997/50 of the Commission on Human Rights and Resolution 15/18 of the Committee on Human Rights.

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<sup>1</sup> The United Arab Republic signed the International Covenant on Civil and Political Rights (“ICCPR”) on 4 August 1967. Egypt succeeded the United Arab Republic on 14 January 1982.

<sup>2</sup> *Constitution of the Arab Republic of Egypt*, adopted on 14 January 2014. Unofficial Translation by Adly Mansour (18 January 2014), <http://www.sis.gov.eg/Newvvr/Dustor-en001.pdf>, Article 93.

## MODEL QUESTIONNAIRE

The signatory organisations, the Media Legal Defence Initiative and the Electronic Frontier Foundation,<sup>3</sup> have endeavoured to present all information requested in the Model Questionnaire, but limited access to the Petitioner and his own limited access to information about his arrest and/or basis for his ongoing detention, has made this difficult. It is submitted that this should not affect the admissibility or final outcome of this Petition, consistent with the position of this Working Group in this regard.<sup>4</sup> Unless otherwise indicated, the family and supporters of the Petitioner have supplied the information to counsel via civil society organisations.

Petitioner: Mr Alaa Abd El Fattah

### I. IDENTITY

Family name	Abd El Fattah
First name	Alaa Ahmed Seif al Islam
Sex	Male
Birth date	18 November 1981
Nationality	Egyptian
Identity document: a) Issued by b) On c) No.	a) Unknown b) Unknown c) Unknown
Profession and/or activity	Software developer, blogger, activist and human rights defender

<sup>3</sup> The Media Legal Defence Initiative and the Electronic Frontier Foundation are grateful to the Euro-Mediterranean Human Rights Network for their help in drafting this Petition. EMHRN has been conducting a trial observation mission on the case of the Petitioner and the 24 other defendants in his case.

<sup>4</sup> This Working Group stated in its first report to the Commission on Human Rights, when establishing its methods of work, that 'failure to comply with all formalities [regarding the presentation of information about a petitioner and the use of the model questionnaire] shall not directly or indirectly result in the inadmissibility of the communication.' See Working Group on Arbitrary Detention (the "Working Group" or "UNWGAD"), *Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment: Report of the Working Group on Arbitrary Detention*, Commission on Human Rights, 48<sup>th</sup> Sess., U.N. Doc. No. E/CN.4/1992/20 (21 January 1992), <http://www2.ohchr.org/english/issues/detention/docs/E-CN4-1992-20.pdf>, par. 8. Further, in Petition No. 29/2006, a petition was accepted (and detention was proven to be arbitrary) based almost entirely on newspaper articles. It was judged that the information was reliable as far as it was possible because it came from 'independent and reliable sources' including NGOs: UNWGAD, No. 29/2006, *Communication addressed to the Government concerning the case of Mr. Ibn al-Shaykh al-Libi and 25 other persons* (8 December 2005), [http://unwgadatabase.org/un/Document.aspx?id=2309&terms=\(+29%2f2006+\).](http://unwgadatabase.org/un/Document.aspx?id=2309&terms=(+29%2f2006+).)

Address of usual residence:	Giza, Egypt
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## II. ARREST

Date of arrest:	28 November 2013
Place of arrest:	His family home, Giza, Cairo
Forces who carried out the arrest or are believed to have carried it out:	State authorities, further details unknown
Did they show a warrant or other decision by a public authority? (Yes) (No)	No. Mr Abd El Fattah and his wife were beaten upon asking to see a warrant.
Authority who issued the warrant or decision:	Unknown
Relevant legislation applied (if known):	<p>Mr Abd El Fattah is alleged to have violated Articles 7, 8, 19, 21 and 22 Egypt's new anti-protest laws that entered into force on 24 November 2013.<sup>5</sup></p> <p>Mr Abd El Fattah is also charged with having assaulted a police officer, having stolen the same police officer's walkie-talkie and under Egypt's former protest laws. The wording of the charge sheet does not specify which articles Mr Abd El Fattah has allegedly violated.</p>

## III. DETENTION

Date of detention:	28 November 2013
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<sup>5</sup> Ahram Online, *Full English translation of Egypt's new protest law* (25 November 2013), <http://english.ahram.org.eg/News/87375.aspx>

Duration of detention (if not known, probable duration):	<p>Initially, the Petitioner was detained for four months, from 28 November 2013 until he was provisionally released on 23 March 2014.</p> <p>The Petitioner was re-arrested on 11 June 2014, and his detention has been ongoing since then. This detention was recently renewed on 6 August 2014.</p>
Forces holding the detainee under custody:	As Cairo's Tora maximum-security prison is a police compound, the Petitioner is held by the Egyptian police force and ultimately the Ministry of Interior.
Places of detention (indicate any transfer and present place of detention):	<p>From 28 November 2013 – 23 March 2014: Central Security Directorate and Cairo's Tora maximum-security prison located at Tora Institute for Police Officers.</p> <p>From 11 June 2014: Cairo's Tora maximum-security prison located at Tora Institute for Police Officers.</p>
Authorities that ordered the detention:	The Petitioner's detention was ordered by the Public Prosecutor and the court at Tora maximum-security prison.
Reasons for the detention imputed by the authorities:	No reasons were provided by the Prosecution in relation to the Petitioner's initial detention and no reasons were provided by the court at Tora.
Relevant legislation applied (if known):	<p>Mr Abd El Fattah is alleged to have violated Articles 7, 8, 19, 21 and 22 Egypt's new anti-protest laws that entered into force on 26 November 2013.</p> <p>Mr Abd El Fattah is also charged with having assaulted a police officer, having stolen the same police officer's walkie-talkie and under Egypt's former protest laws. The wording of the charge sheet does not specify which articles Mr Abd El Fattah has allegedly violated.</p>

**IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY**

**A. Circumstances of the arrest and detention**

This section presents an overview of the broader context in which the arrest and detention of the Petitioner took place, introduces his background, and summarises the most relevant facts of his arrest and his detention. We respectfully refer the Working Group to the responses to sections I (Identity), II (Arrest), and III (Detention) of the Model Questionnaire on pages 3-5 of this Petition for additional information in this regard.

**A.1 The Petitioner was arrested and detained amidst a climate of restrictions in Egypt on the freedoms of participation in political affairs, expression, thought, religion, and association, and the persecution of those who seek to exercise these freedoms**

The Constitution of Egypt protects the right to freedom of thought, opinion, freedom of expression, including through literary and intellectual activity, freedom of the press, and freedom of assembly.<sup>6</sup>

The Constitution provides under Article 65 for freedom of opinion and expression:

“Freedom of thought and opinion is guaranteed.

Every person shall have the right to express his/her opinion verbally, in writing, through imagery, or by any other means of expression and publication.”<sup>7</sup>

Under Article 73, the Constitution provides for freedom of association and assembly:

“Citizens shall have the right to organize public meetings, marches, demonstrations and all forms of peaceful protests, without carrying arms of any kind, by serving a notification as regulated by Law.

The right to peaceful and private assembly is guaranteed without need for prior notification. Security forces may not attend, monitor or eavesdrop on such meetings.”<sup>8</sup>

However, reports from a broad range of sources, including various UN bodies, indicate that the systematic and emphatic repression of basic freedoms prevalent under regime of former President Hosni El Sayed Mubarak also became the norm under the current administration of military-backed President Abdel Fattah el-Sisi. A similar situation existed under the popularly elected Muslim Brotherhood administration of former President Mohamed Morsi and the administration of President Mohamed Mansour. The widely reported deterioration of the human rights situation currently gripping Egyptian society has further aggravated matters.

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<sup>6</sup> Articles 65, 67, 70-73 Constitution.

<sup>7</sup> Id.

<sup>8</sup> Id.

The Human Rights Council's first Universal Periodic Review ("UPR") of Egypt took place in March 2010, prior to the political instability that followed in the wake of the January 2011 Revolution. The Report of the Working Group on the Universal Periodic Review ("UPR Working Group") recommended, *inter alia*, that Egypt "[e]ffectively guarantee the exercise of freedom of expression, association and peaceful assembly and the right to participate in public life and politics, in line with the obligations set forth in the Covenant on Civil and Political Rights,"<sup>9</sup> and "[b]etter disseminate the [UN] Declaration on Human Rights Defenders and ensure its full observance."<sup>10</sup>

One of the underlying documents of the UPR, the summary of stakeholders' information provided to the Working Group,<sup>11</sup> reveals institutional weaknesses that compromised Egypt's ability to protect fundamental freedoms in addition to legislation and State practice that reinforced the repression of basic rights. Submissions from numerous non-governmental organisations provided to the Working Group and included in the summary of the Office of the High Commissioner for Human Rights ("OHCHR") point to the systematic repression of human rights under President Mubarak's regime.

According to the OHCHR, Freedom House and the International Commission of Jurists indicated that "(...) Egyptians have been living under an Emergency Law since 1967. The law which was cancelled for an 18-month period in 1980, was reinstated following the assassination of President Anwar Sadat and has been continuously extended since 1981."<sup>12</sup>

Human Rights Watch also provided information to the UPR Working Group regarding Egypt's use of the Emergency Law:

"[the Egyptian] Government invokes emergency legislation to suppress peaceful political activities and critics and that Egypt's Emergency law (Law No. 162 of 1958) allows authorities to detain individuals without charge and to try them in special courts that do not meet international fair trial standards."<sup>13</sup>

Many other non-governmental organisations painted an equally ominous picture of Egypt under President Mubarak's rule. For example, the Egyptian Organization for Human Rights drew the UPR Working Group's attention to "many other laws restricting fundamental rights and public freedoms in Egypt's legislative structure."<sup>14</sup> The Islamic Human Rights Commission reported of "[r]estrictions on freedom of expression, including criticism of government policies and especially direct criticism of [President Mubarak]."<sup>15</sup> Further, the

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<sup>9</sup> Human Rights Council, *Report of the Working Group on Universal Periodic Review*, UN Doc. A/HRC/14/17 (26 March 2010), p. 15.

