

**PETITION TO:**

**UNITED NATIONS**

**WORKING GROUP ON ARBITRARY DETENTION**

Chair-Rapporteur: Mr. Sètonджи Roland Jean-Baptiste Adjovi (Benin)  
Ms. Leigh Toomey (Australia)  
Mr. José Antonio Guevara Bermúdez (Mexico)  
Mr. Vladimir Tochilovsky (Ukraine)  
Mr. Seong-Phil Hong (Republic of Korea)

**HUMAN RIGHTS COUNCIL  
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of  
**Malek Mostafa Adly Elgendy,**  
Citizen of the Arab Republic of Egypt

v.

Government of the Arab Republic of Egypt

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**URGENT ACTION REQUESTED**

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16,  
24/7<sup>1</sup>

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July 14, 2016

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<sup>1</sup> Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to *UN General Assembly Resolution 60/251*, GA Res. 60/251, Mar. 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, 20/16, and 24/7.

## **Basis for Urgent Action Request**

As set forth in the attached Petition, the Government of the Arab Republic of Egypt is arbitrarily depriving Malek Mostafa Adly Elgendy (referred to as Mr. Adly) of his liberty in reprisal to his work as a human rights defender in the country. Mr. Adly continues to be routinely subject to cruel, inhuman, and degrading treatment and torture by the authorities, and to date, he continues to be held in solitary confinement. The continuation of such deprivations of his rights constitutes serious threats to Mr. Adly's health and physical integrity, his psychological integrity, and his life. Accordingly, we request that the Working Group transmit an urgent appeal to the Government of Egypt by the most rapid means possible on behalf of Mr. Adly.

Mr. Adly is a prominent human rights defender and lawyer. He is a member of the Front for the Defense of Egyptian Protesters (FDEP) and the head of the legal unit for the Egyptian Center for Economic and Social Rights (ECESR). Through his work, Mr. Adly has represented countless peaceful protesters, civil society organizations, and other independent voices.

On April 23, 2016, an arrest warrant was issued for Mr. Adly on the pretense of his political activism on the issue of the Egyptian government's decision to transfer the islands of Tiran and Sanafir to the government of Saudi Arabia. On May 5, Mr. Adly was arrested in Maadi by plainclothes police officers, and taken to the Maadi Police Station.

Although the Maadi Police Station initially denied Mr. Adly's presence at the station to his legal counsel, Mr. Adly's lawyers were eventually informed that he was being taken to the Shubra El-Kheima Prosecution for interrogation in the middle of the night. Eventually, the authorities levied a litany of bogus charges against Mr. Adly, including:

- Joining or participating in an association, entity, organization, group, or gang that intends to impede the provisions of the Constitution or laws, to prevent a state institution or a public authority from performing its function, to encroach upon the personal freedoms of citizens or other general freedoms or rights guaranteed by the Constitution and the law, or to impair national unity or social peace (Article 86 (bis)(2) of the Penal Code);
- Promoting, orally or in writing or via any other method, for an association, entity, organization, group, or gang that intends to impede the provisions of the Constitution or laws, to prevent a state institution or a public authority from performing its function, to encroach upon the personal freedoms of citizens or other general freedoms or rights guaranteed by the Constitution and the law, or to impair national unity or social peace (Article 86 (bis)(3) of the Penal Code);
- Attempting to forcibly overthrow or change the state Constitution or its republican system or the form of government (Article 87(1) of the Penal Code);
- Intentionally broadcasting news, data, or false rumors to disturb public security, to sow panic among people, or to harm the public interest (Article 102 bis of the Penal Code); and
- Using force, violence, or threats with a civil servant or with a person charged with performing a public service to unduly force him to perform or refrain from performing his official duties (Article 137 (bis)(a)(1) of the Penal Code).

Today, Mr. Adly remains in pretrial detention at Tora Prison. He has faced near-automatic detention renewals and his requests for bail and/or conditional release have not been granted proper due process consideration. Under Egyptian and international law, pretrial detention is an exceptional legal measure. The case of Mr. Adly highlights how the practice continues to be abused by Egyptian authorities as a punitive measure to intimidate influential, independent voices from exercising their fundamental rights and, in this case particularly, to deal a severe blow to the access of other human rights defenders to the legal counsel that Mr. Adly has provided for years.

Further, Mr. Adly has been persistently subject to torture and cruel, inhuman degrading in detention. While he was being held at the Maadi Police Station and prior to his interrogation, Mr. Adly was beaten by security personnel, stripped of his shirt, insulted, blind-folded, and pushed around while a gun was being pointed to his chest. He was also forced to walk in a straight line while blind-folded, photographs were taken of him without his consent, and he was subjected to an unauthorized medical exam that falsely concluded him to be intoxicated, despite the fact that he gave clear and coherent answers to all interrogation questions shortly thereafter.<sup>2</sup>

Ever since his initial questioning by authorities on May 6, Mr. Adly has been kept in solitary confinement in a 2x3 meter cell at the Tora Prison. He has been denied any recreation time, and has only been allowed to leave his prison cell for sporadic visits, court hearings, and several severe medical emergencies. At one point during his detention, 17 officers entered his cell, forced him to take an unknown medication, and forcibly gave him an injection. Shortly thereafter, he lost consciousness for a temporary period of time. Mr. Adly has also been denied access to his proper blood pressure medication. His health has deteriorated so significantly that he has had to be taken to the prison hospital at least four times due to high blood pressure and difficulty breathing. He does not have a mattress in his cell, seriously impeding his sleep. He is not allowed access to a radio or any newspapers and books. He is also prohibited from writing letters and making phone calls. Mr. Adly has not been allowed to enter the prison mosque in order to pray and he has been prevented from attending the religious preaching lessons that occur regularly in the prison. Citing the torture, mistreatment, and deplorable detention conditions that he is being subjected to, Mr. Adly has expressed a serious fear of suicidal thoughts.

Reports of general prison conditions at Tora Prison further affirm that the health of Mr. Adly will continue to remain at significant risk of deterioration. Prison cells are often dirty, filled with cockroaches and ants, and subject to extreme temperatures due to poor ventilation.<sup>3</sup> Detainees endure beatings, insults, and torture.<sup>4</sup> At times, detainees are arbitrarily prevented from meeting with family members and face the confiscation of various personal belongings.<sup>5</sup>

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<sup>2</sup> Egyptian Center for Economic and Social Rights, *ECESR Publishes Complaints Filed by HRD Malek Adly's Defense Team to Different Authorities Reporting Violations During Malek's Arrest and Investigation*, EGYPTIAN CENTER FOR ECONOMIC AND SOCIAL RIGHTS, (May 8, 2016), <http://ecesar.org/en/2016/05/08/ecesar-files-complaints-to-different-authorities-reporting-violations-against-human-rights-lawyer-and-defender-malek-adly/>.

<sup>3</sup> Maram Mazen, *Egypt rights lawyers say new prison law legalizes abuses*, ASSOCIATED PRESS, (Oct. 26, 2015), <http://www.sandiegouniontribune.com/news/2015/oct/26/egypt-rights-lawyers-say-new-prison-law-legalizes/>.

<sup>4</sup> Arwa Ibrahim, *Prisoners allege systematic torture of opposition*, MIDDLE EAST EYE, (Apr. 25, 2014), <http://www.middleeasteye.net/news/prisoners-allege-systematic-torture-opposition-942566493>.

<sup>5</sup> Leila Fadel, *In A Viral Video, A Misleading Taste Of What It's Like In Egyptian Prison*, NPR, (Sept. 20, 2015), <http://www.npr.org/2015/09/20/441912079/egyptians-say-report-paints-false-picture-of-prison-conditions>.

The provision of medical care is increasingly inadequate.<sup>6</sup> In 2015, the El-Nadeem Center for Rehabilitation of Victims of Violence documented 137 deaths of persons in detention, at least 81 of which occurred due to inadequate medical care.<sup>7</sup> Very little oversight for Egypt's prisons is available. Under the recently-amended Prison Law, the National Council for Human Rights is only allowed to conduct prison visits after receiving prior approval from the Prosecutor-General.<sup>8</sup> When government officials have previously visited prisons, they have reportedly refused to listen to and record prisoner complaints.<sup>9</sup> Finally, compensation for detainees who have been abused or mistreated is seldom issued. Investigations by authorities into deaths of detainees in custody or reports of inadequate medical care and abuse are even rarer.<sup>10</sup>

Mr. Adly has been arbitrarily detained and continues to be subject to torture, cruel, inhuman, and degrading treatment, and grave prison conditions which place his health and life at significant risk. Accordingly, we request that the Working Group consider this Petition pursuant to its Urgent Action Procedure. Additionally, it is requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reiterated by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4, 15/18, 20/16, and 24/7.

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<sup>6</sup> Al-Jazeera, *Life in an Egyptian prison*, AL-JAZEERA, (Aug. 14, 2015), <http://www.aljazeera.com/news/2015/08/life-egyptian-prison-150812112621901.html>.

<sup>7</sup> El-Nadeem, *2015 in Numbers*, EL-NADEEM, <https://drive.google.com/file/d/0B2-QqOchi4gFcnhWTKZGZTlzV0U/view?pref=2&pli=1>.

<sup>8</sup> Maram Mazen, *supra* note 3.

<sup>9</sup> Human Rights Watch, *Egypt: Rash of Deaths in Custody*, HUMAN RIGHTS WATCH, (Jan. 21, 2015), <https://www.hrw.org/news/2015/01/21/egypt-rash-deaths-custody>.

