

# INTERIM REPORT

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## Public Prosecution

VS.

## Alaa Abd El-Fattah and twenty-four other activists

Sitting at the Police Academy, Tora District Cairo, Egypt

Date of Hearing 6th April 2014



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK  
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME  
الشبكة الأوروبية - المتوسطية لحقوق الإنسان

The **EMHRN** (Euro-Mediterranean Human Rights Network) gathers more than 80 human rights organisations, institutions and individuals based in 30 countries across the Euro-Mediterranean region. It works to promote and protect human rights within the framework of the Barcelona Process and the co-operation between the European Union and the Arab world.

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## Executive Summary

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On 6 April 2014 observers from the Euro-Mediterranean Human Rights Network (EMHRN) attended, what transpired to be, a very short hearing in the criminal case being brought against a well-known civil society activist and open internet campaigner named Alaa Abd El-Fattah in Cairo, Egypt.

Alaa Abd El-Fattah, along with 24 others, has been charged under a new and controversial "Protest Law". The "Protest Law" was issued by Presidential decree on 24 November 2013. The charges relate to a protest that took place outside the upper chamber of the Egyptian Parliament, the Shura Council, on 26 November 2013.

It is widely believed that this prosecution demonstrates a continuing state sponsored campaign to suppress opposition to the ruling regime in Egypt. The final outcome of this trial is likely to be indicative of whether the judiciary in Egypt is independent of the will of the Executive.

The short hearing was concluded with an adjournment upon an application made by Alaa Abd El-Fattah's lawyers requesting that the Presiding Judge be removed from the case. The application was made on the basis that there is "animosity" between the Defendant and the Presiding Judge as a result of a complaint made by him against the Judge in 2005 concerning an election irregularity. No witnesses were called at this hearing.

On 17 May 2014, the Cairo Appeals Court rejected Alaa Abd El-Fattah's application and ruled that the Presiding Judge could continue to hear the case. The next hearing in this case is scheduled to take place on Sunday, 25 May 2014.

Final conclusions about the trial process cannot be reached at this stage but our preliminary findings are set out below. They indicate that the trial process lacks fairness in some respects and further monitoring of Alaa Abd El-Fattah's trial is recommended.

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## Recent Political and Historical Background

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In October 1981 Hosni Mubarak gained the presidency of Egypt and ruled the country for thirty years. In early 2011 a popular uprising led to his removal. Mubarak resigned as the Egyptian President on 11 February 2011. On 12 February 2011, Egypt's top military body, the Supreme Council of the Armed Forces (SCAF) took control of the government, dissolved the Egyptian Parliament and suspended the constitution. The SCAF promised a transition to democracy. However, this transition has been bloody and the struggle for democracy in Egypt continues.

Between November 2011 and January 2012, parliamentary elections were held and the Muslim Brotherhood, through the Freedom and Justice Party, won the greatest share of the vote. However, in June 2012, the Supreme Constitutional Court declared the elections unconstitutional and called for fresh elections. Parliament was dissolved and the upper chamber of the parliament assumed legislative power.

On 30 June 2012, the candidate of the Freedom and Justice Party, Mohammed Morsi was sworn in as the President of Egypt. However, discontent against his presidency grew rapidly. This was particularly so after 22nd November 2012, when Morsi passed a decree which stated that his decisions were "final and unchallengeable by any individuals or body until a new constitution has been ratified and new parliament has been elected." Masses of Egyptians took to the street in protest.

Egypt's most senior judges condemned Morsi's decision, saying that the new powers amounted to an "unprecedented assault" on the independence of the judiciary. On 5 December 2012, deadly clashes took place outside the presidential palace. On 10 December 2012, Morsi agreed to rescind most of his decree, save his decision to hold a referendum on Egypt's new draft constitution.

Despite many legal challenges being filed against Egypt's second constitutional panel, the drafting committee published its draft constitution in December 2012 and a referendum was called. Leaders of the largest association of judges, the Judges' Club, threatened to block the referendum. But it took place on 15 and 22 December 2012 and the constitution was passed.

In April 2013, Tamarod (meaning rebellion or revolt in Arabic) was founded by members of the Egyptian Movement for Change. By 29 June 2013, Tamarod claimed to have gathered 22 million signatures demanding that Morsi step down. Millions of Egyptians took to the streets on 30 June 2013, the first year anniversary of Morsi's appointment. The movement gave Morsi until 2 July 2013 to step down. If he did not step down, they said they would initiate a campaign of civil disobedience.

