

TIME RECEIVED

October 28, 2013 5:53:05 PM GMT+01:

REMOTE_CSID
41 22 7384415

DURATION
221

PAGES
13

STATUS
Received

28/10/2013 18:49

41-22-7384415

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PAGE 01/13

*Permanent Mission of the Arab Republic of Egypt
to the United Nations Office
of International Organisations
in Geneva*



البعثة الدائمة لجمهورية مصر العربية
لدى الأمم المتحدة
والمنظمات الدولية
في جنيف

URGENT & CONFIDENTIAL

CHAN.

The Permanent Mission of the Arab Republic of Egypt to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR-Special Procedures Branch), and with reference to the note verbale (Chan.76 on the 4th of October 2013) sent by the mission of the Arab Republic of Egypt in response to your fax dated August 30th 2013 regarding the Joint Urgent Appeal UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (33-27) EGY 13/2013, has the honor to attach herewith additional information provided by the Government of the Arab Republic of Egypt in relation to the aforementioned urgent appeal, and looks forward that the enclosed information be duly reflected in the relevant communications report to be submitted to the Human Rights Council.

The Permanent Mission of the Arab Republic of Egypt to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights, the assurances of its highest consideration.

W.B

Geneva, 26th October 2013

Ms. Jane Connors, Chief Special Procedures Branch
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(Translated from Arabic)

**Office of the Public Prosecutor
Prosecutor's Office
Office of International Cooperation**

Reply from the Office of the Public Prosecutor in response to the urgent appeal addressed to the Permanent Mission of Egypt in Geneva concerning the arrest of a number of Aljazeera staff and the death of a number of journalists in the Arab Republic of Egypt

Introduction

In the aforementioned appeal, the Special Rapporteurs request information relating to the closure of Aljazeera Mubasher Misr and other television channels and the arrest of a number of staff and journalists in those channels. In summary, they requested:

1. Information with regard to the charges against (1) Mr. Ayman Mohamed Gaballa, Director of Aljazeera Mubasher; (2) Mr. Abdelfattah Fayed, Director of the Aljazeera Media Network Cairo Bureau; (3) Mr. Ahmad Hassan in Aljazeera Media Network Cairo Bureau; (4) Mr. Mohamed Badr, a cameraman for Aljazeera; and (5) Mr. Mohamed Salheh, an engineer for Aljazeera, whether they had been referred to a criminal trial or not and if their freedom had been restricted.
2. Information about the death of four journalists during a sit-in at Al-'Adawiyyah Square, namely: (1) Mr. Mick Deane, a cameraman for British channel Sky news; (2) Ms. Habiba Ahmed Abd Elaziz of the United Arab Emirates, a journalist who worked for Xpress news; (3) Mr. Ahmed Abdel Gawad, a journalist for Al-Akhbar newspaper; and (4) Mr. Mosab Al-Shami, a photographer for Rassd news website.

In order to articulate the reply of the Office of the Public Prosecutor in this regard, in this memorandum we address the position of the Arab Republic of Egypt with regard to the main human rights treaties, the extent to which the national legislation is in conformity with international standards and the role of the Office of the Public Prosecutor and its connection with the legislative branch, in addition to clarifying the charges against the defendants in this case.

I. Position of Egypt with regard to human rights treaties and the national legal framework for the protection of those rights

Egypt is among the first States to have signed international human rights instruments, in particular those that provide for the right of defendants to a fair trial and to appoint a lawyer to represent them during the court proceedings.

Under the former Egyptian Constitution of 1971, those instruments have the status of national laws and legislation.

The principal international instruments that Egypt has ratified are as follows:

1. The International Covenant on Civil and Political Rights, concluded on 16 December 1966 and ratified by Egypt on 14 April 1982;
2. The International Covenant on Economic, Social and Cultural Rights, concluded on 16 December 1966 and ratified by Egypt on 14 April 1982;

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3. The International Convention on the Elimination of All Forms of Racial Discrimination, concluded on 21 December 1965 and ratified by Egypt on 4 January 1969;
4. The Convention on the Elimination of All Forms of Discrimination against Women, concluded on 18 December 1979 and ratified by Egypt on 8 October 1981;
5. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concluded on 10 December 1984 and ratified by Egypt on 26 June 1987.