<sup>10</sup> *Id.*

## Questionnaire To Be Completed<sup>11</sup>

### I. IDENTITY

1. **Family name:** Elgendy
2. **First name:** Malek Mostafa Adly
3. **Sex:** Male
4. **Birth date or age (at the time of detention):** 35 years old
5. **Nationality/Nationalities:** Egypt
6. (a) **Identity document (if any):** National Identification Card  
(b) **Issued by:** Egypt  
(c) **On (date):**  
(d) **No.:**
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):** Mr. Adly is a human rights lawyer, a member of the Front for the Defense of Egyptian Protesters (FDEP), and head of the legal unit for the Egyptian Center for Economic and Social Rights (ECESR). Egyptian authorities state that he was arrested in light of his political protest and online activism on the issue of the Egyptian government's transfer of the islands of Tiran and Sanafir to the government of Saudi Arabia.
8. **Address of usual residence:** Cairo, Egypt

### II. ARREST

1. **Date of arrest:** May 5, 2016
2. **Place of arrest (as detailed as possible):** Maadi, Cairo, Egypt
3. **Forces who carried out the arrest or are believed to have carried it out:** Plainclothes police officers
4. **Did they show a warrant or other decision by a public authority?** It is unclear whether the warrant was physically displayed; however, it was made known that Mr. Adly's arrest was carried out in implementation of the warrant previously issued on April 23, 2016.
5. **Authority who issued the warrant or decision:** Public Prosecution

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<sup>11</sup> *Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Detention*, UN WORKING GROUP ON ARBITRARY DETENTION, <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

6. **Reasons for the arrest imputed by the authorities:** Egyptian authorities issued the arrest warrant against Mr. Adly in light of his political protest and online activism after the Egyptian government's decision to transfer the islands of Tiran and Sanafir to the government of Saudi Arabia.
7. **Legal basis for the arrest including relevant legislation applied (if known):** Mr. Adly was arrested in implementation of the aforementioned arrest warrant.

### III. DETENTION

1. **Date of detention:** May 5, 2016
2. **Duration of detention (if not known, probable duration):** Mr. Adly remains in pretrial detention to date.
3. **Forces holding the detainee under custody:** Egyptian Prison Authority
4. **Places of detention (indicate any transfer and present place of detention):** On May 5, 2016 and subsequent to his 7:30 pm arrest by plainclothes police officers, Mr. Adly was taken to the Maadi Police Station. At 11:00pm on the same day, he was transferred to the Shubra El-Kheima Prosecution for interrogation. Questioning began at 2:00am on May 6, 2016 and continued for four hours. Thereafter, Mr. Adly was ordered into pretrial detention and transferred to the Tora Prison where he remains today.
5. **Authorities that ordered the detention:** Public Prosecution
6. **Reasons for the detention imputed by the authorities:** Mr. Adly is being kept in pretrial detention while an investigation into the charges he faces ensues. The charges levelled against Mr. Adly are: "joining or participating in an association, entity, organization, group, or gang that intends to impede the provisions of the Constitution or laws, to prevent a state institution or a public authority from performing its function, to encroach upon the personal freedoms of citizens or other general freedoms or rights guaranteed by the Constitution and the law, or to impair national unity or social peace"; "promoting, orally or in writing or via any other method, for an association, entity, organization, group, or gang that intends to impede the provisions of the Constitution or laws, to prevent a state institution or a public authority from performing its function, to encroach upon the personal freedoms of citizens or other general freedoms or rights guaranteed by the Constitution and the law, or to impair national unity or social peace"; "attempting to forcibly overthrow or change the state Constitution or its republican system or the form of government"; "intentionally broadcasting news, data, or false rumors to disturb public security, to sow panic among people, or to harm the public interest"; and "using force, violence, or threats with a civil servant or with a person charged with performing a public service to unduly force him to perform or refrain from performing his official duties."

7. **Legal basis for the detention including relevant legislation applied (if known):** Mr. Adly is being kept in pretrial detention as enabled by Articles 134, 142, and 143 of the Criminal Procedure Code (Law No. 150 of 1950). The charges he faces have been brought against him as per Article 86(bis)(2-3), Article 87(1), Article 102(bis), and Article 137(bis)(A)(1) of the Penal Code (Law No. 58 of 1937).

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

a. Statement of Facts

i. Political and Legal Context in Egypt

In the months leading up to the arrest of Malek Mostafa Adly Elgendy (referred to as Mr. Adly), Egyptian authorities have taken a number of political and legal measures to severely constrain the freedoms and liberties of Egyptian citizens and civil society, furthered under the pretense of maintaining security and stability.

Particularly relevant to Mr. Adly's arrest have been the measures taken by Egyptian authorities to severely crackdown on all forms of critique and peaceful dissent in response the Egyptian government's decision to transfer the islands of Tiran and Sanafir to the government of Saudi Arabia. On April 15, 2016, thousands of Egyptians took to the streets to express their rejection for the agreement.<sup>12</sup> After security forces arrested dozens and fired tear gas to disperse the peaceful demonstrations, organizers set April 25, 2016 as the date for a second wave of protests. In the days leading up to the scheduled protests, security forces preemptively arrested at least 90 people in eight different governorates, many of them from local coffee shops.<sup>13</sup> Additionally, the prosecution issued a lengthy list of arrest warrants for human rights defenders and activists, among them Mr. Adly.<sup>14</sup>

On April 25, a heavy security and military presence prevented many of the scheduled peaceful demonstrations from taking place. Meanwhile, pro-government rallies were allowed to occur without interference. The few peaceful demonstrations that went forward and were critical of the government were violently dispersed with teargas. Other large gatherings of activists were raided. Throughout the day, hundreds were arrested and at least 33 foreign and domestic journalists were temporarily detained while covering the demonstrations.<sup>15</sup>

In the time since the April 15 and April 25 protests, hundreds of peaceful demonstrators have been arrested and sentenced, the Press Syndicate has been raided by police for the first time in the country's modern history, and the crackdown against civil society and independent voices has severely escalated.<sup>16</sup> In what is considered to be a second phase of the "foreign funding" case—the first iteration of which occurred between 2012 and 2013 and resulted in the sentencing

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<sup>12</sup> Hamza Hendawi and Maggie Michael, *Thousands of Egyptians are defying draconian laws and staging public protests against President Abdel-Fattah el-Sissi's decision to hand two Red Sea islands to Saudi Arabia*, U.S. NEWS, (Apr. 15, 2016), <http://www.usnews.com/news/world/articles/2016-04-15/egypt-police-fire-tear-gas-break-up-anti-government-rallies>.

<sup>13</sup> EIPR, *Human rights groups: release those arrested in connection with planned protests; the state must protect the constitutional right of peaceful protest*, EGYPTIAN INITIATIVE FOR PERSONAL RIGHTS, (Apr. 25, 2016), <http://eipr.org/en/pressrelease/2016/04/25/2587>.

<sup>14</sup> Frontline Defenders, *Case History: Malek Adly*, FRONTLINE DEFENDERS, (May 19, 2016), <https://www.frontlinedefenders.org/en/case/case-history-malek-adly>.

<sup>15</sup> Committee to Protect Journalists, *Scores of journalists harassed, detained amid Egypt protests*, COMMITTEE TO PROTECT JOURNALISTS, (Apr. 25, 2016), <https://cpj.org/2016/04/scores-of-journalists-harassed-detained-amid-egypt.php>.

<sup>16</sup> Tahrir Institute for Middle East Policy, *TIMEP Condemns Storming of the Egyptian Press Syndicate and Arrest of Two Journalists*, TAHIR INSTITUTE FOR MIDDLE EAST POLICY, (May 2, 2016), <http://timep.org/press-releases/timep-condemns-storming-of-the-egyptian-press-syndicate/>.



of 43 NGO workers—Egyptian authorities have begun to investigate dozens of domestic Egyptian NGOs. Members of the Cairo Institute for Human Rights Studies (CIHRS) and Nazra for Feminist Studies have been called in for questioning. Prominent human rights defenders Hossam Bahgat and Gamal Eid are undergoing court proceedings to determine if their assets will be frozen. NGO and torture rehabilitation center El-Nadeem has been threatened with closure.<sup>17</sup>

The Egyptian government has taken extensive measures to silence other independent voices, including even non-political persons like teenager Mahmoud Mohamed Ahmed Hussein—kept in punitive pretrial detention for over two years for wearing an anti-torture t-shirt<sup>18</sup>—and novelist Ahmed Naji—sentenced to two years for harming public morality for explicit content in his novel.<sup>19</sup> The detention of persons like Hussein and Naji, alongside human rights lawyers like Malek Adly, depicts the extent that the Egyptian authorities have gone to silence youth voices and persons of possible societal influence even outside of the political arena.

The legal arsenal available to Egyptian authorities to crackdown on such voices has only expanded. The Protest Law, passed in November 2013, has effectively banned any public gatherings of more than 10 people without government approval, set forth a requirement that protest organizers give notification to authorities three days prior, granted authorities broad discretion to prohibit demonstrations when they are deemed a threat to public order, and established punishment for unauthorized activity.<sup>20</sup> The Terrorist Entities Law<sup>21</sup> and the Terrorism Law were passed in December 2014 and August 2015, setting forth vague definitions for “terrorism” which have been increasingly used to try political dissidents as terrorists and to implement exceptional measures including the extension of pretrial detention, the monitoring of private phone calls, and the designation of certain criminal courts to hear terrorism cases.<sup>22</sup> Other recent legislation includes measures enabling the removal and suspension of students and professors for “political activity” and military tribunals to prosecute civilians accused of committing crimes against public facilities.<sup>23</sup>

These recent laws add to a number of problematic provisions within the Egyptian Penal Code that violate international human rights law and which criminalize actions like “attempting

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<sup>17</sup> Robert F. Kennedy Human Rights, *Robert F. Kennedy Human Rights Condemns Egyptian Government's Crackdown on Civil Society*, ROBERT F. KENNEDY HUMAN RIGHTS, (Mar. 22, 2016), <http://rfkhumanrights.org/news/news/robert-f-kennedy-human-rights-condemns-egyptian-governments-crackdown-civil-society/>.