On 3 July 2013, SCAF intervened and removed Morsi from office. Adly Mahmoud Mansour, head of Egypt's Supreme Constitutional Court, was appointed Egypt's interim President. Abdul-Fattah al-Sisi, the General Commander of Egypt's armed forces, said the military had no interest in politics and that they were ousting Morsi because he had failed to fulfill "the hope for a national consensus." Under a "road map" for a post-Morsi government, the SCAF announced the constitution would be suspended, and plans would be expedited for new parliamentary and presidential elections under an interim government.

Since then, al-Sisi has become a central figure in Egyptian politics. He has won widespread popular support and many believe he will become the next President of Egypt. However, he is also blamed by many for the death of a

large number of people killed in the authorities' crackdown on Islamists, in particular when security forces stormed two protest camps, at Rab'aa al-Adawiya Square and al-Nahda Square in Cairo, in August 2013.

The repression by the SCAF of its opposition has now been extended from Islamists to the traditional foes of military rule, including human rights activists like Alaa Abd El-Fattah. On 23 November 2013 a presidential decree was issued, The Arab Republic of Egypt Law No.107 for 2013 for Organising the Right to Public Meetings, Peaceful Processions and Protests ("Protest Law"). It is set out in full in Appendix 1. This law gives extensive powers to the police and governors in Egypt to circumscribe and prevent varied forms of public protest and the assembly of civil society.

The observers have a number of concerns about the terms of the Protest Law and its compliance with international human rights standards. Restrictions on the freedom of assembly provided under international human rights law requires that such restrictions are in compliance with the law and must be "necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals of the protection of the rights and freedoms of others." This democratic mandate is missing from the Protest Law in Egypt.

The observers are also concerned about the manner in which the Egyptian authorities are applying this law. The observers were repeatedly told, by the civil society representatives with whom the observers met on 5 and 6 April 2014 that the Egyptian authorities' application of the Protest Law is inconsistent and unequal. It is being disproportionately applied to those criticising the regime and the young in particular. EMHRN recommend a systematic monitoring of the authorities' application of this law in order for its compliance with the right to freedom of assembly in Article 73 of the Constitution of Egypt 2014 to be reviewed.

## Alaa Abd El-Fattah

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Alaa Abd El-Fattah was born on 18 November 1981. An open internet and political activist, he has been at the forefront of the struggle for change in Egypt for many years, working relentlessly for the "bread, freedom and social justice" called for by the 2011 revolution. As a result, he has the distinction of having been arrested not only by Mubarak, but also by all the different regimes that have ruled Egypt since the 2011 revolution.

In 2006, under the Mubarak regime, he was detained at a protest calling for independence of the judiciary and was jailed for 45 days. In 2011, having emerged as a leading face of the revolution, under the SCAF's rule, he was jailed again, this time for 56 days. His son Khalid was born while he was behind bars. Then, during the rule of Morsi, an arrest warrant was issued against him.

## Information about the Case

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This section is based largely on information provided to the observers by defence lawyers and other third party sources. On 26 November 2013 an activist group, *No to Military Trials for Civilians*, called for a demonstration. This demonstration was to take place in front of the Shura Council. The group called for the demonstration to protest against the draft constitution which failed to legislate against the military trial of civilians. The observers understand the demonstration started at around 4pm on Kasr Al Aini Street. Thirty minutes later, the observers were informed, security forces issued a warning to the protestors to immediately end their protest.

Water cannon and tear gas were used to disperse the demonstrators. Some of the police present at the protest were in uniform; some in plain clothes. It was also reported that some of those attending the demonstrations were hit by the police. The protestors have repeatedly stated that the protest was peaceful and that the protest was ended by unjustifiable police violence. The Prosecution disputes these claims.

On 27 November 2013, the authorities issued an arrest warrant for Alaa Abd El-Fattah. He claims that he informed the authorities that he would turn himself in on 30 November 2013. Despite this on 28 November 2013 at around 9pm, approximately twenty police officers, some in plain clothes, broke down the door to his family home. The street on which his house is located was sectioned off by armed policemen. Both he and his wife report that they were beaten by the police when Alaa Abd El-Fattah was arrested.

Alaa Abd El-Fattah claims he was blindfolded and escorted into a police vehicle. He later learnt he was taken to Cairo Security Headquarters. He remained there for approximately twenty four hours. He reports being left in a cell, lying on the floor, blindfolded and with his hands cuffed behind his back. He was hit over his head with a weapon. During this time, his family was refused any information about his whereabouts. The next day the prosecutor visited him in the Headquarters. Alaa Abd El-Fattah refused to speak to him until he had had an opportunity to talk to his lawyers. He was then transferred to Tora prison.

