

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Thursday, April 20, 2017

Abdel Fattah el-Sisi
President of Egypt
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Rahbet Abdin, Abdeen
Cairo, Egypt

Mohamed Hossam Abdel-Rahim
Minister of Justice
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Dear President Sisi and Ministers,

Re: Unlawful Arrest, Conviction and Detention of Lawyer Mohamed Ramadan

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and others who promote human rights and the rule of law through advocacy, education and research. LRWC is a non-governmental organization in Special Consultative Status with the Economic and Social Council of the United Nations.

LRWC requests the Government of Egypt to immediately and unconditionally release Mohamed Ramadan and ensure that the conviction against him is vacated. LRWC objects to the arbitrary arrest of human rights lawyer Mohamed Ramadan and his subsequent conviction following a trial that failed to meet the most basic requirements of fundamental justice and the rule of law. Mohamed Ramadan was charged under the Egyptian Counter-terrorism Law and summarily found guilty of "insulting the president, misusing social media, and inciting violence."¹ He was sentenced in absentia on 12 April 2017 to ten years in prison, followed by five years under house arrest and a five year ban on using the internet.

The case against him was apparently fabricated by the Egyptian authorities as a response to his work representing the victims of torture by the Egyptian police. The evidence used against him in court was based on his own Facebook posts, plus posts made on fake Facebook profiles which were created by a third party to impersonate Mohamed Ramadan without his knowledge or consent. All but one of the witnesses who testified against him was a representative of the Egyptian police force.²

¹ The New Arab, *Egyptian Lawyer Gets 10 years for 'insulting the president'*
<<https://www.alaraby.co.uk/english/news/2017/4/13/egyptian-lawyer-gets-10-years-for-insulting-the-president>> accessed 20/04/17.

² Front Line Defenders, *Mohamed Ramadan: Sentenced Under Counter-Terrorism Law*,
<<https://www.frontlinedefenders.org/en/case/mohamed-ramadan-sentenced-under-counter-terrorism-law>> accessed 20/04/17.

This conviction was based on Articles 1, 2, 6, 9, 18, 29(1), and 37 of the Egyptian Counter-terrorism Law – Law 94 of 2015. The law vaguely describes “terrorist act” as the “use of ... threat or intimidation... for the purpose of disturbing public order ... harm[ing] national unity, social peace, or national security.” This vague and overly broad definition allows the law to be used to arbitrarily criminalize internationally-protected activities such as freedom of expression, peaceful assembly, and freedom of association.

Egypt’s International Law Obligations

Egypt’s use of broad and overly vague criminal law provisions to arrest and imprison Mohamed Ramadan for carrying out his duties as a lawyer is a violation of Egypt’s international law obligations under various international instruments and at customary international law. As a member of the African Union and as a party to the *African Charter on Human and Peoples’ Rights* (Banjul Charter) and as a member of the United Nations (UN) and party to the *International Covenant on Civil and Political Rights* (ICCPR), Egypt has legal obligations to adopt measures that effectively ensure rights to liberty, freedom from arbitrary detention, freedom of expression, rights to participate in public affairs, the presumption of innocence, and fair trial before competent, impartial and independent civilian court. Egypt is also a signatory to the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR), and the *International Convention on the Elimination of all Forms of Racial Discrimination* (CERD). As a member of the UN, Egypt is expected to comply with and respect the *Universal Declaration of Human Rights* (UDHR) and the various principles, guidelines, standards and recommendations adopted by the UN General Assembly and other UN bodies, relating to rights to liberty, fair trial, and freedom of expression, as well as relevant rules of customary international law.

The Anti-terrorism Law under which Mohamed Ramadan was sentenced constitutes a violation of Egypt’s international law obligations under UDHR art 11.1, and ICCPR arts 9.2 and 14.3(a) to ensure that individuals criminally charged are informed promptly and in detail of the nature and the cause of the charges. The definition of “terrorism” in the Law is so vague and overbroad as to violate the presumption of innocence, and the right to a fair trial, as well as the right to know the case against and be able to formulate a defense. Criminal offences must be worded with sufficient precision and certainty: a) to give fair notice that certain conduct is prohibited and b) to prevent arbitrary arrests and convictions and uncontrolled discretion by police and the judiciary. The Anti-terrorism Law prevents both foreknowledge and defense, thereby allowing arbitrary arrests and automatic convictions not supported by evidence.