<sup>18</sup> Robert F. Kennedy Human Rights, *Robert F. Kennedy Human Rights Submits Case to U.N. Working Group Seeking Release of Egyptian Teen Protestor Mahmoud Mohamed Ahmed Hussein*, ROBERT F. KENNEDY HUMAN RIGHTS, (Nov. 13, 2015), <http://rfkhumanrights.org/news/news/robert-f-kennedy-human-rights-submits-case-un-working-group-seeking-release-egyptian-teen-protestor-mahmoud-mohamed-ahmed-hussein/?edit>.

<sup>19</sup> *Egypt: Ahmed Naji sentenced to two years in prison*, PEN INTERNATIONAL, (Feb. 29, 2016), <https://www.englishpen.org/campaigns/egypt-ahmed-naji-sentenced-to-two-years-in-prison/>.

<sup>20</sup> David Kirkpatrick, *New Law in Egypt Effectively Bans Street Protests*, NEW YORK TIMES, (Nov. 25, 2013), [http://www.nytimes.com/2013/11/26/world/middleeast/egypt-law-street-protests.html?\\_r=0](http://www.nytimes.com/2013/11/26/world/middleeast/egypt-law-street-protests.html?_r=0).

<sup>21</sup> Ahmed Fouad, *Egypt passes new law on 'terrorist' entities*, AL-MONITOR, (Dec. 10, 2014), <http://www.al-monitor.com/pulse/originals/2014/12/egypt-law-terrorist-entities-muslim-brotherhood.html#>.

<sup>22</sup> Human Rights Watch, *Egypt: Counterterrorism Law Erodes Basic Rights*, HUMAN RIGHTS WATCH, (Aug. 19, 2015), <https://www.hrw.org/news/2015/08/19/egypt-counterterrorism-law-erodes-basic-rights>.

<sup>23</sup> Mai El-Sadany, *Tracking Egypt's Extraparliamentary Laws*, TAHIR INSTITUTE FOR MIDDLE EAST POLICY, (Aug. 12, 2015), <http://timep.org/commentary/tracking-egypts-extraparliamentary-laws/>.

to overthrow the government,” “spreading false news” and “possessing publications,” historically used to constrain the speech and activities of human rights defenders.<sup>24</sup>

Reports of recent human rights violations in Egypt against human rights defenders have included “excessive use of force by security forces, deficiencies in due process, and the suppression of civil liberties.”<sup>25</sup> Other human rights abuses have included increasing reports of forced disappearances, arbitrary arrests, punitive pretrial detention, impunity for crimes committed by government officials and security forces, overly burdensome restrictions on press and academic freedom, and prosecutions and other judicial actions fueled by political motives.<sup>26</sup>

Reports of prison conditions throughout this time period have been extremely grave. Pretrial detainees are kept in the same conditions and often times, the same cells as convicted persons – including radical extremists and violent offenders. Prison cells are dirty and filled with cockroaches and other insects. Cells are largely overcrowded, and subject to extreme temperatures due to poor ventilation.<sup>27</sup> Detainees endure beatings, insults, and torture,<sup>28</sup> At times, detainees are arbitrarily prevented from meeting with family members and legal counsel and face the confiscation of various personal belongings<sup>29</sup>. The provision of medical care is increasingly inadequate.<sup>30</sup> In 2015, the El-Nadeem Center for Rehabilitation of Victims of Violence documented 137 deaths of persons in detention, at least 81 of which occurred due to inadequate medical care.<sup>31</sup> Very little oversight for Egypt’s prisons is available. Under the recently-amended Prison Law, the National Council for Human Rights is only allowed to conduct prison visits after receiving prior approval from the Prosecutor-General.<sup>32</sup> Further, when government officials have previously visited prisons, they have reportedly refused to listen to and record prisoner complaints.<sup>33</sup> Finally, compensation for detainees who have been abused or mistreated is seldom issued. Investigations by authorities into deaths of detainees in custody or reports of negligence and abuse are even rarer.<sup>34</sup>

## ii. Pretrial Detention in Egypt

Under the Egyptian Criminal Procedure Code, pretrial detention—detention that occurs before sentencing—is an exceptional legal measure that is set forth only in cases in which (1) the offense is *in flagrante delicto*, (2) there is fear that the accused may flee, (3) there is fear that the legal process may be impeded or harmed, (4) the case implicates security and public order, or (5) if the crime is a felony or misdemeanor punished with a prison sentence and the accused does not have a known residence in Egypt.<sup>35</sup>

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<sup>24</sup> Mai El-Sadany, *Legislating Terror in Egypt*, TAHIR INSTITUTE FOR MIDDLE EAST POLICY, <http://timep.org/esw/articles-analysis/legislating-terror-in-egypt/>.

<sup>25</sup> *Egypt 2015 Human Rights Report*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/documents/organization/253133.pdf>.

<sup>26</sup> *Id.*

<sup>27</sup> Maram Mazen, *supra* note 3.

<sup>28</sup> Arwa Ibrahim, *supra* note 4.

<sup>29</sup> Leila Fadel, *supra* note 5.

<sup>30</sup> Al-Jazeera, *supra* note 6.

<sup>31</sup> El-Nadeem, *supra* note 7.

<sup>32</sup> Maram Mazen, *supra* note 3.

<sup>33</sup> Human Rights Watch, *supra* note 9.

<sup>34</sup> *Id.*

<sup>35</sup> *Criminal Procedure Code*, Law No. 150 of 1950, Amended Law No. 83 of 2013, Art. 134, <http://helmylawyers.blogspot.com/2010/07/001.html>.

In cases that meet at least one of the five guidelines to qualify for pretrial detention, an arrested individual can initially be detained without charge for 15 days. This detention can then be extended for up to two additional 15-day periods, amounting to a total of 45 days.<sup>36</sup> If a judge determines that preliminary investigations are not yet complete at the 45-day mark, s/he may grant additional periods of detention renewal. The Prosecutor-General can review and/or receive complaints regarding the pretrial detention.<sup>37</sup> In total, the Egyptian Criminal Procedure Code stipulates that pretrial detention cannot be extended for more than six months for misdemeanors, 18 months for felonies, and two years for crimes carrying death or life imprisonment.<sup>38</sup> In cases in which the detainee has already been sentenced to death or life imprisonment and he or she is appealing the detention or the court has granted a retrial, the referring court and the Court of Cassation can extend pretrial detention in 45-day periods without a maximum time limit, effectively creating a set of circumstances in which there can be indefinite pretrial detention.<sup>39</sup> In practice, it has been reported that courts regularly renew pretrial detention orders at the prosecution's request and without considering the merits of the case; renewal hearings have been short and often last only a few minutes.<sup>40</sup>

Although the Egyptian Criminal Procedure Code sets forth a maximum of two years in pretrial detention for persons who have not been sentenced but face potential death or life imprisonment sentences, the Egyptian government consistently violates its own laws and continues to keep many pretrial detainees in detention even after the expiration of the two-year maximum. At least 1,464 detainees remain in pretrial detention beyond the maximum.<sup>41</sup>

Under the government of President Abdul Fattah El-Sisi, pretrial detention has been used as a punitive measure against political prisoners and prisoners of conscience.<sup>42</sup> Although the Egyptian government has not provided figures on the total number of pretrial detainees, human rights groups and the National Council for Human Rights (NCHR) report excessive use of pretrial detention and large backlogs in criminal courts which further contribute to "protracted periods of pretrial detention."<sup>43</sup> According to a May 31, 2015 report by the NCHR using numbers from the Ministry of Interior, at least 7,000 persons remained in pretrial detention on charges related to incidents occurring on or after June 2013.<sup>44</sup> With official numbers considered conservative by non-governmental rights groups and at least 1,464 detainees documented to be in pretrial detention for longer than two years,<sup>45</sup> the actual total number of pretrial detainees is likely to be significantly higher.

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<sup>36</sup> *Criminal Procedure Code*, *supra* note 35, Art. 142.

<sup>37</sup> *Criminal Procedure Code*, *supra* note 35, Art. 143.

<sup>38</sup> *Id.*

<sup>39</sup> *Criminal Procedure Code*, *supra* note 35, Arts. 142-143.

<sup>40</sup> Amnesty International, *Egypt: Generation Jail: Egypt's Youth Go From Protest to Prison*, AMNESTY INTERNATIONAL, (Jun. 29, 2015), <https://www.amnesty.org/en/documents/mde12/1853/2015/en/>.

<sup>41</sup> EIPR, *The New Emergency Law: Endless Pretrial Detention as Political Punishment At least 1,464 people in Four Governorates Held in Pretrial Detention Longer than the Two Year Legal Limit*, EGYPTIAN INITIATIVE FOR PERSONAL RIGHTS, (May 10, 2016), <http://eipr.org/en/pressrelease/2016/05/10/2600>.

<sup>42</sup> ANHRI, *Extended Pre-trial Detention.. Disguised Incarceration*, THE ARABIC NETWORK FOR HUMAN RIGHTS INFORMATION, (May 31, 2015), <http://anhri.net/?p=145083&lang=en>.

<sup>43</sup> *Egypt 2015 Human Rights Report*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/documents/organization/253133.pdf>.

<sup>44</sup> *Id.*

<sup>45</sup> EIPR, *supra* note 41.