On 4 December 2013, 23 of those arrested outside the Shura Council protest were released on bail. Alaa Abd El-Fattah and another individual remained in prison. On 9 December 2013 it was announced that 25 people who had been under investigation by the police in relation to the Shura Council protest would face criminal charges. On 15 March 2014 the Public Prosecutor announced that the cases of Alaa Abd El-Fattah and the other 24 men would be referred to the Special Chamber of the Criminal Court. They faced charges of blocking roads, assembling illegally, protesting without a permit, assaulting and injuring a public servant and stealing his personal wireless device. Alaa Abd El-Fattah alone was charged with organising the protest.

The observers were informed by Alaa Abd El-Fattah's lawyers that the delay by the Prosecutor to refer his case to a specific court meant that he was not able to access the court to hear an application for bail. On 23 March 2014 his application for bail was heard by the Special Chamber of the Criminal Court. Having been held in prison for nearly four months the court released him on bail for 10,000 EGP. The first hearing into the case against the 25 accused was listed for 6 April 2014.

# Egyptian Judiciary and Prosecution

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The general principle of judicial independence has been constitutionally guaranteed in Egypt for several decades. Article 184 of the latest 2014 Constitution provides that "[t]he judiciary is independent". The same article makes interference in judicial affairs a criminal offence to which the statute of limitations does not apply.

A recent study undertaken by the International Bar Association's Human Rights Institute (IBAHRI), however, identifies a number of challenges to this "on paper" judicial independence in Egypt, two of which were complained of repeatedly by the civil society representatives with whom the observers met on 5 and 6 April 2014. First, the Minister of Justice can assign judges to specific courts. Second, the Minister of Justice can assign judges to specific cases. This allows the Minister of Justice to move the judges he wants to the courts or cases he wants, where specific lawsuits or individuals are to be tried, or to banish judges to remote, less prestigious courts, if he disagrees with their choices.

According to the International Bar Association's (IBA) Minimum Standards of Judicial Independence, "[t]he power to transfer a judge from one court to another shall be vested in a judicial authority and preferably shall be subject to the judge's consent". The current system does not comply with these recommendations. Alaa Abd El-Fattah's lawyers complained that the judges chosen to sit in the Special Chambers of the Criminal Court are known to be loyal to the Executive.

Until recently, the Prosecutor General in Egypt has been directly appointed by the President. This has led to allegations of politicisation. The 2014 Constitution provides that this authority is now with the judge-led Supreme Judicial Council (SJC). However, the 2014 Constitution still allows the Minister of Justice to have a role in the appointment of investigating judges and transferring prosecutors to other posts. This has led to widely held fears of politicised prosecutions and the record of prosecutions over the last three years in Egypt suggests that this fear is not hypothetical.

Since Egypt's 2011 revolution, the IBAHRI has identified three prosecutorial trends. Under the first period of the SCAF rule, the number of civilians prosecuted for crimes against the military, such as the crime of "insulting the military", increased significantly. Under Morsi's presidency, those who insulted Islam or the President himself were targeted. In the post-Morsi era, a startling number of prosecutions have been initiated against Brotherhood figures. This record of selective prosecutions is very worrying. The charges against Alaa Abd El-Fattah should be assessed against this background.

## The Mission's Terms of Reference

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The Mission is to report on whether the trial of Alaa Abd El-Fattah complies with the standards set under the International Covenant on Civil and Political Rights, The African Charter of Human and People's Rights (came into effect 1986), the Egyptian Constitution and domestic laws.



In particular, the Mission will assess compliance with the standards of:

1. RIGHT TO PRE-TRIAL LIBERTY
2. RIGHT TO FAIR TREATMENT IN PRE-TRIAL DETENTION
3. RIGHTS TO FAIR TRIAL
4. IMPARTIAL TRIBUNAL
5. PUBLIC HEARING
6. PRESUMPTION OF INNOCENCE
7. RIGHT TO DISCLOSURE OF CASE
8. RIGHT TO PREPARE DEFENCE
9. RIGHT TO TIMELY TRIAL
10. RIGHT TO BE PRESENT
11. RIGHT TO LEGAL ASSISTANCE
12. RIGHT TO EXAMINATION OF WITNESSES
13. RIGHT AGAINST SELF-INCRIMINATION
14. RIGHT TO LEGAL CERTAINTY OF CRIMINAL CHARGES

There is a widespread view that the trial of Alaa Abd El-Fattah may be "politically motivated." The observers suspect therefore, in due course, it will be necessary for them to assess the evidence presented to the Court as well as trial process itself. If there is no, or only highly suspect, evidence supporting a conviction it might be inferred that the judiciary lacked independence from the prosecution. In such circumstances, the trial observers believe it will be appropriate for them to examine the evidence and verdict in the case, not simply the court procedure and process.