<sup>10</sup> *Id.*, p. 18.

<sup>11</sup> Office of the High Commissioner for Human Rights ("OHCHR"), *Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1*, UN Doc. A/HRC/WG.6/7/EGY/3 (25 November 2009).

<sup>12</sup> *Id.*, par. 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, par. 24.

Egyptian National Council for Human Rights and Human Rights Watch directed the UPR Working Group's attention to amendments to the Penal Code introduced in 2006 with regards to "the crimes of opinion", which maintained broadly-worded provisions that invited abuse and contravened international standards.<sup>16</sup>

Internet-rights focused organisation OpenNet Initiative reported in 2009 that the crackdown by the Egyptian government also extends to bloggers and internet users:

"As the Egyptian blogosphere continues to grow, so does the government's crackdown on bloggers and Internet users. For example, blogger Abdel Kareem Nabil Suleiman Amer was sentenced in February 2007 to four years in prison for 'incitement to hatred of Islam' on his blog and for insulting the president. He has since become the symbol of online repression for the country's bloggers. Other Egyptian bloggers have also been arrested for their online activities, and some have been sentenced to prison. One of the most recent examples is blogger Mohamed Refaat, editor of the blog Matabbat (matabbat.blogspot.com), who was arrested in August 2008 under the state emergency law. He was charged with 'offending the state institutions, destabilizing public security, and inciting others to demonstrate and strike via the Internet'."<sup>17</sup>

Similarly, International PEN has noted that bloggers in Egypt are among the most harassed in the world.<sup>18</sup> Meanwhile, the Arabic Network for Human Rights Information provided the OHCHR with specifics of human rights violations against journalists and bloggers, and the Egyptian State's practice of limiting free internet use and satellite channel transmission.<sup>19</sup>

After 2009, the Egyptian authorities added a new dimension to repression of freedom of opinion and expression online, no longer just targeting individuals, but imposing stricter controls on the entire information and communications technology ("ICT") sector. In its 2012 Report on Internet freedom in Egypt, Freedom House observed that:

"Until 2010, the Egyptian government showed a relaxed attitude towards access of ICTs and did not censor websites or use high-end technologies to block online

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<sup>16</sup> Id.

<sup>17</sup> OpenNet Initiative Egypt, *Egypt* (6 August 2009), available at <https://opennet.net/research/profiles/Egypt>, citing Article 19/International Freedom of Expression Exchange, *UN Experts conclude blogger Kareem Amer is being arbitrarily detained, a violation of international human rights standards* (24 March 2009), available at: [http://www.ifex.org/egypt/2009/03/25/un\\_experts\\_conclude\\_blogger\\_kareem/](http://www.ifex.org/egypt/2009/03/25/un_experts_conclude_blogger_kareem/); Reporters Without Borders, *Two years for a blog: that's enough! Reporters Without Borders calls for release of blogger Kareem Amer* (5 November 2008), available at: [http://www.rsf.org/article.php3?id\\_article=29192](http://www.rsf.org/article.php3?id_article=29192); *Free Kareem!*, (<http://www.freekareem.org/>); Network for Human Rights Information/International Freedom of Expression Exchange, *Blogger arrested, faces charges under state of emergency law* (26 August 2008), available at: [http://www.ifex.org/egypt/2008/08/26/blogger\\_arrested\\_faces\\_charges/](http://www.ifex.org/egypt/2008/08/26/blogger_arrested_faces_charges/).

<sup>18</sup> Office of the High Commissioner for Human Rights ("OHCHR"), *Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1*, UN Doc. A/HRC/WG.6/7/EGY/3 (25 November 2009), par. 28.

<sup>19</sup> Id.

discussions. On the contrary, the government removed many of the obstacles experienced in neighbouring Arab countries, for example, by enabling access to the encrypted BlackBerry instant messaging service. However, with the rise of online dissidents, the authorities started to change its attitude towards internet access.”<sup>20</sup>

Egypt’s political landscape has undergone rapid transformation in recent years. The January 2011 popular uprising led to the overthrow of former President Mubarak. His successor, former President Morsi and his Muslim Brotherhood government, was ousted by a military *coup d’état* led by Field Marshal Abd El Fattah el-Sisi in July 2013 that installed the administration led by former judge, President Mohamed Mansour, in mid-2013. El-Sisi was elected President in May 2014 and has held office since June 2014. However, the new Egypt is yet to benefit from the removal of Mubarak’s autocratic regime – at least not in terms of marked improvements to the protection of freedom of opinion and expression.

This is reflected in a number of Opinions relating to the arbitrary detention of political activists made by the Working Group. In Communication No. 11/2012, the Working Group found the Egyptian authorities to be in contravention of Articles 19, 20 and 21 UDHR, and Articles 9(3), 14, 21 and 22 ICCPR, falling within categories II and II of the categories applicable to cases submitted for consideration to the Working Group.<sup>21</sup> That particular complaint concerned the detention of three Egyptian nationals, Mohammed Abdullah Nimr, Islam Abdullah Ali Tony, and Ahmed Maher Hosni Saifuddin, who had participated in protests against corruption and policies adopted by the President of Al Dakhlah City Council. They were charged with inciting people to assembly and attacking the President of the City Council, after which their case was referred to the Military Misdemeanour Court of Asyout. At their trial, Messrs Nimr, Tony, and Saifuddin were denied the opportunity to present evidence from defence witnesses. Despite the trial against them involving no material evidence, they were found guilty of the charges and sentenced to two years’ imprisonment.<sup>22</sup> At the time of the Working Group’s Opinion, Messrs Nimr, Tony, and Saifuddin remained in detention.

These cases were far from isolated. On the contrary, arbitrary detention in response to a range of issues has become commonplace. The tip of that iceberg is visible through the Communications issued by Working Group, revealing 11 cases in the past five years alone in which the Egyptian authorities were found to have breached international law by arbitrarily detaining its citizens.<sup>23</sup>

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<sup>20</sup> Freedom House, *Egypt: Freedom on the Net 2012*, available at:

<http://www.freedomhouse.org/report/freedom-net/2012/egypt#.UzHSWGRDs9Z>.

<sup>21</sup> United Nations Working Group on Arbitrary Detention (“UNWGAD”), *Communication No. 11/2012* (8 February 2012).

<sup>22</sup> *Id.*

<sup>23</sup> See UNWGAD, *Communication No. 25/2009* (24 November 2009); UNWGAD, *Communication No. 21/2010* (1 September 2010); UNWGAD, *Communication No. 22/2010* (2 September 2010); UNWGAD, *Communication No. 3/2011* (3 May 2011); UNWGAD, *Communication No. 7/2011* (4 May 2011); UNWGAD, *Communication No. 8/2011* (4 May 2011); UNWGAD, *Communication No. 50/2011* (2 September 2011); UNWGAD, *Communication No. 57/2011* (17 November 2011); UNWGAD, *Communication No. 1/2012* (30 April 2012); UNWGAD, *Communication No. 12/2012* (3 May 2012).

More recent reports from Human Rights Watch and Amnesty International indicate that the human rights situation in Egypt has not improved.<sup>24</sup> It was reported that President Morsi's Muslim Brotherhood-dominated government showed disregard for rights protections, with an increase in the prosecutions of journalists - among others on charges of insulting the President, police abuse, and sectarian violence.<sup>25</sup> Under President Mansour, police used excessive lethal force, killing over 1,300 persons at protests.<sup>26</sup> Throughout 2013 military prosecutors continued to try civilians before military courts, while the number of military trials of civilians increased following Morsi's overthrow.<sup>27</sup> According to Amnesty International, the new Constitution allows for military trials of civilians, which are inherently unfair.<sup>28</sup> Amnesty International also reported that unfair trials by Emergency Supreme State Security Courts continued and security forces continued to act above the law.<sup>29</sup> No reform of the police was initiated and the authorities employed tactics reminiscent of the Mubarak era, with security forces using excessive force against protesters.<sup>30</sup> Riot police used excessive and unnecessary force, including firearms and US-made tear gas.<sup>31</sup>

Despite the aspirations of the new Egyptian Constitution, the reality is that the protection of fundamental freedoms in Egypt is still marred by the fact that the Egyptian Constitution neither specifically delineates the status of international law in Egypt's domestic legal order,<sup>32</sup> nor ensures that fundamental freedoms are interpreted in light of international norms.<sup>33</sup> As an unfortunate consequence, the human rights situation in Egypt is spiralling towards crisis point.

#### **(i) Freedom of expression and association**

As the situation on the ground worsens, the suppression of fundamental rights and imposition of significant limitations on the freedom of expression and association has become increasingly apparent.

For example, journalistic activity and blogging remain heavily curtailed by Egyptian authorities. In the World Press Freedom Index published in 2014, Egypt slumped to a ranking that places it amongst States with the most deplorable levels of respect for press freedom (no.