### iii. The Detention of Malek Mostafa Adly Elgendy

Malek Mostafa Adly Elgendy (referred to as Mr. Adly) is a prominent human rights defender and lawyer, a member of the Front for the Defense of Egyptian Protesters (FDEP), and head of the legal unit for the Egyptian Center for Economic and Social Rights (ECESR). FDEP is a group composed of 34 human rights non-governmental organizations and several lawyers, which documents violations perpetrated by police against peaceful protesters.<sup>46</sup> ECESR is a prominent non-governmental organization in Egypt that protects economic and social rights through litigation, research, data, and campaigns.<sup>47</sup> Through his work, Mr. Adly has represented countless peaceful protesters, civil society organizations, and other independent voices.<sup>48</sup>

Prior to his arrest, Mr. Adly expressed his opposition to the decision of the Egyptian government to transfer the islands of Tiran and Sanafir to the government of Saudi Arabia via social media posts and via his participation in peaceful public assemblies and demonstrations. He also joined at least two other lawyers in a lawsuit to the State Council regarding the constitutionality of the island transfer decision.<sup>49</sup>

On April 23, 2016, an arrest warrant was issued for human rights lawyer Malek Adly on the pretense of his activities regarding Tiran and Sanafir.<sup>50</sup> On May 5, 2016 at 7:30 pm, Mr. Adly was arrested in Maadi, Cairo by plainclothes police officers in implementation of the warrant. He was immediately taken to the Maadi Police Station. At the Maadi Police Station, Mr. Adly was beaten by security personnel, stripped of his shirt, insulted, blind-folded, and pushed around while a gun was being pointed to his chest. He was also forced to walk in a straight line while blind-folded; photographs were taken of Mr. Adly without his permission. Mr. Adly was forced to undergo a medical exam that was not ordered by the prosecution and which falsely concluded that Mr. Adly looked to be under the influence of either drugs or alcohol and that there was an alcoholic smell emanating from his mouth, despite the fact that he clearly and coherently answered all questions during his interrogation shortly thereafter. His lawyers did not receive a copy of the medical report from this alleged examination until after it had been leaked on the Internet in an attempt to defame Mr. Adly's reputation.<sup>51</sup>

Although the Maadi Police Station initially denied Mr. Adly's presence at the station to his counsel, Mr. Adly's lawyers were eventually informed that Mr. Adly was being transferred to the Shubra El-Kheima Prosecution at 11:00 pm. Thereafter, questioning began with Mr. Adly at 2:00 am on May 6 and continued for four hours. He faces charges of:

- Joining or participating in an association, entity, organization, group, or gang that intends to impede the provisions of the Constitution or laws, to prevent a state institution or a public authority from performing its function, to encroach upon the personal freedoms of

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<sup>46</sup> Frontline Defenders, *supra* note 14.

<sup>47</sup> Egyptian Center for Economic and Social Rights, *About Us*, EGYPTIAN CENTER FOR ECONOMIC AND SOCIAL RIGHTS, <http://ecesr.org/en/771365-2/about-us/>.

<sup>48</sup> Sawt El-Zanazeen, *Malek Adly*, SAWT EL-ZANAZEEN, [http://alznazeen.net/profiles/%D9%85%D8%A7%D9%84%D9%83-%D8%B9%D8%AF%D9%84%D9%8A/#pf\\_tab3](http://alznazeen.net/profiles/%D9%85%D8%A7%D9%84%D9%83-%D8%B9%D8%AF%D9%84%D9%8A/#pf_tab3).

<sup>49</sup> Daily News Egypt, *Trial to contest Sanafir, Tiran's sovereignty transfer to begin 17 May*, DAILY NEWS EGYPT, (Apr. 11, 2016), <http://www.dailynewsegypt.com/2016/04/11/trial-contest-sanafir-tirans-sovereignty-transfer-begin-17-may/>.

<sup>50</sup> Frontline Defenders, *supra* note 14.

<sup>51</sup> Egyptian Center for Economic and Social Rights, *supra* note 2.

citizens or other general freedoms or rights guaranteed by the Constitution and the law, or to impair national unity or social peace (Article 86 (bis)(2) of the Penal Code);

- Promoting, orally or in writing or via any other method, for an association, entity, organization, group, or gang that intends to impede the provisions of the Constitution or laws, to prevent a state institution or a public authority from performing its function, to encroach upon the personal freedoms of citizens or other general freedoms or rights guaranteed by the Constitution and the law, or to impair national unity or social peace (Article 86 (bis)(3) of the Penal Code);
- Attempting to forcibly overthrow or change the state Constitution or its republican system or the form of government (Article 87(1) of the Penal Code);
- Intentionally broadcasting news, data, or false rumors to disturb public security, to sow panic among people, or to harm the public interest (Article 102 bis of the Penal Code); and
- Using force, violence, or threats with a civil servant or with a person charged with performing a public service to unduly force him to perform or refrain from performing his official duties (Article 137 (bis)(a)(1) of the Penal Code).

On May 6 and upon completion of questioning, Mr. Adly was ordered detained for 15 days and he was transferred to Tora Prison. On May 6, Mr. Adly's lawyers were also shocked to learn via the Internet that the prison had ordered that a sample of Mr. Adly's blood and urine be taken to substantiate the earlier allegations of intoxication.<sup>52</sup>

When his family members and lawyer first attempted to visit him on May 16, they were turned away and told that Mr. Adly was not entitled to any visitors or the receipt of food or clothing due to orders from "high, high up."<sup>53</sup> On May 18, Mr. Adly's detention was extended another 15 days. During this hearing, the defense lawyers were not allowed to complete their oral pleadings, Mr. Adly was not allowed to make a full statement, and Mr. Adly was removed in the middle of the proceedings, leading the lawyers to withdraw in protest at how the hearing was being conducted.<sup>54</sup> Mr. Adly's lawyer and wife were allowed to visit him for the first time on May 19. On May 25, an appeal that had been filed to challenge Mr. Adly's detention was denied.<sup>55</sup> Mr. Adly's detention has been extended for 15-day periods again on June 1, June 14, and July 3. On July 4, without the consent of his lawyers, the prosecution forced Mr. Adly to sign off on a request to appeal his July 3 detention renewal. Mr. Adly was hastily brought before the court in the absence of his attorneys on the same day, and his appeal was summarily rejected.<sup>56</sup> Despite continued requests from Mr. Adly's counsel, the Public Prosecution has consistently refused to give the lawyers any official charge sheets or documentation in the case. The Public Prosecution has also failed to provide any evidence to back up the charges brought against Mr. Adly. Mr. Adly's next detention renewal hearing is scheduled for July 18, 2016.

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<sup>52</sup> *Id.*

<sup>53</sup> Mai El-Sadany, *Tweet*, TWITTER, (May 16, 2016), <https://twitter.com/maitelsadany/status/732288900161474561>.

<sup>54</sup> Toqa Ezzidin, *Detention renewed for rights lawyers Adly and Al-Banna, defense withdraw from session*, DAILY NEWS EGYPT, (May 18, 2016), <http://www.dailynewsegypt.com/2016/05/18/detention-renewed-for-rights-lawyers-adly-and-al-banna-defense-withdraw-from-session/>.

<sup>55</sup> Daily News Egypt, *Appeal to release Adly, Badr, Al-Saqa, and others rejected*, DAILY NEWS EGYPT, (May 25, 2016), <http://www.dailynewsegypt.com/2016/05/25/appeal-release-adly-badr-al-saqa-others-rejected/>.

<sup>56</sup> Asmaa Aly, *Facebook Post*, FACEBOOK, (Jul. 4, 2016), <https://www.facebook.com/yasmin.hosameidin.7/posts/10153628068792124>.



Since his transfer to the Tora Prison on May 6, 2016, Mr. Adly has been kept in solitary confinement in a 2x3 meter cell. He has been allowed absolutely no recreation time. He has been deprived of sunlight for tens of days and has only been allowed to leave his prison cell for meetings with family members and counsel, court hearings, and multiple emergency hospital visits.<sup>57</sup> The lack of sunlight has been especially problematic for Mr. Adly's health in light of the fact that he already suffers from hypertension and dorsalgia. During one visit from his wife, their conversation was so heavily monitored by prison officials that at one point, the prison official who was documenting the conversation asked them to raise their voices so that he could document every word.<sup>58</sup>

At one point during Mr. Adly's detention when he was extremely ill, 17 officers entered his cell, forced him to take an unknown medication, and forcibly injected an unknown substance into his body. Shortly thereafter, he lost consciousness for a period of time.

Mr. Adly has been denied access to his proper blood pressure medication, and his health has deteriorated so significantly that he has been taken to the prison hospital at least four times in emergency visits for high blood pressure and difficulty breathing.<sup>59</sup> He does not have a mattress in his cell, severely impeding his sleep. Although his family has offered to cover costs to properly furnish his cell, their offers have been denied by prison authorities. Mr. Adly is not allowed access to a radio or any newspapers and books, despite the fact that his family has offered to bring him such items and he has offered to pay for them at his own expense. Mr. Adly is also prohibited from making phone calls and writing letters.<sup>60</sup> Mr. Adly has not been allowed to enter the prison mosque in order to pray and he has been prevented from attending the religious preaching lessons that occur regularly in the prison. In light of the immense psychological, mental, and physical pain and suffering that he continues to experience, Mr. Adly has expressed a serious fear of suicidal thoughts.

Speaking about his egregious prison conditions, Mr. Adly addressed the court on June 14, 2016, stating: "I've been denied to see sunlight for the past 40 days, except while I'm being transferred to court to attend my hearing sessions. My physical condition is terrible due to sleeping on the floor. I only get to sleep for only three hours full of the worst nightmares. Knowing that if anything bad happens to me, no one will be able to save me, and as a result, I can't get to sleep. I asked the prison administration to remove all the medications I have in my cell, as I'm afraid to commit suicide...."<sup>61</sup>

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<sup>57</sup> Asmaa Aly, *Facebook Post*, FACEBOOK (June 5, 2016), <https://www.facebook.com/photo.php?fbid=10154078051060907&set=a.10151035952660907.475125.540795906&type=3&theater>.

<sup>58</sup> Radwa Medhat, *Tweet*, TWITTER, (May 22, 2016), <https://twitter.com/radwamedhat80/status/734349776951627776>.