This Interim Report will report only on the rights above as is possible in view of the shortened hearing on 6 April 2014.

This Interim and any Final Report will also comply with the following trial observation guidelines:

- Trial Observation Manual for Criminal Proceedings – Practitioners Guide of the International Commission of Jurists, 2009.
- The Guidelines contained in the Guidelines for Human Rights Fact Finding Missions - A joint publication of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law of the Lund University and International Bar Association, September 2009.
- Amnesty International's Fair Trial Manual, Second Edition, 2014.

## Composition of the Delegation

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**EMHRN** invited experts from the Solicitors International Human Rights Group (SIHRG) to take part in this trial observation mission.

**SIHRG** is a United Kingdom based non-governmental organisation with a membership drawn principally from the solicitors' profession of England and Wales. A solicitor is a qualified lawyer and there are 138,000 solicitors practising in the United Kingdom and overseas. The objects of SIHRG include raising awareness of international human rights law within the solicitors' profession and motivating solicitors to participate in the movement to deepen respect for universal human rights around the world. It provides training in the UK and overseas on international human rights law.

- Lionel Blackman, Chair of the Solicitors International Human Rights Group and criminal advocate with 30 years trial experience.
- Rosa Curling, Committee member of SIHRG, UK and international human rights lawyer and member of the EMHRN Working Group on Freedom of Association and Assembly.
- Maysa Zorob, Jurist and Justice Program Officer, EMHRN.
- The mission also had the assistance of Arabic-English interpreter Nermin Serhan.

## The Mission's Meetings

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The observers determined that in order to obtain as wide as possible insight into the trial it was appropriate to meet and interview the individuals and organisations mentioned below.

The defendants and their lawyers: Initial meetings with Alaa Abd El-Fattah's lawyers took place on 5 and 6 April 2014.

Civil society representatives: On 5 and 6 April 2014, background meetings took place with the Cairo Institute for Human Rights Studies, the Egyptian Centre for Economic and Social Rights, the No Military Trials for Civilians movement, the April 6 Youth Movement, the Arab Network for Human Rights Information, the Andalus Institute for Tolerance and Anti-Violence Studies, the New Woman Foundation and the Egyptian Initiative for Personal Rights.

Various Embassy representatives: An initial meeting with the EU Delegation and representatives from various European embassies many of which had sent observers in this case took place on 6 April 2014 in Cairo.

The observers requested a meeting with the Presiding Judge determining Alaa Abd El-Fattah's case. This request

was not responded to but the period of time provided to consider this request was short. Time constraints prevented the observers from pursuing a meeting with the Prosecutor during this visit.

## The Charges

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Quoting directly from a professional translation of the case summary served on the Defence by the Public Prosecutor the charges are as follows:

"Participated, along with other unknown individuals, in a gathering made up of more than 5 individuals, jeopardising public peace, in the aim of committing assault crimes against individuals, public and private properties, and influencing public authority figures as they performed their duties through the use of force and violence, as one of them carried a tool that is used in assaulting individuals. The intended aim of the gathering was achieved, and [protesters] were aware of the [commitment] of the following felonies:

- a. They stole a radio device owned by the Ministry of Interior, which was carried by the victim Lieutenant Colonel Imad Tahoun. This was done through coercion as some [protesters] encircled him while others beat him, weakening his resistance. They were able, through this kind of coercion, to accomplish the theft. The coercion caused injuries to the victim as shown in the investigations.
- b. They displayed, and other unknown individuals, force and threatened with violence, and proceeded first with using force and violence, in the aim of resisting police forces. The accused and other unknown individuals gathered at the incident scene and surprised police forces with the attack, putting their safety at risk, and disturbing security and public peace as shown in the investigations.
- c. They took part in a protest, during which they disrupted security and public order, blocked the road, and disrupted traffic as shown in the investigations.
- d. They attacked two policemen, Lieutenant Colonel Imad Tahoun and soldier Ahmad Mohammad Abdel Aal as they performed their duty, injuring them as described in the two annexed medical reports, as shown in the investigations.

The first accused [Alaa Abd El-Fattah] also:

- a. Formed a gathering made up of more than 5 individuals, jeopardizing public peace, in the aim of committing assault crimes against individuals, public and private properties, and influencing the figures of public authorities as they performed their duties through the use of force and violence as shown in the investigations.
- b. Staged a protest without informing the competent police station about the location of the protest as shown in the investigations..."