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<sup>24</sup> Human Rights Watch, *World Report 2014, Country Chapter Egypt*, available at <http://www.hrw.org/world-report/2014/country-chapters/egypt?page=1> and Amnesty International, *Annual Report 2013, Country Chapter Egypt*, available at <http://www.amnesty.org/en/region/egypt/report-2013>.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id. See also Amnesty International, *Annual Report 2013, Country Chapter Egypt*, <http://www.amnesty.org/en/region/egypt/report-2013>.

<sup>28</sup> Amnesty International, *Annual Report 2013, Country Chapter Egypt*, <http://www.amnesty.org/en/region/egypt/report-2013>.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> See Article 19, *Egypt: Draft Constitution December 2013* (9 January 2014), <http://www.article19.org/resources.php/resource/37415/en/egypt:-draft-constitution-december-2013>.

<sup>33</sup> Id.

159 of 180 countries surveyed).<sup>34</sup>

2013 saw a new wave of attacks against freedom of information. Reporters Without Borders have provided multiple accounts of journalists being tried before military courts; arrests and abusive treatments of journalists and those associated with the media; and the closure of media outlets unsympathetic to the previous regime.<sup>35</sup> According to Human Rights Watch's 2013 Country Report concerning Egypt:<sup>36</sup>

“Overall, there was an increase in prosecutions under restrictive laws from the Mubarak era that penalize defamation and “spreading false information,” and security services continued to arrest and abuse journalists during protests. Security services assaulted, arrested, and tortured journalists and protesters during protests outside the Ministry of Interior in February and outside the Ministry of Defense in May.

Following [President Morsi's] election, the authorities ordered the closure of one TV station and censored at least three editions of newspapers. The public prosecutor filed criminal defamation charges against at least nine journalists in connection with their writing or broadcasting. In November, the minister of justice appointed an investigative judge to interrogate a number of journalists and activists on charges of ‘insulting the judiciary.’ In 2012, prosecutors interrogated or indicted at least 15 individuals on criminal charges of ‘insulting religion.’ In September, a court in Assiout sentenced Bishoy Kamel to six years’ imprisonment for ‘insulting Islam’.

In the same month, the blasphemy trial opened of Alber Saber, whose atheist beliefs led to his indictment on charges of insulting Islam and Christianity. Media freedom activists criticized the upper house of parliament, the Shura Council, for failing to include independent journalists in their appointments of the new editors of state newspapers. In August, President Morsy amended the press law to cancel pretrial detention for journalists after a judge ordered the detention of Islam Afifi, editor of *Dustoor* newspaper, after he was charged with defamation.”

These crackdowns come amongst the midst of wider suppression of freedom of opinion and journalistic integrity that has transcended the *coup d'état* and shows no sign of abating during El-Sisi's Presidency. This is despite the fact that the Egyptian Constitution purports to guarantee freedom of opinion and expression (Article 65), freedom of literary creativity (Article 66) and freedom of the press (Articles 70-72).

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<sup>34</sup> Reporters Without Borders, *Press Freedom Index 2013*, <https://rsf.org/index2014/en-index2014.php>.

<sup>35</sup> See e.g. Reporters Without Borders, *Freedom of information falls prey to military crackdown* (25 September 2013), <http://www.rsf.org/egypt-freedom-of-information-falls-prey-25-09-2013.45234.html>; Reporters Without Borders, *New wave of attacks on freedom of information* (5 November 2013), <http://www.rsf.org/egypt-new-wave-of-attacks-on-freedom-of-05-11-2013.45420.html>; Reporters Without Borders, *North Sinai journalist arrested for “false reports” about military* (6 September 2013), available at <http://www.rsf.org/egypt-north-sinai-journalist-arrested-06-09-2013.45148.html>.

<sup>36</sup> Human Rights Watch, *Country Chapters: Egypt, World Report 2013*, <http://www.hrw.org/world-report/2013/country-chapters/egypt>.

These continuing attacks on journalistic integrity run contrary to the UN Declaration on safety of journalists issued by General Assembly Resolution on 2 November 2013.<sup>37</sup>

## **(ii) The right to freedom of assembly and association**

On 24 November 2013, a new law intended to curtail peaceful protests and demonstrations in Egypt came into force,<sup>38</sup> which was used by the military-backed, “interim government” to crack down on virtually all form of assembly, association or meaningful opposition in Egypt. Dozens of activists and organisers have been sent to prison as a result of this law.

The anti-protest law has also come under criticism from observers. For example, as recently as 3 March 2014, Human Rights Watch urged Egyptian authorities:

“... to repeal the new protest law or amend it in line with international standards on freedom of assembly and association, including by ceasing the arrest and prosecution of demonstrators on charges of protesting without notifying the authorities and the ending of excessive use of force including lethal force against peaceful protestors.”<sup>39</sup>

In Egypt, three protests in the days following the law’s entry into force saw thousands of people march in five cities across the country, including downtown Cairo, Suez and Alexandria. Police violently suppressed each of the protests. Shotguns and teargas were used to disperse protestors, in violation of the anti-protest law itself.<sup>40</sup> At a protest at Cairo University on 28 November, at least one student - Mohamed Reda - was killed.<sup>41</sup> In Alexandria, 14 female supporters of the Muslim Brotherhood were sentenced to 11 years in prison for participating in a political protest.<sup>42</sup>

## **(iii) The right to a fair trial**

With regards to Egypt’s criminal justice system, reports from a variety of sources reveal numerous incidents of individuals who have chosen to exercise their rights to freedom of expression and/or freedom of peaceful assembly, or have otherwise spoken critically about the State and have been detained in circumstances that appear to be tantamount to arbitrary detention. For example, according to Amnesty International:

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<sup>37</sup> General Assembly Resolution A/RES/68/163.

<sup>38</sup> Global Voices Advocacy, *Statement: Release Alaa Abd El Fattah And All Unjustly Detained In Egypt* (23 January 2014), <http://advocacy.globalvoicesonline.org/2014/01/23/civil-society-to-egypt-release-alaa-abd-el-fattah-and-all-unjustly-detained-in-egypt/>.

<sup>39</sup> Human Rights Watch, *Silence is not an Option: Call by Civil Society for the United Nations Human Rights Council to Address the Grave Human Rights Situation in Egypt, and Ensure Respect for Democratic Development* (3 March 2014), <http://www.hrw.org/news/2014/03/03/silence-not-option>.

<sup>40</sup> Daily News Egypt, *Egypt Police fire tear gas as Islamists defy protest law* (29 November 2013), <http://www.dailynewsegypt.com/2013/11/29/egypt-police-fire-tear-gas-as-islamists-defy-protest-law/>.

<sup>41</sup> Daily News Egypt, *One killed at Cairo University protests* (28 November 2013), <http://www.dailynewsegypt.com/2013/11/28/one-killed-at-cairo-university-protests/>.

<sup>42</sup> Ahramonline, *Severe sentences for Alexandria female protesters spark Egypt outcry* (28 November 2013), <http://english.ahram.org.eg/NewsContent/1/64/87715/Egypt/Politics-/Severe-sentences-for-Alexandria-female-protesters-.aspx>.

“On 4 May [2013] the army arrested Mahmoud Mohamed Amin among some 300 protesters demonstrating against military rule in Abbaseya, Cairo. They were referred to military prosecution and trials, on charges such as ‘attacking army members’ and ‘disrupting public order’.”<sup>43</sup>

The erosion of already weak human rights protection since the ousting of the Muslim Brotherhood government is alarming. As recently as 24 March 2014, over 529 protesters were sentenced to death by the Minya Criminal Court in relation to violence that erupted following former President Morsi’s removal from office in mid-2013.<sup>44</sup> Yet Egyptian authorities have all but ignored violations committed by State security forces.<sup>45</sup> By all accounts, the trial of the protesters failed to observe fundamental human rights standards. It was conducted over two days, while more than three-quarters of the defendants were tried *in absentia*.<sup>46</sup> According to the UN High Commissioner for Human Rights:

“Defence lawyers say that they have had insufficient access to the defendants and that the court did not consider relevant evidence presented by the defence.

According to sources present at the trial, among other procedural irregularities, the judge did not call on each defendant by name; some of the defendants who were in detention at the time of the trial were not brought to the court; and the judge did not ask about the legal representation of the defendants.”<sup>47</sup>

Although, according to Amnesty International, Egypt’s authorities do not release figures on death sentences and executions despite repeated requests over the years, there has been a dramatic increase in the number of death sentences that have become known to Amnesty International in recent years. The organisation reports that “Egyptian courts handed down at least 109 death sentences in 2013, after at least 91 death sentences in 2012, and at least 123 in 2011.” According to the OHCHR, “[t]he astounding number of people sentenced to death in this case is unprecedented in recent history.”<sup>48</sup> By contrast, Amnesty International has reported that in 2013, the total number of 778, compared to 682 in the previous year.<sup>49</sup> This is an extremely worrying development and one that speaks volumes as to the deterioration of the situation on the ground in Egypt.

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<sup>43</sup> Amnesty International, *Annual Report 2013: Egypt*, <http://amnesty.org/en/region/egypt/report-2013>.

<sup>44</sup> Amnesty International Australia, *Egypt: More than 500 sentenced to death in “grotesque” ruling* (25 March 2014), <http://www.amnesty.org.au/news/comments/34179/>.