<sup>59</sup> Amnesty International, *Urgent Action: Malek Adly's Detention Renewed for 15 Days*, AMNESTY INTERNATIONAL, (Jun. 3, 2016), [https://www.amnestyusa.org/sites/default/files/uaa09816\\_1.pdf](https://www.amnestyusa.org/sites/default/files/uaa09816_1.pdf).

<sup>60</sup> Egyptian Center for Economic and Social Rights, *Al-Markaz Al-Masry Yutin Ala Al-Igraat Al-Taasufia Lihabs Malek Adly*, EGYPTIAN CENTER FOR ECONOMIC AND SOCIAL RIGHTS, (Jun. 30, 2016), <http://ecesr.org/2016/06/30/%D8%B7%D8%B9%D9%86-%D8%A7%D9%84%D8%A7%D8%AF%D8%A7%D8%B1%D9%89-%D9%85%D8%A7%D9%84%D9%83-%D8%B9%D8%AF%D9%84%D9%89/>.

<sup>61</sup> Egyptian Center for Economic and Social Rights, *Malek Adly from Behind Bars: 'I haven't seen sunlight in 40 days'*, EGYPTIAN CENTER FOR ECONOMIC AND SOCIAL RIGHTS, (Jun. 15, 2016), <http://ecesr.org/en/2016/06/15/malek-adly-from-behind-bars-i-havent-seen-sunlight-in-40-days/>.

Mr. Adly’s arrest and torture by Egyptian authorities is a direct reprisal to his work as a prominent human rights defender and lawyer. While expressing concern about Mr. Adly’s case, the International Commission of Jurists noted that, “[t]he regime’s crackdown on fundamental rights and freedoms has been worryingly extended to the very lawyers whose role is to challenge and protect against such crackdown.”<sup>62</sup> In a joint statement, 10 Egyptian non-governmental organizations also stressed that, “Adly is being punished for his tireless defense of Egyptians’ fundamental human rights and his active role in exposing human rights crimes in the media.”<sup>63</sup>

## b. Legal Analysis

### i. Category I: No Basis for Detention

The detention of Mr. Adly is arbitrary under Category I.

#### 1. The Continued Detention of Mr. Adly Violates Domestic Regulations on Pretrial Detention

A detention is arbitrary under Category I when it is “clearly impossible to invoke any legal basis justifying the deprivation of liberty.”<sup>64</sup>

There is currently no legal basis in Egyptian law for Mr. Adly’s continued pretrial detention. Under the Egyptian Criminal Procedure Code, pretrial detention—detention prior to sentencing—is an exceptional legal measure available only in cases in which (1) the offense is *in flagrante delicto*, (2) there is fear that the accused may flee, (3) there is fear that the legal process may be impeded or harmed, (4) the case implicates security and public order, or (5) if the crime is a felony or misdemeanor punished with a prison sentence and the accused does not have a known residence in Egypt.<sup>65</sup>

In cases that meet at least one of the five guidelines to qualify for pretrial detention, Egyptian law permits an arrested individual to be initially be detained without charge for 15 days. Egyptian law then allows a detention to be potentially extended for up to two additional 15-day periods, amounting to a total of 45 days.<sup>66</sup> If a judge determines that preliminary investigations are not yet complete at the 45-day mark, Egyptian law gives the judge the authority to grant additional periods of detention renewal. The Prosecutor-General can review and/or receive complaints regarding the pretrial detention.<sup>67</sup> In total, the Egyptian Criminal Procedure Code stipulates that pretrial detention cannot be extended for more than six months for

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<sup>62</sup> International Commission of Jurists, *Egypt: human rights lawyer Malek Adly must be released*, INTERNATIONAL COMMISSION OF JURISTS, (May, 10, 2016), <http://www.icj.org/egypt-human-rights-lawyer-malek-adly-must-be-released/>.

<sup>63</sup> Cairo Institute for Human Rights Studies, *Malek Adly’s life in danger: Rights organization urge the president to end retaliatory measures against victims’ lawyer and release him, and call on OHCHR to intervene to save Adly’s life*, CAIRO INSTITUTE FOR HUMAN RIGHTS STUDIES, (May 19, 2016), <http://www.cihrs.org/?p=18618&lang=en>.

<sup>64</sup> *Report of the Working Group on Arbitrary Detention*, A/HRC/30/69, Aug. 4, 2015, ¶8(a) [hereinafter *Revised Methods of Work*].

<sup>65</sup> *Criminal Procedure Code*, *supra* note 35, Art. 134.

<sup>66</sup> *Criminal Procedure Code*, *supra* note 35, Art. 142.

<sup>67</sup> *Criminal Procedure Code*, *supra* note 35, Art. 143.

misdemeanors, 18 months for felonies, and two years for crimes carrying death or life imprisonment.<sup>68</sup>

The facts involving Mr. Adly do not satisfy any of the five categories above. First, Mr. Adly was arrested while walking in Maadi, Cairo and thus, not in the act of committing any crime, or *in flagrante delicto*. Second, there is no fear that Mr. Adly may flee. Mr. Adly has no other citizenship, has known and clear ties to Egypt through his work and political activism, has numerous family members and friends in Egypt, and has repeatedly and publicly expressed his deep commitment to his human rights work in Egypt. Third, there is no fear that the legal process may be harmed if Mr. Adly were not in detention. As a lawyer, Mr. Adly is well-aware of all legal procedures. He continues to engage with Egyptian authorities in a fully-cooperative manner. Mr. Adly has demonstrated no intent to avoid arrest or trial. He and his counsel have participated fully in the process. Fourth, although an argument can be made that the alleged charges against Mr. Adly possibly implicate security and public order, authorities have unequivocally failed to provide a single piece of evidence or documentation to back up the egregious charges against Mr. Adly. In fact, these bogus charges have come in response to Mr. Adly exercising his fundamental rights to freedom of expression and peaceful assembly as well as other protected activity. Any claim that Mr. Adly's legitimate work as a human rights defender could implicate "security and public order" violates Egypt's constitution and international law. Fifth, Mr. Adly has a known address in Egypt.

## 2. The Practice of Pretrial Detention in Egypt Violates Domestic and International Human Rights Obligations

The provisions of Egypt's Criminal Procedure Code on pretrial detention used to uphold the continued detention of Mr. Adly violate human rights protections enshrined in both domestic and international law and cannot serve as a basis by which Egypt authorities can continue to keep the defendants in detention.

Under Article 54 of the Egyptian Constitution<sup>69</sup>, Article 6 of the African Charter on Human and Peoples' Rights<sup>70</sup>, and Articles 9, 10, and 11 of the ICCPR<sup>71</sup>, Egypt has a duty to safeguard the personal freedoms, liberties, and due process rights of its citizens, while protecting them from arbitrary detention. Egypt must further ensure that its pretrial detention laws and practices do not violate Article 9(3) of the ICCPR which states that authorities must guarantee that "anyone arrested or detained on a criminal charge... be brought promptly before a judge or other officer authorized by law to exercise judicial power" and that detainees be entitled to "trial within a reasonable time or... release."<sup>72</sup> In considering what is reasonable, the judicial officer must ask whether the justification put forward for detaining the accused can justify the time the accused has spent in detention prior to the adjudication. The diligence of the prosecuting or investigating authority in bringing the case to trial, the complexity of the case, the conduct of the

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<sup>68</sup> *Id.*

<sup>69</sup> *Constitution of the Arab Republic of Egypt*, (2014), Art. 54, <http://www.sis.gov.eg/Newvr/Dustor-en001.pdf>.

<sup>70</sup> *African Charter on Human and Peoples' Rights ("Banjul Charter")*, ORGANIZATION OF AFRICAN UNITY, Jun. 27, 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Art. 6.

<sup>71</sup> *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, Art. 9-11 [hereinafter ICCPR].

<sup>72</sup> *ICCPR*, *supra* note 71, Art 9.



accused, and the proportionality of the detention period to the penalty that may be imposed for the offense should all be considered.<sup>73</sup>

General Comment No. 8 (1982)<sup>74</sup> of the United Nations Human Rights Committee explains the notion of “promptly” by referring to a period of a few days, implying that a detainee must be informed of the charges against him within a period as short as possible.<sup>75</sup> Further, the General Comment states that pretrial detention must not be arbitrary, it must be based on grounds and procedures established by law, it must be backed by information of the reasons for such detention, court control of the detention must be available, and compensation in the case of a breach must be provided. The African Commission on Human and Peoples' Rights has stated that the need for continued pretrial detention should be based on an assessment of whether there are sufficient legal reasons, whether investigating authorities are exercising due diligence, whether detention pending trial is necessary and proportionate, and what measures can be taken to safeguard the well-being of the detainee.<sup>76</sup> The African Commission has also held that the failure or negligence of security agents to “scrupulously” adhere to the requirement that they submit reasons for the arrest of a detainee and inform him promptly of any charges against him is a violation of the right to a fair trial.<sup>77</sup> The 2011 Report of the UN Working Group on Arbitrary Detention concludes that “any detention must be exceptional and of short duration.”<sup>78</sup>

The provisions of the Egyptian Criminal Procedure Code on pretrial detention are vague and subject to excessive discretion, facilitate detention for an egregiously lengthy period of up to two years, and leave little to no recourse for detainees wishing to challenge their continued detention – all of which violate Egypt’s international and regional human rights obligations. The categories allowing pretrial detention employ terms like “security or public order,” allotting overly broad discretion and subjective determinations to the prosecution and judges—both of whom are aligned with the government and are unlikely to make determinations in favor of human rights defenders and prisoners of conscience. Further, the fact that pretrial detainees facing possible charges for crimes that carry death or life imprisonment sentences can be kept in detention for up to two years is egregiously lengthy and clearly exceeds what international law conceives to be a period of a few days. Finally, the fact that proper due process consideration has not been granted for requests for bail and/or conditional release in the case of Mr. Adly ensures that he is left without effective recourse, constituting yet another violation.