## Summary of the evidence

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The statements of several witnesses (exclusively State security and police officers) are summarised by the Prosecutor in the following paragraph:

"They Testified: that they were assigned to head to the vicinity of Shura Council after information was received about the two members of April 6 Movement, Alaa Abd El-Fattah, and another, calling on citizens to protest in front of the Shura Council against the new protest law at 4 pm of that day, without acquiring a prior permit. The witnesses went to the location with a number of security cadres including Mohammad Hamed Mohammad al-Sharbini, Ali Tahoun, Samir Moujdi, Amro Talaat, Mohammad al-Sharkawi, in addition to central security members.

They saw around 350 protesters on the sidewalk off the Shura Council holding banners denouncing the new protest law, the constitution, and military trials, and chanting against police and armed forces. Accordingly, they were warned to break up the protest given that they did not acquire a prior permit and were thus violating the new protest law. Yet, they did not abide by the orders.

Loudspeakers were used and protesters were given a deadline to leave. Yet, again, they did not abide by the orders, which led [security forces] to fire water cannons on protesters to break them up. However, protesters assaulted police forces, throwing stones and empty bottles, and cursing the forces. Meanwhile, a number of protesters encircled and beat Mohammad Tahoun, injuring him and stealing his radio device. They also blocked the road, and disrupted the traffic. Yet the forces were able to arrest the second to the last [on the list] of the accused, knowing that the second was carrying a steel blade."

## The Court Room and Dynamics

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The hearing held on 6 April 2014 in Alaa Abd El-Fattah's case took place in a Special Chamber of the Criminal Court. The Special Chamber is located in the Tora police compound in Cairo. The compound is heavily fortified and armed police men control access to the area in which the court is located. On 6 April 2014, army tanks were stationed at both entries to the section of the compound in which the court is located.

On 6 April 2014 most of the defendants and their lawyers arrived at the Tora compound for 10am. No notice was provided about the time their cases would be heard. The hearing did not start until after 5pm.

There is no waiting area for the defendants or their families in the police compound. The defendants, their relatives and most of their lawyers established a make shift "waiting area" at a local coffeehouse. All those involved had to spend the day waiting in the heat until the court notified them that the hearing was to start.

# The Trial Rights in Question for this Interim Report

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The applicable legal standards found in the International Covenant on Civil and Political Rights 1966 (ICCPR) are set out below.

## 1. RIGHT TO PRE-TRIAL LIBERTY

*ICCPR - Article 9*

*3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.*

The Trial Observation Manual of the International Commission of Jurists' (ICJ) confirms that pre-trial detention should not be the general rule: it should only be used in criminal proceedings as a last resort, and for the shortest possible time period, when required to meet the needs of justice or of the investigation of the alleged offence or in order to protect society and the victim. Pre-trial detention should be the exception and bail should be granted, except in situations where there is a likelihood that the accused would abscond, destroy evidence, influence witnesses or flee from the jurisdiction of the State.

Alaa Abd El-Fattah was held in detention for 115 days before a court considered his application for bail. His lawyers informed the observers that they believe his detention was purposely extended by the Prosecutor; that the Prosecutor purposely delayed allocating his case to a court until 15 March 2014 so that his application for bail could not be considered by a court until after this date.

This matter requires further inquiries.

## 2. RIGHT TO FAIR TREATMENT IN PRE-TRIAL DETENTION

*ICCPR - Article 10*

- 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*
- 2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as un-convicted persons;*

Alaa Abd El-Fattah reported being beaten up by the authorities upon his arrest and during his detention in the Cairo Security Headquarters. Whilst at the Security Headquarters he claims he was blindfolded, handcuffed and

left on a cell floor for twelve hours. He reported being hit on the back of his head with a weapon. Whilst detained at the Tora prison he has reported that he was held in solitary confinement for twenty of every twenty four hours.

These matters are very concerning and require further investigation.

### 3. RIGHT TO FAIR TRIAL – IMPARTIAL TRIBUNAL

*ICCPR - Article 14*

*1.... In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*

At the short hearing on 6 April 2014 the observers witnessed Alaa Abd El-Fattah's lawyers make an application to the court that the Presiding Judge of the Special Chamber, Judge Mohammed El-Fikki, should recuse himself from the case. The defence submitted that the judge was not impartial as there was a history of "animosity" between the defendant and the judge dating back to a complaint that Alaa Abd El-Fattah and others filed against the Judge in 2005 alleging election irregularities. The Presiding Judge agreed that a higher court should consider this application and adjourned proceedings.

At the time of writing it has been reported to us that the Cairo Appeals Court on 17 May 2014 ruled that Judge Mohammed El-Fikki may continue to try the case. The reasons for this ruling and the evidence upon which it was founded will require further investigation before we can reach a finding on the impartiality of Alaa Abd El-Fattah's trial court.