<sup>45</sup> *Id.*

<sup>46</sup> UN Human Rights News Centre, *UN human rights office deeply alarmed at mass imposition of death penalty in Egypt* (25 March 2014), <http://www.un.org/apps/news/story.asp?NewsID=47423#.UzWrOHCmFNg>.

<sup>47</sup> *Id.*

<sup>48</sup> Office of the High Commissioner for Refugees, *Press Briefing Notes on Egypt and Turkey* (25 March 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=14433>.

<sup>49</sup> Amnesty International, *Death Penalty 2013: Small number of countries trigger spike in global executions* (27 March 2013), <https://www.amnesty.org/en/news/death-penalty-2013-small-number-countries-trigger-global-spike-executions-2014-03-27>.

## A.2 The Petitioner is a human rights defender, blogger and software developer

The Petitioner has sought to exercise his right to freedom of expression and assembly through a range of activities. He is a 32-year-old prominent independent blogger, software developer, political activist, and a vocal critic of repressive State practices in Egypt.

He is renowned for co-founding, alongside his wife Manal Hassan, Egyptian blog aggregators *Manalaa* and *Omraneya* – the first Arab blog aggregators that did not restrict inclusion based on content of the blogs. In 2005, the *Manalaa* aggregator won the Special Reporters Without Borders Award in German international public broadcaster Deutsche Welle’s “Best of Blogs” competition.<sup>50</sup>

Mr Abd El Fattah’s family are well known to Egyptian authorities for their political activism and human rights work:

- His father, Ahmed Seif El-Islam Hamad is a human rights attorney.<sup>51</sup> Under the Mubarak regime, Mr El-Islam Hamad was arrested, detained, tortured and imprisoned for five years;<sup>52</sup>
- His mother, Dr Laila Soueif, is a professor of mathematics at Cairo University, and well known for her political activism in defence of human rights.<sup>53</sup> She helped to organise some of the most significant demonstrations against the Mubarak regime throughout the last two decades.<sup>54</sup> Dr Soueif was attacked by police during a pro-democracy campaign in 2005;<sup>55</sup>
- His sister, Mona Seif, is also a prominent activist, credited with playing a key-role in documenting human rights abuses in the wake of the January 2011 Revolution.<sup>56</sup> She was recently convicted on the basis of trumped-up charges of burning presidential candidate Ahmed Shafiq’s campaign headquarters in January 2014. Mona was a Final Nominee for the 2013 Martin Ennals Award;<sup>57</sup> and
- Mr Abd El Fattah’s aunt is Ahdaf Soueif, a novelist, political and cultural commentator, and columnist for The Guardian.<sup>58</sup>

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<sup>50</sup> Deutsche Welles, *Winners 2004-2010, The Bobs: Best of Online Activism*, <https://thebobs.com/english/2014/winner-old/>.

<sup>51</sup> Amnesty International, *Human rights defender in Egypt: Ahmed Seif El-Islam* (9 December 2008), <http://www.amnesty.org/en/news-and-updates/feature-stories/human-rights-defender-egypt-ahmed-seif-el-islam-20081209>.

<sup>52</sup> Id.

<sup>53</sup> Los Angeles Times, *A family nurtured in rebellion* (13 February 2011), <http://articles.latimes.com/2011/feb/13/world/la-fg-egypt-revolutionaries-20110213>.

<sup>54</sup> Id.

<sup>55</sup> CNN, *For Egyptian online warrior, father’s torture fuelled activism* (16 June 2011), <http://edition.cnn.com/2011/WORLD/meast/06/16/arab.unrest.irevolution/>.

<sup>56</sup> Id.

<sup>57</sup> The Martin Ennals Award for Human Rights Defenders, *Mona Seif – Egypt – Final Nominee for Martin Ennals Award 2013*, [http://www.martinennalsaward.org/index.php?option=com\\_content&view=article&id=189](http://www.martinennalsaward.org/index.php?option=com_content&view=article&id=189).

<sup>58</sup> See <http://www.theguardian.com/profile/ahdafsoueif>.

According to the Egyptian newspaper *al-Ahram Weekly*, Mr Abd El Fattah’s name became “synonymous with Egypt’s January 25 Revolution” of 2011.<sup>59</sup> He was one of the first *netizens* to facilitate movement for political change in Egypt. He has been instrumental in developing Arabic-language versions of important software and platforms and is held in high regard in the online community for his commitment to the promotion of freedom of speech and human rights.

A joint statement on Mr Abd El Fattah’s arrest, coordinated by the Electronic Frontier Foundation and IFEX and signed by a host of non-governmental organisations, noted:<sup>60</sup>

“His wildly popular blog—established with his wife, Manal—helped spark a community of bloggers in the Arab World committed to the promotion of free speech and human rights. It won the Reporters Without Borders award at the 2005 Bobs. Their groundbreaking website, Omraneya, collected blog entries across the Arab World, archiving dissent in the face of repression. As put by one popular independent media outlet: ‘[Omraneya is] at times the house of alternative expression and at others the amplifier of muted voices.’

(...)

Alaa has been jailed or charged under every government to take power in Egypt. In 2006, when he was only 22, he was jailed by the Mubarak government. The Supreme Council of the Armed Forces (SCAF) jailed him in 2011. Morsi brought a case against him in 2013. And he is now imprisoned by the current military government. He is not alone in this cycle of persecution. Alongside him now in prison are activists Ahmed Maher, Mohamed Adel, and Ahmed Douma—all of whom were also targeted by Egypt’s recent regimes. Thousands of other young people are in prison or

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<sup>59</sup> Al-Ahram Weekly, *The Face of Protest* (17 November 2011), <http://weekly.ahram.org/2011/1072/eg.7htm>.

<sup>60</sup> The statement was signed by the following signatories: 7iber; Access; ActiveWatch – Media Monitoring Agency; Afghanistan Journalists Centre; Arab Digital Expression Foundation; Arabic Network for Human Rights Information; Article 19; Association for Freedom of Thought and Expression; Association for Progressive Communication; Association of Independent Electronic Media; Bahrain Centre for Human Rights; Canadian Journalists for Free Expression; Centre for Independent Journalism – Malaysia; Derechos Digitales; Digital Rights Foundation, Pakistan; Egyptian Organization for Human Rights; Electronic Frontier Foundation; Foundation for Press Freedom – FLIP; Freedom Forum; Freedom House; Freedom of the Press Foundation; Global Voices Advocacy; Globe International Center; Human Rights Watch; Independent Journalism Center – Moldova; Index on Censorship; Initiative for Freedom of Expression – Turkey; International Federation of Journalists Asia-Pacific; Internet Sans Frontières (Internet Without Borders); IPYS Venezuela; Jadaliyya; Journalists’ Trade Union; Mada Masr; Media, Entertainment and Arts Alliance; Media Foundation for West Africa; Media Institute of Southern Africa; Media Rights Agenda; Mosireen; National Union of Somali Journalists; Norwegian PEN; Pacific Islands News Association; Pakistan Press Foundation; PEN American Center; PEN Canada; PEN International; Public Association “Journalists”; Social Media Exchange (SMEX); The Workshops (Egypt); World Association of Newspapers and News Publishers; Rasha A. Abdulla, Ph.D., The American University in Cairo; and Amir Ahmad Nasr, author of *My Isl@m*.

unaccounted for.”<sup>61</sup>

Mr Abd El Fattah has been arrested on a number of other occasions, all in relation to his online advocacy work. On 7 May 2006, Mr Abd El Fattah was detained and imprisoned for a period of 45 days under the authority of the Mubarak government. Mr Abd El Fattah’s arrest occurred during of a peaceful protest during which he called for increased judicial independence. He was charged with “insulting the President”, and a number of other charges, details of which are unknown. Mr Abd El Fattah was released after being held in detention for 45 days, without being tried or convicted of any charge. His arrest followed a petition on his blog in protest of the arrests of others on charges of “insulting the President” that said, “we the undersigned, insult the President.”<sup>62</sup>

Following this incident, Mr Abd El Fattah and his wife, Manal, moved to South Africa, where they continued their work and online advocacy. The couple moved back to Egypt, however, shortly after the uprising of 25 January 2011.

Following the January 2011 revolution, Mr Abd El Fattah continued his work promoting freedom of expression through online platforms. As noted by the Joint Statement co-sponsored by the Electronic Frontier Foundation and IFEX:

“[Mr Abd El Fattah] started a nation-wide people’s initiative enabling citizen collaboration in the drafting of the Egyptian Constitution. He initiated and hosted Tweet-Nadwas (‘Tweet-Symposiums’), that brought activists and bloggers from across the world into Tahrir Square, to participate in open format dialogue about tough issues ranging from Islamism to Economic Reform.”<sup>63</sup>

Mr Abd El Fattah was arrested for the second time on 30 October 2011, accused of inciting violence against the military during the 9 October 2011 Maspero demonstrations. His arrest followed his keynote address at the Silicon Valley Human Rights Conference in 2011. Charges brought against Mr Abd El Fattah and satirist Bassem Youssef in 2013 were designed to deter protest under the Morsi government.<sup>64</sup> He was initially detained for 15 days, but this period was repeatedly extended as Mr Abd El Fattah challenged the legitimacy of the military court’s jurisdiction over civilians. Following sustained public pressure, Mr Abd El Fattah’s case was eventually transferred to a civilian court, where it was ultimately dismissed. Mr Abd El Fattah spent a total of 55 days in detention as a result of his second arrest.