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<sup>73</sup> American Bar Association, *Handbook of International Standards of Pretrial Detention Procedure*, ABA RULE OF LAW INITIATIVE, [https://www.ilsa.org/jessup/jessup16/Batch%201/handbook\\_of\\_international\\_standards\\_on\\_pretrial\\_detention\\_procedure\\_2010\\_eng\\_authcheckdam.pdf](https://www.ilsa.org/jessup/jessup16/Batch%201/handbook_of_international_standards_on_pretrial_detention_procedure_2010_eng_authcheckdam.pdf).

<sup>74</sup> *General Comment No. 8: Article 9 (Right to Liberty and Security of Persons)*, UN HUMAN RIGHTS COMMITTEE, Jun. 30, 1982, ¶2.

<sup>75</sup> The Human Rights Committee has previously found that a period of 7 or 9 days is not acceptable under Article 9(2) of the ICCPR. *See Grant v. Jamaica*, Communication No. 597/1994, para. 8.1; *see also Morrison v. Jamaica*, Communication No. 663/1995, para. 8.2; *see also Kurbanov v. Tajikistan*, Communication No. 1096/2002, para. 7.2; *see also A. Berry v. Jamaica*, Communication No. 330/1988, para. 5.6.

<sup>76</sup> *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS, [http://www.achpr.org/files/instruments/guidelines\\_arrest\\_detention/guidelines\\_on\\_arrest\\_police\\_custody\\_detention.pdf](http://www.achpr.org/files/instruments/guidelines_arrest_detention/guidelines_on_arrest_police_custody_detention.pdf).

<sup>77</sup> ACHPR, *Huri-Laws (on behalf of the Civil Liberties Organisation) v. Nigeria*, Communication No. 225/98, decision adopted during the 28th Ordinary Session, 23 October – 6 November 2000, paras. 43-44.

<sup>78</sup> *Report of the Working Group on Arbitrary Detention*, UNITED NATIONS HUMAN RIGHTS COUNCIL, A/HRC/16/47, Jan. 19, 2011.

### 3. The Charges against Mr. Adly are Without Merit and Cannot be Used as a Basis by Which to Justify his Continued Detention

The six charges brought against Mr. Adly are without merit and should not be a basis by which to keep him in pretrial detention.

In exercising his fundamental rights to freedom of expression and peaceful assembly, and carrying out his work as a human rights defender, Mr. Adly wrote Facebook and Twitter posts criticizing the decision of the Egyptian government to transfer the Tiran and Sanafir islands to the government of Saudi Arabia. Mr. Adly called for and joined peaceful assemblies and demonstrations to express this public concern. Finally, as a lawyer, Mr. Adly participated in litigation questioning the constitutionality of the island agreement.

The state has unequivocally failed to produce a single piece of evidence thus far indicating that Mr. Adly actions could implicate any of the charges brought against him, including but not limited to the “overthrow of the government” and “the spreading of false news.” In fact, these charges include impermissibly vague language and have been repeatedly used by the Egyptian government against peaceful dissidents to unduly restrict the fundamental rights to freedom of expression and peaceful assembly. These charges are merely pretense to allow authorities to crackdown on the constitutionally-protected and internationally recognized rights and activities of Mr. Adly.

#### i. Category II: Substantive Fundamental Rights

The detention of Mr. Adly is arbitrary under Category II.

A detention is arbitrary under Category II when the detention results from the exercise of fundamental rights protected by international law. More specifically, the arbitrary detention results “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights and, and insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights.”<sup>79</sup> In light of this, the detention of Mr. Adly is arbitrary because the detention resulted from the exercise of his fundamental rights to freedom of opinion and expression and of peaceful assembly, as well as his legitimate work to promote human rights as a human rights defender.<sup>80</sup>

#### a. The Egyptian Government Detained Mr. Adly Because He Exercised His Right to Freedom of Opinion and Expression

Freedom of opinion and expression are guaranteed under international law by Article 19(1)-(2) of the ICCPR<sup>81</sup> and Article 19 of the UDHR.<sup>82</sup> The Human Rights Committee has

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<sup>79</sup> *Revised Methods of Work*, *supra* note 64, ¶7(e).

<sup>80</sup> ICCPR, *supra* note 71, Art 22.

<sup>81</sup> ICCPR, *supra* note 71, Art 19.

<sup>82</sup> *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, Art. 19 (1948) [hereinafter *Universal Declaration*].

determined that this right includes the right to express a dissenting political opinion.<sup>83</sup> In addition to these obligations under international law, Egypt is bound by Article 65 of its own Constitution to respect the right of its citizens to freedom of opinion “verbally, in writing, through imagery, or by other means of expression and publication.”<sup>84</sup> The United Nations Declaration on Human Rights Defender defines human rights defenders as “individuals, groups and associations ... contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals” and establishes protections for such individuals.<sup>85</sup>

Mr. Adly was arrested, tortured, charged, and continues to be held in pretrial detention today because he expressed his opinion criticizing the Egyptian government’s island deal with Saudi Arabia via Twitter and Facebook posts, via participation in peaceful assemblies, and via his legal action. Mr. Adly is being further targeted in light of his status as a prominent human rights lawyer who has long provided legal services for independent voices and peaceful dissidents who themselves have expressed opinions that have been critical of the current government.

Further, although the right to freedom of opinion and expression is not absolute under international law, Mr. Adly’s exercise of his right does not fall under any of the permissible limitations set forth by Article 19(3) of the ICCPR. Article 19(3) allows for certain restrictions provided by law and necessary “for respect of the rights or reputations of others” or “for the protection of national security or of public order...or of public health or morals.”<sup>86</sup> The Human Rights Committee has also found that because there is no legitimate restriction under Article 19(3) which would justify the arbitrary arrest, torture, and threats to life of a human rights defender, “the question of deciding which measures might meet the ‘necessity’ test in such situations does not arise.”<sup>87</sup>

b. The Egyptian Government Detained Mr. Adly Because He Exercised His Right to Freedom of Peaceful Assembly

Freedom of peaceful assembly is guaranteed by Article 20(1) of the UDHR<sup>88</sup> and Article 21 of the ICCPR.<sup>89</sup> Under Article 73 of Egypt’s Constitution and domestic law, the government is mandated to respect the rights of its citizens to organize marches, demonstrations, and all forms of peaceful protests.<sup>90</sup> The United Nations Declaration on Human Rights Defenders further affirms these rights for “individuals contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.”<sup>91</sup>

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<sup>83</sup> *General Comment No. 34 (2011) on Article 19: Freedom of Expression*, UN HUMAN RIGHTS COMMITTEE, CCPR/C/GC/34, Sep. 12, 2011, ¶ 11.

<sup>84</sup> *Constitution of the Arab Republic of Egypt*, *supra* note 69, Art. 65.

<sup>85</sup> *Who is a defender?*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

<sup>86</sup> *ICCPR*, *supra* note 71, Art 19.

<sup>87</sup> *Njaru v. Cameroon*, UNHRC, Views of 3 April 2007, UN Doc. CCPR/C/89/D/1353/2005, para. 6.4.

<sup>88</sup> *Universal Declaration*, *supra* note 82, Art. 20.

<sup>89</sup> *ICCPR*, *supra* note 71, Art 21.

<sup>90</sup> *Constitution of the Arab Republic of Egypt*, *supra* note 69, Art. 73.

<sup>91</sup> *Who is a defender?*, *supra* note 85.

Mr. Adly was slammed with the charges in this case due to his social media posts calling for participation in peaceful assemblies and demonstrations and his physical participation in several assemblies and demonstrations.

Although the right to freedom of peaceful assembly is not absolute under international law, Mr. Adly's exercise of his right does not fall under the permissible limitations set forth by the ICCPR. Under the ICCPR, the right to freedom of peaceful assembly can only be restricted as prescribed by the law and as necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.<sup>92</sup> The Human Rights Committee has found that there would be no "necessary" reason to arrest, torture, or threaten the life of a human rights defender.<sup>93</sup> In calling for and participating in peaceful protests, Mr. Adly was exercising his fundamental rights. Placing constraints on this activity violates both Egyptian law and the country's international legal obligations under the ICCPR.

c. The Egyptian Government Detained Mr. Adly Because He Exercised His Right to Freedom of Association

Freedom of association is guaranteed by Article 20(1) of the UDHR<sup>94</sup> and Article 22(1) of the ICCPR.<sup>95</sup> Under Article 75 of the Constitution, Egypt is mandated to respect the rights of its citizens to form non-governmental associations and foundations that acquire legal personality upon notification.<sup>96</sup> These associations and foundations are guaranteed the right to practice their activities freely and are protected from administrative interference or dissolution.<sup>97</sup> The United Nations Declaration on Human Rights Defenders further affirms this right for "individuals contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals."<sup>98</sup>

Non-governmental organizations and human rights defenders on the ground have reason to believe that Mr. Adly was particularly targeted for arrest and charge due to his influential and prominent work as a human rights lawyer, his membership within the Front for the Defense of Egyptian Protesters (FDEP), and his leadership within the Egyptian Center for Economic and Social Rights (ECESR).

Although the right to freedom of association is not absolute under international law, Mr. Adly's exercise of his right does not fall under the permissible limitations set forth by the ICCPR. Under the ICCPR, the right to freedom of association can only be restricted as prescribed by the law and as necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.<sup>99</sup> The Human Rights Committee has found that there would

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<sup>92</sup> ICCPR, *supra* note 71, Art 21.

<sup>93</sup> *Njaru v. Cameroon*, *supra* note 87.

<sup>94</sup> *Universal Declaration*, *supra* note 82, Art. 20.

<sup>95</sup> ICCPR, *supra* note 71, Art 22.

<sup>96</sup> *Constitution of the Arab Republic of Egypt*, *supra* note 69, Art. 75.

<sup>97</sup> *Id.*

<sup>98</sup> *Who is a defender?*, *supra* note 85.