### 4. RIGHT TO FAIR TRIAL – PUBLIC HEARING

*ICCPR - Article 14*

*1.... In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*

The hearing on 6 April 2014 was held in a fortified police compound. Access to the compound was controlled by armed policemen. Access to the court within the compound was restricted to those the judge permitted. On 6 April 2014 Alaa Abd El-Fattah's family was not granted access to the police compound or the court. All the defendants and their lawyers were granted access to both, along with members of the media, the EMHRN observers and their interpreter.

No reasons were provided by the Judge to exclude ordinary members of the public or the defendants' families. There was no restrictive space in the court gallery. In fact the court room appeared to be converted from a lecture hall of considerable size - perhaps large enough to accommodate over 200 people. Moreover the court room featured strong security grills and gates separating and protecting prosecutors and judges from all other court users and any observers.

The observers find that the hearing held on 6 April 2014 was in breach of ICCPR Article 14(1) and the Egyptian Constitution of 2014, Article 187: "Court sessions shall be public, unless the court decides on its secrecy to safeguard public order or public morals. In all cases, court judgments shall be pronounced in publicly held sessions. "

## 5. RIGHT TO FAIR TRIAL – RIGHT TO DISCLOSURE OF CASE

*ICCPR - Article 14 (3)*

*(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*

The observers were informed that Alaa Abd El-Fattah's lawyers had received disclosure of the statements in the case from the Prosecution. As of 6 April 2014 they had not received video or closed-circuit television (CCTV) evidence from the Prosecution, which could be crucial. The observers wish to investigate this aspect of the case further as the trial continues.

## 6. RIGHT TO TIMELY TRIAL

*ICCPR - Article 14 (3)*

*(c) To be tried without undue delay;*

Alaa Abd El-Fattah's alleged offences took place on 26 November 2013 and the trial started just over four months later. The case was adjourned as a result of a Defence application. By international standards the Defendants have a good prospect to be tried without undue delay. The trial is due to resume on 25th May 2014. However, this aspect must be kept under review as the trial process continues.

## 7. RIGHT TO BE PRESENT

*ICCPR - Article 14 (3)*

*(d) To be tried in his presence,*

At the hearing on 6 April 2014 Alaa Abd El-Fattah and others were allowed to be present at the hearing, in compliance with his rights under domestic Egyptian and international standards.

## 8. RIGHT TO LEGAL ASSISTANCE

*ICCPR - Article 14 (3)*

*(d).....and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does*

*not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;*

At the hearing on 6 April 2014, it appeared that Alaa Abd El-Fattah was adequately represented. However, the observers wish to ask further questions about the resources available to his defence team. They also wish to request further information about the conditions in which he was allowed to meet and speak with his lawyers whilst in detention. He should have been allowed to communicate freely and in a private area with lawyers.

## 9. RIGHT TO LEGAL CERTAINTY OF CRIMINAL CHARGES

*ICCPR - Article 15*

*1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.....*

A moot point in this case will be whether the charge of organising a protest "without a permit" is retrospective. The Protest Law was issued on 24 November 2013 and imposed a requirement of 3 days' notice for any protest. The protest in question took place on 26 November 2013. It might therefore be argued the law could not apply as it would not have been possible to give 3 days' notice for a protest planned two days after the Protest Law was issued. The observers wish to investigate this aspect further.

## Conclusion

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Following their short mission to Cairo and their observation of the hearing held on 6 April 2014 the authors of this Interim Report have concerns about whether Alaa Abd El-Fattah will receive a fair trial in relation to the charges he faces concerning the Shura Council protest.

Taking the prosecution's case at its highest the offences levelled against Alaa Abd El-Fattah constitute relatively minor criminal offences. Yet his trial has all the physical trappings of a major terrorist prosecution.

In view of the political background and pressures upon them the judges and prosecutors may yield to unfair processes and verdicts. International monitoring may act as a countervailing pressure. EMHRN recommends that international observations of the hearings continue.