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<sup>61</sup> Global Voices Advocacy, *Statement: Release Alaa Abd El Fattah And All Unjustly Detained In Egypt* (23 January 2014), <http://advocacy.globalvoicesonline.org/2014/01/23/civil-society-to-egypt-release-alaab-abd-el-fattah-and-all-unjustly-detained-in-egypt/>.

<sup>62</sup> The Independent, *Egypt releases blogger jailed for 45 days after “insulting” President* (21 June 2006), <http://www.independent.co.uk/news/world/middle-east/egypt-releases-blogger-jailed-for-45-days-after-insulting-president-404865.html>.

<sup>63</sup> Global Voices Advocacy, *Statement: Release Alaa Abd El Fattah And All Unjustly Detained In Egypt, 23 January 2014* (23 January 2014), <http://advocacy.globalvoicesonline.org/2014/01/23/civil-society-to-egypt-release-alaab-abd-el-fattah-and-all-unjustly-detained-in-egypt/>.

<sup>64</sup> Id.

### **A.3 The Petitioner was detained without legal justification and in a manner that violates international law**

The Petitioner was detained on the basis of his non-violent and legitimate activities in relation to a range of political and social justice issues. On 26 November 2013, Mr Abd El Fattah took part in peaceful demonstrations in front to the Shoura Council (the Upper House of the Egyptian parliament) that had been called for by the Egyptian human rights advocacy group No to Military Trials for Civilians. Protests were aimed at the failure of what was then the draft Constitution to protect civilians from being court-martialled before military tribunals.

The protestors were met by police who used water cannon and tear gas to disperse the demonstrators, arresting over 50 people, largely at random. Some of those arrested were beaten and female protesters, when arrested, were beaten and sexually assaulted. Of those demonstrators arrested, 50 were detained for hours whilst 25 were charged.<sup>65</sup>

On the day of the protest, while waiting outside the police station for those being questioned, the Petitioner, in an act of solidarity with the detained protestors, voluntarily offered to hand himself to police for questioning in relation to the demonstration. No action was taken by authorities at that time.

On 27 November 2013, Mr Abd El Fattah became aware of a summons for his arrest issued by the Public Prosecutor's Office, which was publicised through the media. Charges were also brought against Ahmed Maher, founder of the 6<sup>th</sup> April Youth Movement and himself a prominent activist.

Mr Abd El Fattah informed Egyptian authorities the same day of his intention to comply with the summons and to hand himself in to the Office of the Prosecutor on Saturday 30 November 2013. Three separate communications were sent: a telegram to the Office of the Prosecutor (telegram no. 96/381, dated 27 November 2013), a communication by registered mail to the Prosecutor (registration number 17138/2013, dated 27 November 2013), and a telegram sent to the Attorney-General for Cairo Central (telegram no. 96/382).<sup>66</sup>

Nonetheless, at approximately 9:30-10:00pm on 28 November 2013, a combined force, constituted of agents from the Qasr el-Nil police station, Omraneya police station, and the Egyptian Special Forces attended Mr Abd El Fattah's place of residence to carry out a raid.<sup>67</sup> His front door was broken down and two laptops and two mobile phones were confiscated. Mr Abd El Fattah was beaten after asking to see a copy of an arrest warrant and was dragged from his home. No warrant of arrest was produced. His wife was beaten by five policemen. Mr Abd El Fattah was blindfolded and taken to an unknown location where he was subjected to humiliating treatment. He was left blindfolded, with his hands cuffed behind his back, and

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<sup>65</sup> This was announced by the Prosecution on 9 December 2014.

<sup>66</sup> See Alaa Abd El Fattah, *Deja Vu, I'm about to hand myself in to the authorities again on Saturday. My ever imminent arrest is now a running joke in Egypt* (27 November 2013), <https://www.facebook.com/alaaoosh/posts/10153519503810291>.

<sup>67</sup> It is believed that State Security agents may have also been present. It is noteworthy, however, that no identification was displayed or provided by any of the police/security forces who conducted the arrest.

without being provided treatment for the beating he received. He was taken to Cairo's Security Directorate where questioning by the Prosecutor started at approximately 9:30-10:00am the next morning. Questioning took place under the authority of the Ministry of Interior instead of the Prosecutor's Office or the court. Mr Abd El Fattah did not have access to his lawyer at this time, and his wife together with one of his sisters was only able to see him for ten minutes after questioning.

Mr Abd El Fattah was transferred to Cairo's maximum-security detention facility, Tora Prison, on 29 November 2013. The authorities refused to inform Mr Abd El Fattah's family of the location of the prison to which he was transferred. Conditions of pre-trial detention in Tora Prison are deplorable. During these 11 days of his detention, he was not allowed out of his cell. After that, he was held in a single cell for 20 of every 24 hours, and later on 18 of every 24 hours. Mr Abd El Fattah remained almost entirely dependent on family members to bring him adequate food and the most basic amenities (clothing, laundry and sanitary items). Mr Abd El Fattah's wife was able to visit him only once, for ten minutes, during the first 11 days of his detention. After that he was allowed one visit every seven days. Mr Abd El Fattah only spoke to one of his lawyers once during the first 11 days of his detention, on the basis of a special permit from the Prosecutor's Office. After that he was allowed one visit every 15 days on the basis of a similar permit. However, rules regarding visits continuously change.

The authorities have obstructed Mr Abd El Fattah's legal team, thus impeding his appeal against his imprisonment on remand and compromising Mr Abd El Fattah's ability to secure pre-trial release at the earliest opportunity. The Petitioner's lawyers applied to the General Prosecutor for his release three or four times during the initial 118 days of detention. They also applied to the Cairo Criminal Court for his release. At this stage, no court had been allocated to hear his case, so the lawyers could not apply there, as is the normal procedure. The case was only allocated to the "Special Chamber" of the Criminal Court at Tora on 15 March 2014, shortly before the hearing listed for 23 March 2014. Of the other 24 persons charged, the Petitioner and Mr Ahmed Abd El Rahman were the only ones to remain in prison, while the other 23 persons had been released on bail on 4 December 2013.

The Prosecution can extend detention three times, up to 45 days in total, after which the court needs to consider whether detention continues. During the first 118 days of his arbitrary detention it is unclear how often and by whom his detention was extended. The applications for provisional release made on his behalf were all unanswered.

It took almost four months, during which Mr Abd El Fattah remained in detention, before a date was set for his trial. At no point was any reason offered by authorities for Mr Abd El Fattah's ongoing pre-trial detention.

Mr Abd El Fattah was released on bail on 23 March 2014. But this release was short lived.

Mr Abd El Fattah and his legal team were informed that the hearing would take place on 11 June 2014 at the Tora Institute for Police Officers. The time at which the hearing was supposed to take place was not specified, which is in line with standard practice of the court. As court sessions generally start at 10:00am, the Petitioner and his father arrived at Tora at 9:30am. A lawyer of the Petitioner's defence team was already present, waiting outside when they arrived. The family of the Petitioner reported that another lawyer was in the court's

waiting room at the time and had been there for some time. As the court hearing was supposed to take place at the Tora Institute for Police Officers, the police controls who has access to the building and who will be able to attend hearings

The lawyer in the court's waiting room had a view of the court room. At no point in time did he see the judge go into the court room. The judge left the court building without informing the lawyers either inside or outside the court that he had made a ruling. No "hearing" as such took place, not even *in absentia*. The judge later released a statement in which he said he handed down judgment at 10:30am. This is not possible according to the lawyers' account as the judge had already left the court at this time.

Police officers came up to the Petitioner, Mr Mohammed Noubi and Mr Wael Metwally, who were all waiting outside the Tora compound for their hearing to start. The three defendants were told that their hearing was due to start. It is unclear whether the police officers knew the *in absentia* sentence had already been handed down at this point.

By the time the Petitioner entered the court building, the judge had already left. The Petitioner was informed that judgment had been handed down and he was arrested and returned to custody.<sup>68</sup>

As a result, Mr Abd El Fattah's lawyers were not heard and no defence witnesses were able to give evidence. Nonetheless, Mr Abd El Fattah was convicted and sentenced to 15 years imprisonment for his alleged role in the 26 November 2013 protests.<sup>69</sup>

Mr Abd El Fattah's arrest followed the coming-into-force on 24 November 2013 of the anti-protest law, which is intended to curtail peaceful protests and demonstrations in Egypt.<sup>70</sup> Mr Abd El Fattah was charged under the new law as having organised the protest illegally, despite the fact that it was well known that neither of them were among the organisers of No to Military Trials for Civilians<sup>71</sup> – their affiliation with protestors apparently formed a sufficient nexus for authorities to seek their detention. Six members of No to Military Trials for Civilians even attempted to turn themselves in, stating they were in fact the organisers of the protest. The Prosecution, however, refused to accept this and stated that it would not investigate this claim or pursue any action against the six members.

This was confirmed by the coordinator of No to Military Trials for Civilians, Mr Abd El Fattah's sister, Mona Seif, who stated:

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<sup>68</sup> See also Aljazeera, *Alaa Abdel Fattah and the "democracy virus" in Egypt* (15 June 2014), <http://www.aljazeera.com/indepth/opinion/2014/06/ala-a-abdel-fattah-democracy-vir-201461555134995794.html>.

<sup>69</sup> BBC News, *Egypt Activist Alaa Abdul Fattah jailed for 15 years* (11 June 2014), <http://www.bbc.com/news/world-middle-east-27790896>.