<sup>99</sup> ICCPR, *supra* note 71, Art 22.

be no “necessary” reason to arrest, torture, or threaten the life of a human rights defender.<sup>100</sup> In becoming a member of FDEP and working for a non-governmental organization like ECESR, Mr. Adly was exercising his right to freedom of association. FDEP and ECESR are two of the most prominent civil society groups in the Egypt working to promote and protect human rights. Rather than representing harm to national security or public safety or order, these entities uphold the democratic nature of the society and safeguard the rights and freedoms of others.

ii. Category III: Due Process Rights

The detention of Mr. Adly is arbitrary under Category III.

A detention is considered arbitrary under Category III “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”<sup>101</sup> Additionally, the Working Group looks to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles).<sup>102</sup>

1. Egyptian Authorities Violated Mr. Adly’s Right by Failing to Promptly Bring Him Before a Judge and Failing to Try Him Without Undue Delay

Egyptian authorities have violated Mr. Adly’s right to be promptly brought before a judge and tried without undue delay. Article 9(3) of the ICCPR, which affirms this right, also adds: “It shall not be the general rule that persons awaiting trial shall be detained in custody.”<sup>103</sup> Principle 11(1) of the Body of Principles<sup>104</sup> and Article 14(3)(c) of the ICCPR<sup>105</sup> additionally reiterate the right of the accused to be tried without undue delay.

Egyptian authorities have increasingly used pretrial detention as a punitive measure by which to constrain the fundamental freedoms of independent voices and human rights defenders, all the while failing to bring them to just, speedy trial in violation of their guaranteed due process rights; the case of Mr. Adly is, thus far, no exception.

Mr. Adly has been kept in pretrial detention despite an inability of Egyptian authorities to produce a single piece of evidence or documentation to back up the alleged charges that have been brought against him. By keeping him in pretrial detention, subjecting him to near-automatic detention renewal hearings during which his lawyers do not have proper opportunities to wholly represent their client, removing him from the courtroom before his detention renewal hearings are complete, and refusing to grant bail without due process consideration, Egyptian authorities are violating Mr. Adly’s right to be brought promptly before a judge on the alleged merits of the

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<sup>100</sup> *Njaru v. Cameroon*, UNHRC, Views of 3 April 2007, UN Doc. CCPR/C/89/D/1353/2005, para. 6.4.

<sup>101</sup> *Revised Methods of Work*, *supra* note 64, ¶8(c).

<sup>102</sup> *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, GA Res. 47/173, 43 U.N. GAOR Supp. (No. 49) 298, A/43/49, Dec. 9, 1998 [hereinafter *Body of Principles*].

<sup>103</sup> *ICCPR*, *supra* note 71, Art 9.

<sup>104</sup> *Body of Principles*, *supra* note 102, Principle 11.

<sup>105</sup> *ICCPR*, *supra* note 71, Art 14.

case and his right to be tried without undue delay. There is no evidence to suggest that authorities are actively investigating the alleged case against Mr. Adly. The inability of the prosecution to produce evidence in the case suggests that Mr. Adly is being held in pretrial detention to punish him for exercising his fundamental rights and for human rights work.

## 2. Egyptian Authorities Violated Mr. Adly's Rights by Failing to Grant Him an Opportunity to Appeal the Lawfulness of his Detention

Egyptian authorities have violated Mr. Adly's right to be granted an opportunity to appeal the lawfulness of his ongoing detention. Under Article 9(4) of the ICCPR,<sup>106</sup> Egypt is mandated to bring Mr. Adly before a court in order for the court to determine the lawfulness of detention without delay. Further, Article 54 of the Egyptian Constitution<sup>107</sup> notes that every person whose freedom is restricted shall have the opportunity to file grievance before the court. Principle 11(3) of the Body of Principles affirms that "a judicial or other authority shall be empowered to review as appropriate the continuance of detention."<sup>108</sup>

By subjecting Mr. Adly to near-automatic detention renewals, denying him and his counsel from having a full opportunity to present a case for conditional release and/or bail, and failing to provide any documentation or evidence regarding the charges against Mr. Adly, Egyptian authorities are denying Mr. Adly an opportunity to fully become aware of the reasons for his detention and ultimately, to appeal his detention. While Mr. Adly's lawyers were able to file a single appeal, the court did not grant the counsel a proper opportunity to challenge the detention and instead hastily rejected the appeal on May 25. Then on July 4, the prosecution forced Mr. Adly to sign off on a second appeal without the knowledge of his lawyers, hastily and improperly brought him before the court on the same day, and allowed for a summary rejection to again occur. Ultimately, Mr. Adly finds himself subjected to a system in which judges lack any independence from the prosecution, raising serious questions on whether Mr. Adly will ever have a genuine and full opportunity to appeal his detention.

## 3. Egyptian Authorities Violated Mr. Adly's Right to Have Adequate Time and Facilities for the Preparation of his Defense

Egyptian authorities have violated Mr. Adly's right to prepare an adequate defense. Article 14(3)(b) of the ICCPR guarantees the right to have adequate time and facilities for the preparation of a detainee's defense.<sup>109</sup> Adequate time depends on the circumstances of the particular case. The United Nations Human Rights Committee has noted that facilities must include access to documents and other evidence that the accused requires to prepare his case.<sup>110</sup>

Egyptian authorities have placed severe constraints on the ability of Mr. Adly to meet with his counsel. Despite his right to his first visit 11 days after his arrest as per the country's

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<sup>106</sup> ICCPR, *supra* note 71, Art 9.

<sup>107</sup> Constitution of the Arab Republic of Egypt, *supra* note 69, Art. 54.

<sup>108</sup> Body of Principles, *supra* note 102, Principle 11.

<sup>109</sup> ICCPR, *supra* note 71, Art 14.

<sup>110</sup> General Comment No. 13: Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law (Art. 14), UN HUMAN RIGHTS COMMITTEE, HRI/GEN/1/Rev.1, Apr. 13, 1984, ¶11.

prison regulations, Mr. Adly was prevented from meeting with his lawyer and wife. Later visits with Mr. Adly have been heavily-monitored, raising questions on whether he has adequate opportunity and time to discuss the legal strategy of the case or any privileged or confidential information with his counsel and family members. Further, the prosecution has consistently failed to provide Mr. Adly's counsel with the official charge sheets and any documentation from the case to substantiate the charges being brought against Mr. Adly. Even during the court sessions, Mr. Adly's lawyers have been cut off while presenting their oral pleadings and have not been allowed to fully present their arguments. Mr. Adly has himself been removed from the courtroom before his detention renewal hearing was complete. Authorities are thus severely constraining Mr. Adly's due process rights, particularly his right to have both adequate time and facilities to prepare his defense.

#### 4. Egyptian Authorities Violated Mr. Adly's Right to be Presumed Innocent Until Proven Guilty

Egyptian authorities have violated Mr. Adly's right to be presumed innocent until proven guilty. Under Article 14(2) of the ICCPR,<sup>111</sup> Article 11(1) of the UDHR,<sup>112</sup> Article 96 of the Egyptian Constitution,<sup>113</sup> and Principle 36 of the Body of Principles,<sup>114</sup> every citizen has the right to be presumed innocent. The Human Rights Committee has stated that:

“the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.”<sup>115</sup>

Article 10(2)(a) of the ICCPR states that “accused persons shall, save for exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.”<sup>116</sup> Principle 8 of the Body of Principles reiterates that unconvicted persons should be kept separately from convicted persons and should be treated accordingly.<sup>117</sup>

Since 2013, Egyptian authorities have increasingly used pretrial detention as a punitive measure to silence peaceful dissidents and retaliate against individuals for their human rights work. The number of pretrial detainees in Egypt has exponentially increased and the periods of pretrial detention routinely fail to live up to international standards and often exceed even domestic maximums. Pretrial detainees are kept in the same cells as convicted prisoners.

By placing Mr. Adly in pretrial detention, continuously renewing his detention in a near-automatic manner, and not giving proper due process consideration to the conditional release

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<sup>111</sup> ICCPR, *supra* note 71, Art 14.

<sup>112</sup> *Universal Declaration*, *supra* note 82, Art. 11.

<sup>113</sup> *Constitution of the Arab Republic of Egypt*, *supra* note 69, Art. 96.

<sup>114</sup> *Body of Principles*, *supra* note 102, Principle 36.

<sup>115</sup> *General Comment No. 13*, *supra* note 110.

<sup>116</sup> ICCPR, *supra* note 71, Art 10.

<sup>117</sup> *Body of Principles*, *supra* note 102, Principle 8.

and/or granting of bail, Egyptian authorities are acting under the assumption that Mr. Adly is guilty and are treating him as such. Egyptian authorities continue to take unlawful punitive action against Mr. Adly. He has been repeatedly subjected to physical abuse, torture, and cruel, inhuman, and degrading treatment, and since May 6, 2016 has been held in solitary confinement. By placing Mr. Adly into Tora Prison, a detention center where convicted criminals serve their sentences, Egyptian authorities are clearly treating Mr. Adly as guilty well before he has even been brought before a court on the merits of the case.

#### 5. Egyptian Authorities Violated Mr. Adly's Right to be Equal Before the Courts

Egyptian authorities have violated Mr. Adly's right to be equal before the courts and tribunals under Article 14(1) of the ICCPR.<sup>118</sup> According to the United Nations Human Rights Committee, this "ensures that the parties to the proceedings in question are treated without any discrimination" and the principle of the "equality of arms."<sup>119</sup>

By depriving Mr. Adly of full due process rights, Egyptian authorities have taken punitive measures against Mr. Adly and established his pretrial detention as an opportunity to take unlawful punitive action against Mr. Adly for his exercise of his rights to freedom of opinion and expression, peaceful assembly, and association. Everyday criminal detainees who face possible murder, rape, or theft charges undergo a regularized legal process under Egyptian domestic law. Many of them are granted conditional release after standardized detention renewal hearing sessions. However, Egyptian authorities treat human rights defenders and prisoners of conscience differently, including Mr. Adly, in especially egregious manners and deprive such detainees of their full due process rights creates an inequity in the legal system.