# Appendix – The Protest Law 2013

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## **Presidential Decree, The Arab Republic of Egypt**

### **Law No.107 for 2013**

#### **For organizing the right to public meetings, peaceful processions and protests**

The Interim President

After viewing the Constitutional Declaration issued on July 8, 2013;

The Penal Code;

The Criminal Procedures Law;

Law 10 for 1914 regarding Gathering;

Law 14 for 1923 for determining the provisions of public meetings and protests in public roads;

Law 394 for 1954 regarding Weapons and Ammunition;

Police Authority Law issued by law 109 for 1971;

The Judicial Authority Law issued by law 46 for 1972;

The State Council Law issued by law 47 for 1972;

The Local Administration System Law issued by law 43 for 1979;

The Environment Law issued by law 4 for 1994;

Law 94 for 2003 regarding the establishment of the National Council for Human Rights;

Law 113 for 2008 regarding the protection of the sanctity of worship places;

And after the approval of the Cabinet;

And based on the view of the State Council:

The following law's text has been decided upon:

## **Chapter One**

### **General Provisions and Definitions**

#### **(Article 1)**

Citizens have the right to organize and join peaceful public meetings, processions, and protests, in accordance to the provisions and rules stipulated in this law.

#### **(Article 2)**

A public meeting is every gathering that takes place in a public place or site, entered by or could be entered by individuals without a prior personal invitation, not less than ten to discuss or exchange views on an issue of general interest.

Electoral meetings that abide to the following conditions are considered as public meetings in applying the provisions of this law:

- 1- When the aim of it is to select a candidate or candidates for the memberships of parliaments or to listen to their electoral programs.
- 2- When it's limited to the voters, and candidates, or both of them.
- 3- When the meeting takes place in the time designated for electoral campaigning.

#### **(Article 3)**

A procession is every march of individuals in a public place, or road, or square that exceeds ten to peacefully express opinions or issues that are not political.

**(Article 4)**

A protest is every gathering of individuals in a public place, or proceeds on the public roads and squares that exceeds ten to express their opinions or demands, or political discontentment in a peaceful manner.

**(Article 5)**

Public meetings for political purposes are prohibited in places of worship or their arena, or their annexes. It is also prohibited to conduct processions to them or from them, or protest in them.

**(Article 6)**

Participants in public meetings, processions, or protests are prohibited to carry any weapons or ammunition or explosives or fireworks or incendiary material or any other tools or material that subjects individuals or buildings, or properties to damage or danger.

They are also prohibited to wear masks or coverings to hide facial features with the intention of committing any of these acts.

**(Article 7)**

Participants in public meetings or processions or protests are prohibited to disrupt public security or order or obstruct production, or call for it, or hamper citizens' interests or harm them or subject them to danger or prevent them from exercising their rights and work, or affecting the course of justice, public utilities, or cutting roads or transportation, or road, water, or air transport, or obstructing road traffic or assaulting human life or public or private property or subjecting it to danger.

**Chapter Two**

**Organizational Procedures and Rules**

**For public meetings, processions, and protests**

**(Article 8)**

Whoever wishes to organize a public meeting, or conduct a procession or protest should submit a written notification to the police station or point that falls within the zone of the place of public meeting or the start point of the procession or protest. The notification should be submitted at least three working days prior to the start of the meeting, procession, or protest, with a maximum of 15 days. In the case of electoral meetings, this duration will be 24 hours. The notification is to be delivered by hand or by a notice served by a bailiff and should include the following data and information:

The place of the public meeting or the place and route of the procession or protest.

The start and end time of the public meeting, procession or protest.

The subject of the public meeting, procession, or protest, its purpose, the demands requested by the participants in any of them, and the mottos used.

The names of individuals, and their titles, or entities organizing the public meeting or procession or protest, their residences and contact information.

**(Article 9)**

The Minister of Interior shall issue a decree to compose a Standing Committee in each governorate, headed by its

Security Chief. It is responsible for putting in place the rules and guaranteeing measures that would ensure securing the notified public meetings, processions, and protests and methods of dealing with them in case they become non-peaceful, according to the provisions of this law.

**(Article 10)**

If serious information or evidence is found before the scheduled time for starting a public meeting, procession, or demonstration, indicating the presence of threats to security of peace, the Minister of Interior or the specialized Director of Security may issue a justified decree prohibiting the public meeting, procession, or demonstrations, or suspending it, or relocating it, or altering the route; the organizers [submitters of the request] should be notified with the decision, at least 24 hours prior to the scheduled date.

Without prejudice to the jurisdiction of the Administrative Court, organizers [submitters of the request] may appeal against the prohibition or postponement decision before the Judge of Urgent matters at the appropriate First Instance Court. The Judge shall issue his verdict swiftly.

**(Article 11)**

Within the framework of procedures, measures, and methods of treatment placed by the committee mentioned in article 9, security forces shall take the necessary measures and procedures to secure notified public meetings, processions, or demonstrations, while protecting lives, the well-being of the participants, and the public and private properties, without obstructing the purpose [of the demonstration].

Officially dressed security forces – based on an order from the appropriate field commander – may disperse the public meeting, procession, or demonstration, and arrest suspects, if the participants in the public meeting, procession, or demonstration take any action that constitutes as a crime punishable by law or violate the peaceful nature of expressing opinions.