Mohamed Ramadan’s trial violated Egypt’s obligations to ensure a fair trial, under UDHR arts 10 and 11, and ICCPR, arts 14, 9.3, and 9.5. The admission of fabricated evidence and sentencing in absentia are two indications of the failure to ensure a fair trial.

Suppression of Mohamed Ramadan’s freedom of expression is also a violation of international legal obligations. Under art 19 of the ICCPR, Egypt has an obligation to ensure that everyone has the right to freedoms of opinion and expression. While limitations are permitted, Egypt’s Anti-terrorism Law does not meet the requirements of clarity and necessity as required by art 19(3). As the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stated in his 2016 report, for a law to be consistent with 19(3), it “must also be formulated with sufficient precision to enable both the individual and those charged with its execution to regulate conduct accordingly and be made accessible to the public.”³

The *Basic Principles on the Roles of Lawyers* requires States to guarantee the right of equal access to justice by ensuring the independence and safety of lawyers and protecting them from interference by state and other actors. These guarantees include, *inter alia*:

- Article 16: “[g]overnments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.”

³ United Nations (UN), *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN General Assembly, seventy-first session, 06 September 2016, UN Doc. A/71/373
<http://www.un.org/ga/search/view_doc.asp?symbol=A/71/373> accessed 30 January 2017, paras 13-14.

- Article 23: “Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly.”

Egypt additionally has an international law obligation to guarantee freedom from arbitrary arrest and detention, as guaranteed by UDHR art 9 and ICCPR art 9.1 The UN Working Group on Arbitrary Detention has defined detention as arbitrary when one or more of the following conditions exist:⁴

- Category I – It is clearly impossible to invoke any legal basis justifying the deprivation of liberty;
- Category II – The deprivation results from the exercise of the rights or freedoms guaranteed by, *inter alia*, Article 19 of the UDHR and ICCPR;
- Category III – When the total or partial non-observation of international norms relating to the right to a fair trial as specified by the UDHR and ICCPR are of such gravity as to render the deprivation of liberty arbitrary.

The HR Committee has determined that ‘arbitrariness’ “is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law ...”⁵

The arrest and sentencing of Mohamed Ramadan is arbitrary under both Categories I, II and III. It resulted directly from the exercise of the protected right to freedom of expression, and Mohamed Ramadan’s exercise of protected duties as a lawyer. It was also a result of a grave deprivation of the right to know and defend the charges, the presumption of innocence, and the requirement of an impartial tribunal. There is no basis justifying the deprivation of liberty that complies with Egypt’s international law obligations

The UN Human Rights Committee has affirmed that the ICCPR Article 2.1 creates binding obligations on States to exercise due diligence to prevent, punish, investigate and redress violations of protected rights committed by State actors. Egypt is required under ICCPR Article 2.3 to ensure and enforce an effective remedy for the violations of Mohamed Ramadan’s internationally-protected rights, as determined by competent and impartial authorities.

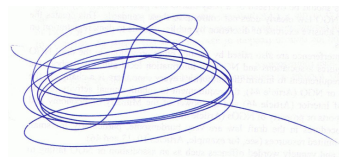
Recommendations

LRWC calls on the Government of Egypt to:

1. Immediately and unconditionally release Mohamed Ramadan and ensure that the conviction against him is vacated;
2. Ensure the liberty and security of Mohamed Ramadan;
3. Guarantee in all circumstances that all human rights defenders and lawyers in Egypt are able to carry out their legally-protected human rights activities without fear of reprisal;
4. Amend the Anti-terrorism Law to provide clear guidelines for the criminal definition of “terrorist act,” and ensure the law is fully complies with international law obligations.

LRWC requests that the Government of Egypt advise us as to the steps being undertaken to remedy the unlawful arrest, conviction and detention of Mohamed Ramadan. Thank you.

Sincerely,



⁴ Fact Sheet No. 26, The Working Group on Arbitrary Detention.

⁵ *Mukong v. Cameroon*, Communication No. 458/1991, UN Human Rights Committee (HRC), 21 July 1994, para. 9.8.

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