#### 6. Egyptian Authorities Violated Mr. Adly's Right to be Free from Cruel, Inhuman, or Degrading Treatment

Egyptian authorities have violated Mr. Adly's right to be free from cruel, inhuman or degrading treatment or punishment. Article 7 of the ICCPR,<sup>120</sup> Article 5 of the UDHR,<sup>121</sup> Articles 52 and 55 of the Egyptian Constitution,<sup>122</sup> and Principle 6 of the Body of Principles<sup>123</sup> collectively establish this prohibition. The Body of Principles states that this prohibition "should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time."<sup>124</sup> Further, Articles 1-2 and 4-7 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or

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<sup>118</sup> ICCPR, *supra* note 71, Art 14.

<sup>119</sup> *General Comment No. 32 (2007) on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, UN HUMAN RIGHTS COMMITTEE, CCPR/C/GC/32, Aug. 23, 2011, ¶ 8.

<sup>120</sup> ICCPR, *supra* note 71, Art 27.

<sup>121</sup> *Universal Declaration*, *supra* note 82, Art. 5.

<sup>122</sup> *Constitution of the Arab Republic of Egypt*, *supra* note 69, Arts. 52-55.

<sup>123</sup> *Body of Principles*, *supra* note 102, Principle 6.

<sup>124</sup> *Id.*



Punishment<sup>125</sup>, to which Egypt is a state party, also collectively prohibit the infliction of physical or mental pain or suffering by a public official with the intention to intimidate or coerce.

More broadly, Article 10(1) of the ICCPR<sup>126</sup> and Principle 1 of the Body of Principles<sup>127</sup> state that persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Article 51 of the Egyptian Constitution<sup>128</sup> states that dignity is a right of every human being, that it may not be violated, and that the State must respect and protect it.

Upon arrest and while at the Maadi Police Station, Mr. Adly was beaten by security personnel, stripped of his shirt, insulted, blind-folded, and pushed around while a gun was being pointed to his chest. He was also forced to walk in a straight-line while blindfolded and had photographs taken of him without consent. He was forced to undergo an unauthorized medical exam without consent that falsely concluded him to be intoxicated, despite the fact that he was clearly coherent during questioning shortly thereafter.

Since May 6, 2016, Mr. Adly has been held into prolonged solitary confinement without any justifiable cause in a 2x3 meter cell. The lack of sunlight has been especially problematic for Mr. Adly due to his hypertension and dorsalgia. Mr. Adly has been denied any recreation time. He has only been allowed to leave his cell for severe medical emergencies, sporadic meetings with counsel and family members, and a few court hearings.

At one point during Mr. Adly's detention when he was extremely ill, 17 officers entered his cell, forced him to take an unknown medication, and forcibly injected an unknown substance into his body. Shortly thereafter, he lost consciousness for a period of time. Mr. Adly has also been denied access to his proper blood pressure medication. His health has deteriorated so significantly that he has had to be taken to the prison hospital at least four times due to high blood pressure and difficulty breathing.

Inside his cell, Mr. Adly is not allowed access to a radio or any newspapers and books. He is prohibited from writing letters and making phone calls. He is also banned from having a mattress, thus depriving him of adequate sleep and leaving severe impacts on his psychological and mental health. Mr. Adly has expressed a serious fear of suicidal thoughts.

Whether during his initial arrest or throughout his time at the Tora Prison while in solitary confinement, Mr. Adly has been subjected to physical and mental abuse that has severely violated his dignity. In an attempt to weaken his resolve prior to interrogation, to punish him for his exercise of fundamental rights, and to disincentivize him from continuing his human rights activities upon his release, Egyptian authorities have subjected Mr. Adly to torture and cruel, inhuman or degrading treatment.

### iii. Category V: Discrimination Based on a Protected Class

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<sup>125</sup> *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, June 26, 1987, 1465 U.N.T.S. 85, Arts. 1-2, 4-7.

<sup>126</sup> *ICCPR*, *supra* note 71, Art 10.

<sup>127</sup> *Body of Principles*, *supra* note 102, Principle 1.

<sup>128</sup> *Constitution of the Arab Republic of Egypt*, *supra* note 69, Art. 51.

The detention of Mr. Adly due to his political opinions, political participation, and status as a human rights defender is arbitrary under Category V.

A detention is arbitrary under Category V when, in violation of international law, the detention is discriminatory “based on . . . political or other opinion . . . and aims towards or can result in ignoring the equality of human rights.”<sup>129</sup> Article 7 of the UDHR<sup>130</sup> and Article 26 of the ICCPR<sup>131</sup> further prohibit discrimination before the law on a number of grounds, including “political or other opinion”; similarly, Article 53 of the Egyptian Constitution guarantees equality before the law on the basis of political affiliation.<sup>132</sup>

Mr. Adly’s arrest and detention is a manifestation of the discrimination currently being perpetrated against him by Egyptian authorities in light of his protected status.

Mr. Adly was arrested due to his political opinions, political participation, and status as a human rights defender. Mr. Adly is being charged based on his social media posts and his participation in protests rejecting the Egyptian government’s island transfer deal. According to civil society organizations and independent media in Egypt, Mr. Adly is being particularly targeted in reprisal to his work as a human rights defender and lawyer, his participation in human rights campaigns and initiatives, and his willingness to publicly express peaceful criticism of the government.

Since being detained, Mr. Adly has been singled out by authorities and treated in a manner different than that which any everyday citizen facing possible murder or drug charges would be subjected to. Mr. Adly has been subjected to torture, near-automatic detention renewals, egregious prison conditions, and severe violations of due process.

**II. 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.**

Mr. Adly does not have any effective or legal remedies available.

On May 8, 2016, Mr. Adly’s counsel filed complaints with the head judge of the Supreme Judicial Council, the Public Prosecutor, the Lawyers’ Syndicate, the National Council for Human Rights, the Assistant Minister of Justice for the Judicial Inspection Department, and the head judge of the Shubra El-Kheima Summary Court in light of Mr. Adly’s treatment during his arrest and interrogation.

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<sup>129</sup> *Revised Methods of Work*, *supra* note 64, ¶8(3).

<sup>130</sup> *Universal Declaration*, *supra* note 82, Art. 7.

<sup>131</sup> *ICCPR*, *supra* note 71, Art 26.

<sup>132</sup> *Constitution of the Arab Republic of Egypt*, *supra* note 69, Art. 53.

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

On June 29, 2016, Mr. Adly's counsel filed a case before the Administrative Court against the Prosecutor-General, the Minister of Interior, the Assistant Minister of Interior for Prisons, and the head Prison Warden (where Mr. Adly is being detained) to challenge the lack of furniture and bedding in Mr. Adly's cell; the ban on newspapers, books, and magazines; the ban on Mr. Adly's ability to write letters or make phone calls; the ban on Mr. Adly's enjoyment of recreation time; and the ban on Mr. Adly's ability to attend the prison mosque. Despite the urgency of the situation, the case is not scheduled to be heard until September 5, 2016.<sup>133</sup>

Despite these complaints, Mr. Adly has remained subject to the very same egregious prison conditions and treatment. More than two months after the first complaints were submitted, Mr. Adly's situation has not changed and there is no reason to believe that he has any effective or legal remedies available to improve his conditions.

Mr. Adly and his counsel have not been granted a full or adequate opportunity to request conditional release and/or bail. In fact, their pleadings have been cut short and, at times, Mr. Adly has been removed from the courtroom while proceedings continue *in absentia*. On at least one other occasion, Mr. Adly has been brought to an appeal without the knowledge of his counsel. In light of the significant due process violations, the lack of independence between the detention renewal judge and the prosecution, and the refusal of the prosecution to cooperate with Mr. Adly's lawyers to provide documentation, there is little reason to believe that Mr. Adly will be able to challenge his continued pretrial detention via any legal means. Even if a legal avenue theoretically existed on paper, in practice the government has systematically ensured that it does not exist in practice.

### III. CONCLUSION

The arrest and continued detention of Mr. Adly is an egregious violation of his fundamental rights. The Government of the Arab Republic of Egypt has violated the following rights under various provisions of the Egyptian Constitution, Egyptian laws, and international law by unlawfully extending the pretrial detention of Mr. Adly and subjecting him to mistreatment:

- The right to be free from arbitrary detention;
- The right to freedom of association;
- The right to due process, including the right to be promptly brought before a judge, the right to appeal the lawfulness of detention, the right to prepare an adequate defense, the right to be presumed innocent before guilty, and the right to be equal before the courts; and
- The right to dignity and the right to be free from torture and cruel, inhuman or degrading treatment or punishment.

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<sup>133</sup> Daily News Egypt, *Rights lawyer Malek Adly's health reportedly worsening in solitary confinement*, DAILY NEWS EGYPT, (Jul. 10, 2016), <http://www.dailynewsegypt.com/2016/07/10/rights-lawyer-malek-adlys-health-reportedly-worsening-in-solitary-confinement/>.

We hereby request that the United Nations Working Group on Arbitrary Detention:

1. Issue an opinion finding Mr. Adly's arrest and ongoing pretrial detention to be in violation of Egypt's obligations under international law;
2. Call for Mr. Adly's immediate release;
3. Request that the Government of Egypt investigate and hold accountable all persons responsible for the unlawful arrest, continued detention, and mistreatment of Mr. Adly; and
4. Request the Government of Egypt to award Mr. Adly compensation for the violations he has endured as a result of his unlawful arrest, arbitrary detention, and mistreatment while in state custody.

**IV. FULL NAME AND ADDRESSES OF THE PERSON(S) SUBMITTING THE INFORMATION**



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