The Security Director, with geographic jurisdiction, may request from the Urgent Matters Judge at the appropriate First Instance Court - prior to the dispersal, break-up or arrest - to second whoever he may see fit, in order to authenticate the non-peacefulness of the public meeting, procession, or demonstration. The Judge shall issue his verdict swiftly.

**(Article 12)**

In the cases in which the law permits the dispersal or break up of a public meeting, procession, or demonstration, the Security Forces shall abide by the following methods and stages:

Firstly: Requesting from the participants in the public meeting, procession, or demonstration to voluntarily depart by directing repetitive verbal warnings at an audible level to disperse the public meeting, procession or demonstration, while specifying and securing the departure routes for the participants.

Secondly: In case of the non-responsiveness of the participants in the public meeting, procession, or demonstration to the departure warning, the Security Forces shall disperse them in accordance with the following order:

- Using water cannons;
- Using tear gas canisters;
- Using batons

**(Article 13)**

In the case of the failure of the previously stipulated methods in dispersing or breaking up the participants in the public meeting, procession, or demonstration, or in cases in which the participants undertake acts of violence, sabotage, destroying public and private properties, or assaulting individuals or forces, the Security forces may

gradually use force, as follows:

- Firing warning shots;
- Firing sound bombs or gas bombs;
- Firing rubber cartouche bullets;
- Firing non-rubber cartouche bullets

In case the participants in the public meeting, procession, or demonstration resort to using firearms, thus providing a legitimate basis for self-defense, they [demonstrators] shall be dealt with using tools proportionate to the danger posed against life, money, or property, in response to the assault.

**(Article 14)**

In coordination with the appropriate governor, the Minister of Interior shall, by issuing a decree, determine a 'specified safe area' in front of vital facilities, such as presidential premises, parliamentary councils, international organization offices, foreign diplomatic missions, premises of governmental, military, security and auditing agencies, courts and prosecution offices, hospitals, airports, oil facilities, educational institutions, museums, monumental areas, and other public facilities.

Participants in the public meeting, procession, or demonstration are prohibited from trespassing the boundaries of the specified safe areas, stipulated in the previous paragraph.

**(Article 15)**

The appropriate governor shall issue a decree determining sufficient space inside the governorate, in which public meetings, processions, or demonstrations, with the purpose of peaceful expression of opinions are allowed without prior notification.

**Chapter Three**  
**Penalties**

**(Article 16)**

Without prejudice to any severer penalty stipulated in the penal code or any other laws, the acts stipulated in the following Articles will be punished as specified.

**(Article 17)**

Anyone who possessed or obtained weapons or explosives or ammunition or incendiary material or pyrotechnic material while participating in a meeting, procession or protest shall be punished by strict imprisonment not less than 7 years, and a fine not less than EGP 100,000 and not more than EGP 300,000, or either penalties.

**(Article 18)**

Anyone who offered or received cash or any benefit or mediated to organize public meetings or protests, with the intention of violating Article 7 of this law, shall be punished by imprisonment and a fine not less than EGP 100,000 and not more than EGP 200,000, or either penalties. The same punishment will be applied to whoever incited to commit the crime even if it didn't occur.

**(Article 19)**

Anyone who violated the prohibitions stipulated in Article 7 of this law shall be punished by confinement not less than two years and not more than five years and a fine not less than EGP 50,000 and not more than EGP 100,000,

or either of these two punishments.

**(Article 20)**

Anyone who wore masks or coverings with the intention of hiding facial features during the meeting, procession or protest, or violated the prohibitions stipulated in Articles 5 and 14 of this law shall be punished by imprisonment for a period not exceeding one year and a fine not less than EGP 30,000 and not more than EGP 50,000, or either of these two punishments.

**(Article 21)**

Anyone who organizes a public meeting or procession or protest without the notification stated in Article 8 of this law shall be punished by a fine not less than EGP 10,000 and not more than EGP 30,000.

**(Article 22)**

Without violating the rights of those who don't practice goodwill, the court shall confiscate the materials, tools, and money used in any of the crimes stipulated in this law.

**Chapter Four**

**Procedural Provisions**

**(Article 23)**

The referenced Law No. 14 for 1923 shall be cancelled, as well as any provisions that is contrary to this law

**(Article 24)**

The Cabinet shall issue necessary decrees to implement the provisions of this law.

**(Article 25)**

This law shall be published in the Official Gazette and shall be enforced one day following the day of its publishing.

Issued by the Presidency on November 24, 2013

Adly Mansour