<sup>70</sup> Global Voices Advocacy, *Statement: Release Alaa Abd El Fattah And All Unjustly Detained In Egypt, 23 January 2014* (23 January 2014), <http://advocacy.globalvoicesonline.org/2014/01/23/civil-society-to-egypt-release-ala-a-abd-el-fattah-and-all-unjustly-detained-in-egypt/>.

<sup>71</sup> FreeAlaa Facebook Page, *Alaa Abd El Fattah and the Shoura Council 24* (Rolling Press Release), [https://docs.google.com/document/d/1x5ET89CijFYyLIMxJAyysz2por9cu\\_b3ybblyW-FBxs/edit](https://docs.google.com/document/d/1x5ET89CijFYyLIMxJAyysz2por9cu_b3ybblyW-FBxs/edit)

“It is clear where the invitation to protest came from. It came from No to Military Trials’ social media pages on November 24th. We take full responsibility. All the other people and groups that chose to join did so at our invitation. And although we turned ourselves in and although we faced the same charges the prosecutor’s office has chosen to focus on Alaa as the organizer when he played no part in the organisation and the 24 as if they were the only participants (...).”<sup>72</sup>

In addition, Mr Abd El Fattah was charged with assaulting a security officer, and stealing a walkie-talkie from the same officer. Mr Abd El Fattah denies these charges against him.

As observed by Mr Abd El Fattah’s mother, Dr Laila Soueif, and quoted in the Joint Statement co-sponsored by the Electronic Frontier Foundation and IFEX:

“At this particular juncture, those in power are trying to sell the myth that the whole country is united behind them against the Muslim Brotherhood and their allies. The fact that Alaa, who was very vocal in his criticism of the Brotherhood while Morsi was president, is condemning – even more strongly – the current criminal behaviour of the police and the army explodes their myth. Particularly as he is not alone in taking this position. Arresting him and demonizing him in the media is a message to critics of the regime to shut up.”<sup>73</sup>

On 18 August 2014, Mr Abd El Fattah went into hunger strike. He decided to go into hunger strike after a visit on 17 August 2014 to his father, who was recently hospitalised. His father’s health had severely deteriorated in the days prior to his visit whilst Mr Abd El Fattah’s family had not been able to reach him.<sup>74</sup> As a result of his hunger strike, rules regarding visits from his family and lawyers have changed and will be applied arbitrarily.

## **B. Reasons why the arrest and detention are arbitrary**

The arrest and detention of the Petitioner are arbitrary as they fall within Categories II and III arbitrary detention as articulated by the Working Group. The following section details the reasons that the arrest and detention are arbitrary by category, addressing each category in turn. It is noted that Egypt is a party to the ICCPR; consequently this Petition sets out the various ICCPR Articles that Egypt has breached as a result of its treatment of the Petitioner. The Petition also notes that Egypt has breached principles of customary international law reflected in the UDHR.

### **B.1 The detention of the Petitioner constitutes Category II arbitrary detention because his deprivation of liberty results from the exercise of his right to freedom of opinion and expression (Article 19 ICCPR, Article 19 UDHR)**

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<sup>72</sup> Id.

<sup>73</sup> Global Voices Advocacy, *Statement: Release Alaa Abd El Fattah And All Unjustly Detained In Egypt* (23 January 2014), <http://advocacy.globalvoicesonline.org/2014/01/23/civil-society-to-egypt-release-alaa-abd-el-fattah-and-all-unjustly-detained-in-egypt/>.

<sup>74</sup> Global Voices Advocacy, *Prominent Egyptian Activist Alaa Abdel Fattah Goes on Hunger Strike* (20 August 2014), <http://globalvoicesonline.org/2014/08/20/prominent-egyptian-activist-alaa-abdel-fattah-goes-on-hunger-strike/>.

Although the charges against the Petitioner relate to the alleged organisation of a protest, assault of a security officer and the theft of a walkie-talkie, it is submitted that, given the history of Egypt detaining political prisoners and those who speak out against the political regime (see above under A.1), and also due to the Petitioner's background as a human rights defender and blogger (see above under A.2), the real purpose of the detention and prosecution is to punish the Petitioner for exercising his rights under Article 19 ICCPR and to deter others from doing so. This point is underlined by the previous arrests and harassment of the Petitioner.

It is a clear and established principle of international law that the right to freedom of opinion guaranteed by both Article 19 of the UDHR and Article 19 ICCPR is a fundamental right that can only be restricted under very limited circumstances. As the Human Rights Committee has stated in its General Comment 34:

“Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions.

Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.”<sup>75</sup>

All forms of opinion are protected. This includes political views, which are critical of a political power, regime or ruling class. The free exchange of ideas and opinions on politics and other matters of public interest are what make a democracy function. It is incompatible with the right to free expression to criminalise the holding of an opinion or to intimidate or stigmatise a person through arrest, detention, trial or imprisonment for reasons of the opinions they may hold.<sup>76</sup> Further, any coercion into the holding or not holding of any opinion is prohibited.<sup>77</sup>

According to the Human Rights Committee in its General Comment 34, journalistic activities of bloggers such as Mr Abd El Fattah are encompassed within the breadth of the protection of freedom of expression in Article 19(2) ICCPR, which includes “all forms of audio-visual as well as electronic and internet-based modes of expression.”<sup>78</sup> Further, General Comment 34 explicitly recognises that:

“[t]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a

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<sup>75</sup> UN Human Rights Committee (“UNHRC”), *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc. No. CCPR/C/GC/34 (12 September 2011) (“General Comment No. 34”), para 2-3.

<sup>76</sup> General Comment No. 34, par. 9.

<sup>77</sup> General Comment No. 34, par. 10.

<sup>78</sup> General Comment No. 34, par. 12.

free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.”<sup>79</sup>

There are no limitations to the rights to freedom of opinion and expression that would afford justification to the Egyptian Government’s failure to respect these protections in Mr Abd El Fattah’s present circumstances. The right to freedom of *opinion* is absolute. In General Comment 34, the Human Rights Committee observed that Article 19(1) ICCPR cannot be derogated from in any circumstance.<sup>80</sup> By contrast, the right to freedom of *expression* may legitimately be constrained, but only in limited circumstances. However, no such legitimate limitations to Mr Abd El Fattah’s freedom of expression are apparent in the present case.

Mr Abd El Fattah was detained for his role in peaceful protests, whereby he sought to exercise his freedom of expression in supporting protests against military trials for civilians. The present charges against him, however, ought to be viewed in the full light of the Egyptian authorities’ efforts to stifle dissent and silence Mr Abd El Fattah, his family, and fellow activists who have dared to criticise the status quo. As a result of his opinions, and because of his opinions, Mr Abd El Fattah has been targeted by State authorities and arbitrarily detained, in clear violation of his right to freedom of opinion and expression.

Moreover, Mr Abd El Fattah was arrested, detained and subjected to criminal charges after publically expressing his views on controversial anti-protest legislation. When considered in the context of his prior detention by Egyptian authorities, Mr Abd El Fattah’s arrest, detention, and prosecution can be understood as part of a wider effort to censure and intimidate him for exercising his right to freedom of opinion and expression.<sup>81</sup> Indeed, Mr Abd El Fattah’s detention in 2011 followed his keynote address at the Silicon Valley Human Rights Conference in 2011, while charges brought against Mr Abd El Fattah and satirist Bassem Youssef in 2013 were designed to deter protest under the Morsi government.<sup>82</sup>

It is clear that the arrest and detention of Mr Abd El Fattah, like the ongoing proceedings against him, are being used as a mechanism to coerce and silence his right to expression and to deter others from expressing critical thought.

While Article 19(3) ICCPR permits certain restrictions on the freedom expression, the Human Rights Committee expressly provided that:

“[p]aragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of his exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest (...) be compatible with article 19.”<sup>83</sup>

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<sup>79</sup> General Comment No. 34, par. 18.

<sup>80</sup> General Comment No. 34, par. 5.

<sup>81</sup> FreeAlaa Facebook Page, *Alaa Abd El Fattah and the Shoura Council 24* (Rolling Press Release), [https://docs.google.com/document/d/1x5ET89CijFYyLIMxJAyysz2por9cu\\_b3ybblyW-FBxs/edit](https://docs.google.com/document/d/1x5ET89CijFYyLIMxJAyysz2por9cu_b3ybblyW-FBxs/edit).

<sup>82</sup> Id.

<sup>83</sup> General Comment No. 34, par. 23.

Of particular relevance to the Petitioner is that the Human Rights Committee has determined that “[t]he penalization of a (...) journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.”<sup>84</sup>

It is for precisely such reasons that the Petitioner was arrested and detained. The Petitioner sought to express his views and opinions on the judiciary, other political issues and a wide range of human rights issues; it is averred that it is solely on this basis that he has been detained and that there is no substance to the charge of organising demonstrations, assault of a security officer and theft of a walkie-talkie that have been levied against him. The arrest and detention of the Petitioner therefore constitute a Category II form of arbitrary detention as his detention violates Article 19 ICCPR and the principles enshrined in Article 19 UDHR.<sup>85</sup>

## **B.2 The detention of the Petitioner constitutes Category II arbitrary detention because his deprivation of liberty results from the exercise of his right to peaceful assembly and association (Article 21 and 22 ICCPR, Article 20 UDHR)**

The Petitioner’s arrest and detention are also linked to his association with other individuals who oppose the regime and his participation in non-violent demonstrations. As described above, the Petitioner was arrested on 28 November 2013 after a demonstration on military trials for civilians. The arrest of Petitioner fits into an ongoing pattern of human rights violations by the Government of Egypt, outlined above under A.1, which has frequently involved arbitrary detention of those who express political views that oppose the Government of Egypt, or associate with those who oppose the Government.

In October 2010, the Human Rights Council adopted Resolution 15/21 in which it expressly recognised the importance of the rights to freedom of peaceful assembly and of association to the full enjoyment of civil and political rights, and economic, social and cultural rights. The Council recognised that these rights are:

“[...] essential components of democracy, providing individuals with invaluable opportunities to, inter alia, express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities [...] and elect leaders to represent their interests and hold them accountable.”<sup>86</sup>

The right of association often dovetails with the right to freedom of expression. The Human Rights Committee has observed that:

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<sup>84</sup> General Comment No. 34, par. 42.

<sup>85</sup> The arrest and detention are also contrary to the principles reflected in Article 23 of the Basic Principles on the Role of Lawyers, 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.

<sup>86</sup> Human Rights Council, *Resolution 15/21 The rights to freedom of peaceful assembly and of association*, UN Doc. A/HRC/RES/15/21 (6 October 2010), preamble.

“[...] the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. [...] It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the [ICCPR], including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.”<sup>87</sup>

Freedom of assembly is one of the most fundamental of all human rights. The right is expressed under Article 20 UDHR, which states, *inter alia*, that “[e]veryone has the right to *freedom of peaceful assembly* and association.”<sup>88</sup> It is also proclaimed as an individual right under Article 21 ICCPR.<sup>89</sup>

The right to freedom of assembly is vital to the democratic freedoms that enable individuals to act collectively to promote their interests.<sup>90</sup> The right to assembly protects non-violent, organised gatherings in public and private. A broad range of assemblies is encompassed, including political, economic, artistic and social gatherings.<sup>91</sup> States must not only abstain from interfering with the right, but are also required to take positive measures to protect peaceful assemblies. Although the right envisages temporary gatherings, it also protects mass political protests that may last for weeks or months.<sup>92</sup>

Although restrictions to the right of freedom of assembly are permissible under Article 21 ICCPR, the Article is explicit that any such restrictions must be:

“[...] *necessary in a democratic society* in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of other.”<sup>93</sup>

The reference to *democratic society* in Article 21 ICCPR, and likewise Article 22 ICCPR indicate that in order to be justifiable, and indeed legitimate, interferences with any of the rights enshrined in those articles must claim to arise from the needs of a truly democratic

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<sup>87</sup> UNHRC, *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)*, UN Doc CCPR/C/21/Rev.1/Add.7 (12 July 1996) (“General Comment No. 25”).

<sup>88</sup> Universal Declaration of Human Rights, Art. 20(1) (emphasis added).

<sup>89</sup> The significance of the right to freedom of association is underscored by the fact the right is also expressly recognised in a number of regional instruments including: European Charter on Human Rights, Art. 11; American Charter of Human Rights, Art. 15; African Charter of Human and Peoples’ Rights, Art. 11. The right to freedom of assembly has also been expressly recognised in the text of the 1994 and 2008 versions of the Arab Charter on Human Rights. See Council of the League of Arab States, *Arab Charter on Human Rights* (15 September 1994), 18 Hum. Rts. L.J. 151 (1997) (never entered into force), Art. 28; League of Arab States, *Arab Charter on Human Rights* (22 May 2004), 12 Int’l Hum. Rts. Rep. 893 (2005), entered into force March 15, 2008, Art. 24(6).

<sup>90</sup> D. Moeckli, S. Shah, and S. Sivakumaran, *International Human Rights Law* (2010), p. 275.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Art. 21 ICCPR (emphasis added).

society.<sup>94</sup> Democracy, therefore, is a fundamental feature of the international legal order, and the ICCPR was designed, at least in part, to foster, promote and maintain democratic ideals.<sup>95</sup>

While the Human Rights Committee has accepted that regulation of demonstrations or gatherings is not in itself incompatible with the permitted limitations laid down in Article 21 ICCPR,<sup>96</sup> international and regional human rights decisions have consistently reinforced the principle that States must ensure that any limitations are sufficiently balanced so they do not unnecessarily restrict the exercise of freedom of assembly.<sup>97</sup>

The European Court of Human Rights has further indicated that, although the regulation of demonstrations is not itself impermissible, arbitrariness in the issuance of permits can constitute a violation of the right to freedom of assembly.<sup>98</sup> This has been affirmed in decisions by the African Commission on Human and Peoples' and Rights<sup>99</sup> and the Inter-American Commission on Human Rights.<sup>100</sup>

It is plain from this case and others that there is an ongoing pattern of human rights violations by the Egyptian Government, which has frequently involved arbitrary detention of those who express political views that oppose the incumbent regime, or associate with opposition supporters. The treatment of Mr Abd El Fattah is clearly an example of this ongoing situation and this suppression of the right to freedom of assembly and association is indisputably in violation of international law.

As outlined above under A.1, Egypt's new protest laws are designed and implemented in such a way as to deter peaceful public gatherings and expression of political dissent. Mr Abd El Fattah has been arrested on the basis of anti-protest laws because of his alleged role in the organisation of the demonstration, his support of No to Military Trials for Civilians and standing in solidarity with those protesters who were arrested and/or detained by police as a result of having taken part in protests to exercise their rights to peaceful assembly and

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<sup>94</sup> Similar logic was espoused by the European Court of Human Rights ("ECtHR") in ECtHR, *Baczowski v Poland*, Judgment of 3 May 2007, App no 1543/06, par. 61 where the Court held that the reference to "democratic society" in the permissible limitations to the rights enshrined in in Articles 8, 9, 10, and 11 European Convention on Human Right, (which include the right to freedom of assembly).

<sup>95</sup> *Baczowski v Poland*, par. 61.

<sup>96</sup> UNHRC, *Kivenmaa v Finland*, CCPR/C/50/D/412/1990 (9 June 1994).

<sup>97</sup> See e.g. ECtHR, *Öllinger v Austria*, Judgment of 29 June 2006, App. No. 76900/01; UNHRC, *International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr and Civil Liberties Organisation v Nigeria*, Communication No. 137/94, 139/94, 154/96, and 161/97 (31 October 1998); UNHRC, *Kivenmaa v Finland*, CCPR/C/50/D/412/1990 (9 June 1994); ECtHR, *Baczowski v Poland*, Judgment of 3 May 2007, App. No. 1543/06; ECtHR, *Bukta and Others v Hungary*, Judgment of 17 September 2007, App. No. 25961/04. Cf. ECtHR, *Éva Molnár v Hungary*, Judgment of 7 October 2008, App. No. 10346/05; D. Moeckli, S. Shah, and S. Sivakumaran, *International Human Rights Law* (2010), p. 276.

<sup>98</sup> ECtHR, *Baczowski v Poland*, Judgment of 3 May 2007, App. No. 1543/06.

<sup>99</sup> UNHRC, *International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr and Civil Liberties Organisation v Nigeria*, Communication No. 137/94, 139/94, 154/96, and 161/97 (31 October 1998), para. 1-2, 106. See also D. Moeckli, S. Shah, and S. Sivakumaran, *International Human Rights Law* (2010), p. 275-6.

<sup>100</sup> Inter-American Commission on Human Rights ("IACHR"), *Oscar Elías Biscet et al. v Cuba*, Cases 771/03 and 841/03(14 October 2004), IACHR Report No. 57/04.

freedom of opinion and expression. These actions by the Egyptian authorities are in clear violation of Mr Abd El Fattah's right to freedom of association.

Therefore, the arrest and detention of the Petitioner constitute a Category II form of arbitrary detention as it violates the rights guaranteed by Articles 21 and 22 ICCPR and the principles recognised by Article 20 UDHR.

**B.3 The arrest and detention of the Petitioner constitutes Category II arbitrary detention because his deprivation of liberty results from the exercise of his right to take part in the conduct of public affairs (Article 25 ICCPR and Article 21 UDHR)**

The Petitioner has been arrested and detained for exercising his freedom to take part in the conduct of public affairs (Article 25 ICCPR, Article 21 UDHR). He has been detained due to his participation in activities relating to a range of social justice issues and his active involvement in civil society, set out above, but particularly, for promoting the protection of the right to a fair trial in Egypt.

The arrest and detention of the Petitioner on this basis is a clear violation of Article 25 ICCPR, which protects the freedom of each citizen to take part in the conduct of public affairs. The Human Rights Committee has defined this conduct to include "exerting influence through public debate and dialogue with their representatives or through their capacity to organise themselves."<sup>101</sup> This freedom must be able to be exercised without distinction on any basis (including political or other opinion)<sup>102</sup> and only objective and reasonable restrictions on this freedom are permissible.<sup>103</sup>

The right of citizens to take part in the government of their country is also recognised by Article 21 UDHR. In violation of these internationally protected guarantees, the Petitioner was targeted by the State authorities in Egypt for arrest and detention on the basis of his expression of his opinions. Therefore, the arrest and detention of the Petitioner constitutes Category II arbitrary detention in violation of Article 25 ICCPR and the principles in Article 21 UDHR.

**B.4 The detention of the Petitioner constitutes Category III arbitrary detention because it violates his right to a fair and public hearing by an independent and impartial tribunal (Article 14 ICCPR and Article 10 UDHR)**

No public was able to attend any of the hearings in Mr Abd El Fattah's case, which have taken place on 23 March 2014, 6 April 2014, 25 May 2014 and 6 August 2014, thereby endangering the transparency of the proceedings. General Comment 32 indicates that it follows from the right to a fair trial that courts must make information about the venue and time of hearings publicly known:

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<sup>101</sup> General Comment No. 25, par. 8.

<sup>102</sup> Articles 2 and 14 ICCPR.

<sup>103</sup> General Comment No. 25, par. 4.

“All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the oral hearing.”<sup>104</sup>

Mr Abd El Fattah was informed that another hearing in his case would take place on 11 June 2014. As set out above, Mr Abd El Fattah and his defence team were present at the compound in which the court is located on the morning of 11 June 2014 before the usual start time of court hearings. In the course of the morning, Mr Abd El Fattah was informed that the hearing had already taken place in his absence. Consequently he was re-arrested and detained. One of the lawyers of his defence team who was reportedly present in the court’s waiting room has confirmed that the judge arrived and left the building while Mr Abd El Fattah was waiting outside, and that no hearing had taken place.

Article 14(1) ICCPR provides that in the determination of any criminal charge, all persons “shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” This right has been violated, as it appears that Mr Abd El Fattah was deliberately denied a hearing.

Article 14(3) ICCPR makes clear that a fair trial requires that accused persons be afforded certain procedural minimum guarantees. This includes the right of the accused to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him. General Comment 32 clarifies that “[i]n the case of trials in absentia, article 14, paragraph 3 (a) requires that, notwithstanding the absence of the accused, all due steps have been taken to inform accused persons of the charges and to notify them of the proceedings.”<sup>105</sup> In the Petitioner’s case, the relevant authorities have clearly failed to take steps to notify him of the proceedings and allow him to attend.

During the most recent hearing in Mr Abd El Fattah’s case, on 6 August 2014, further violations of Mr Abd El Fattah’s right to a fair and public hearing by an independent and impartial tribunal have taken place. Mr Abd El Fattah and the other defendants in the case were placed in glass cages during the hearing. As a result, only the judge could control what the defendants heard and when the defendants are heard. Unless the judge switched on the speakers in the glass cage, of which it is questionable if they even work, the defendants did not hear what was being discussed in court. There was no opportunity either for the defendants to speak with their lawyers during the hearing. This will be particularly problematic during the upcoming hearing of 10 September 2014, during which the

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<sup>104</sup> Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Doc. No. CCPR/C/GC/32 (23 August 2007) (“General Comment No. 32”), par. 28. See also UNHRC, *Van Meurs v. The Netherlands, Communication No. 215/1986*, par. 6.2.

<sup>105</sup> General Comment No 32, para. 32. See also UNHRC, *Mbenge v. Zaire, Communication No. 16/1977*, par. 14.1.

Prosecution will show video evidence on which it relies. The defendants' lawyers, including the Petitioner, have not been granted access to this evidence beforehand.

Furthermore, Mr Abd El Fattah's case is considered by Judge Fiky, against whom he filed a complaint shortly after the 2011 revolution accusing Judge Fiky and 21 other judges of allowing election fraud during the 2005 elections. The evidence submitted in the complaint was compiled by a fact finding committee of the Syndicate of Judges in 2005. The complaint was only submitted after the 2011 revolution, as the complainants believed there was little point in doing so before the revolution, given the Mubarak regime's approach to elections.

As Judge Fiky was the subject of a complaint filed by the Petitioner, he cannot be considered impartial in the case against the Petitioner. The Petitioner's defence team therefore requested the judge to recuse himself. This request has been heard and denied by another court. This means that Mr Abd El Fattah's case is at the moment not being heard by an independent and impartial tribunal.

For the reasons set out above, the arrest and detention of the Petitioner constitute a Category III form of arbitrary detention as it violates his right to a fair and public hearing by an independent and impartial tribunal as enshrined in Article 14 ICCPR and the principles recognised in Article 10 UDHR.

**B.5 The detention of the Petitioner constitutes Category III arbitrary detention because it violates his right to equality before courts and tribunals (Article 14 ICCPR, Article 10 UDHR) including his right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him (Article 14(3)(e) ICCPR)**

As the Petitioner was denied a hearing on 11 June 2014 and a decision in his case was made *in absentia*, he and his legal counsel were unable to present their arguments in court or examine witnesses against him or obtain the attendance and examination of witnesses on his behalf. Furthermore, the fact that the Petitioner was placed in a glass cage during the hearing of 6 August 2014 and will most likely be placed in a similar cage during the next hearing, renders all participation in the trial impossible.

Article 14 ICCPR provides that “[a]ll persons shall be equal before the courts and tribunals.” The right to equality before courts and tribunals also ensures equality of arms:<sup>106</sup>

“[t]his means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.”<sup>107</sup>

It is for the State Party to show that any procedural inequality was based on reasonable and objective grounds, not entailing actual disadvantage or other unfairness to the author.<sup>108</sup>

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<sup>106</sup> General Comment No. 32, par. 13.

<sup>107</sup> Id. See also UNHRC, *Dudko v. Australia*, Communication No. 1347/2005, par. 7.4.

<sup>108</sup> UNHRC, *Dudko v. Australia*, Communication No. 1347/2005, par. 7.4.

Article 14(3) ICCPR further provides that in the determination of a criminal charge against them, everyone is entitled to certain minimum guarantees. One of these minimum guarantees is the right to “examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him” (Art. 14(3)(e) ICCPR). General Comment No. 32 clarifies that:

“[a]s an application of the principle of equality of arms, this guarantee is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.”

Although Article 14(3)(e) does not provide an unlimited right to obtain the attendance of any witness requested by the accused or their counsel, it does provide a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.<sup>109</sup>

For the reasons set out above, the arrest and detention of the Petitioner constitute a Category III form of arbitrary detention as it violates his right to equality before courts and tribunals as enshrined in Article 14 ICCPR and the principles recognised in Article 10 UDHR.

**B.6 The detention of the Petitioner constitutes Category III arbitrary detention because it violates his right to time and facilities for the preparation of his defence and to communicate with counsel of his own choosing without restriction (Article 14 ICCPR, Article 11 UDHR)**

Mr Abd El Fattah was held in detention with limited access to legal representatives. During his first detention, he was prevented from seeing his lawyers during his interrogation and the first 11 days of his detention, except for one visit. He was granted regular access to counsel only after being transferred from police detention to Tora Prison, but even this access was limited, as Mr Abd El Fattah was only allowed to see his lawyers once every 15 days.

It is however of critical importance to note that, even though Mr Abd El Fattah is able to speak with his lawyers during these limited visits, this does not enable him to adequately prepare for his defence. At the most recent hearing in his case, he was placed in a glass cage. As explained above, this has rendered it impossible for him to speak with his lawyers during the hearing, whilst evidence will be presented to both the Petitioner and the defence team for the first time during the hearing.

Detention and trial under these conditions is a clear violation of Article 14 ICCPR, the principles in Article 11 UDHR, and Principles 15 and 18 of the BPPP.

Article 14(1) of the ICCPR provides that in determination of any criminal charge, all persons “shall be entitled to fair and public hearing by a competent, independent and impartial

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<sup>109</sup> General Comment No. 32, par. 39

tribunal established by law.” Article 14(3) makes clear that such a fair trial requires that accused persons be guaranteed certain minimum protections – a principle that is also reflected in Article 11 UDHR. Article 14(3)(b) ICCPR provides that the required guarantees include adequate time and facilities for the preparation of defence and the right of the accused to communicate with counsel of his or her own choosing.

For the reasons set out above, the arrest and detention of the Petitioner constitute a Category III form of arbitrary detention as it violates his right to time and facilities for the preparation of his defence and to communicate with counsel of his own choosing without restriction as enshrined in Article 14 ICCPR and the principles recognised in Article 11 UDHR.

**V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN**

The Petitioner’s ability to pursue domestic remedies with legal and administrative authorities, has been limited by significant restrictions on his access to justice. However, after the judgment in his case on 11 June 2014, the appeal in his case is currently ongoing.

**VI. REQUESTED ACTION FROM THE WORKING GROUP**

For the reasons set out above, the detention of the Petitioner is rendered arbitrary under Categories II and III. The Petitioner therefore requests the Working Group to:

- (a) render an opinion that the detention of the Petitioner is arbitrary for being in contravention to Article 19, 21, 22 and 25 of the ICCPR and Article 19, 20 and 21 of the UDHR and therefore falls within Category II of the categories of arbitrary detention defined by the Working Group;
- (b) render an opinion that the detention of the Petitioner is arbitrary due to failure by the Government of Egypt to ensure the Petitioner’s rights to a fair trial guaranteed by Article 14 of the ICCPR and by Article 11 of the UDHR and therefore falls within Category III of the categories of arbitrary detention defined by the Working Group;
- (c) recommend that the Government of Egypt release the Petitioner and withdraw the charges against him, or ensure the charges are determined by an independent and impartial tribunal in proceedings conducted in strict compliance with the provisions of the ICCPR, and provide just compensation to him for the arbitrary detention that he suffered; and
- (d) request that the Government of Egypt take such other steps as are necessary to prevent further violations of the Petitioner’s freedom to participate in public life and his rights to freedom of expression, association and assembly as recognised and

guaranteed by the ICCPR and the UDHR.

**VII. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE):**

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