The five treaties referred to above form the basis of international human rights law, in addition to the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948.

The principal human rights instruments affirm that the principle of procedural legitimacy is an undisputed, basic universal principle according to which any procedure that involves interference with the personal freedom established for members of society must be in accordance with the law.

The Universal Declaration of Human Rights refers to various principles relating to arrest and pretrial detention. Article 3 provides that: "Everyone has the right to life, liberty and security of person." Article 9 provides that: "No one shall be subjected to arbitrary arrest, detention or exile."

Article 9 of the International Covenant on Civil and Political Rights provides that: "No one shall be subjected to arbitrary arrest or detention."

On the basis of the above and in view of the obligations arising from those treaties, the existing legislation has been revised by the Egyptian legislature and amended to bring it into line with the international treaties ratified by the Egyptian authorities, in order to ensure that the investigating agencies and public authorities abide by them. The most important points are as follows:

The legal framework in Egypt with regard to the protection of the rights of defendants

1. *The rights of defendants under arrest and remanded in custody*

Arrest procedures, the means of dealing with defendants and the requirements for their incarceration are regulated under the Egyptian Code of Criminal Procedure.

Article 40 of the Egyptian Code of Criminal Procedure provides that: "No one shall be arrested or detained unless by a warrant issued by the legally competent authorities. Any person who is arrested or detained shall be treated in a manner that preserves human dignity and shall not be subjected to physical or mental harm."

Article 41 of the Code provides that: "No one may be detained in any place other than a designated prison and no prison warden may admit any prisoner without a signed order from the competent authority or detain him beyond the period specified in that order."

2. *The right of defendants to legal counsel at all stages of criminal proceedings*

The right to a defence is guaranteed to a defendant so that he may make all of his applications and defences, as follows:

- (a) During the gathering of evidence stage, the arresting authorities are required to inform any person who is arrested or remanded in custody of the reasons for their arrest or remand. The person concerned has the right to contact a person of their choice in order to inform them about the incident, or to consult a lawyer (art. 139 (1), Code of Criminal Procedure).

(b) During the preliminary investigation stage, the investigator into offences punishable by imprisonment *de jure* may not question a defendant or have him confront other defendants or witnesses unless that person's lawyer has been invited to attend. If the defendant does not have a lawyer, or if his lawyer does not attend, having been invited to do so, the investigator is required to appoint a lawyer for the defendant (art. 124, Code of Criminal Procedure).

In addition, the defendant or his representative are entitled to attend all investigation procedures, although the Office of the Public Prosecutor may, in case of necessity or urgency, initiate some investigative procedures in the absence of either one. Both have the right to scrutinize the documents arising from the investigation procedures (art. 77, Code of Criminal Procedure).

(c) During the trial stage, in respect of offences punishable by imprisonment *de jure*, all defendants must be represented; in the absence of a lawyer, a lawyer must be appointed for their defence (art. 237, Code of Criminal Procedure).

It should be noted that the defendant is free to choose his lawyer; the Prosecution Office does not interfere with this right, and members of the Prosecution Office must abide by the defendant's choice. In cases where the defendant has not appointed a lawyer prior to questioning, a lawyer is appointed from the branch Bar Association list of lawyers whose names are posted in the chamber of the court before which the case is to be brought.

It is clear from the above that the Egyptian legal system has regular legal procedures in connection with arrest and detention and that it recognizes the right of the defendant to scrutinize all investigation procedures and to seek legal counsel. This would indicate that the Egyptian legal system is consistent with international standards in this regard.

Role and functions of the Office of the Public Prosecutor

The Office of the Public Prosecutor is an integral part of the judicial authority in Egypt.

- The judicial authority is independent, and judges are subject only to the authority of the law in the performance of their duties. No authority may interfere in judicial affairs or cases, as is enshrined in the Constitution;
- The Office of the Public Prosecutor, as an integral part of the judicial authority, is independent in its work. The Public Prosecutor may not be removed from office; this is in order to ensure that he remains independent in his work and in launching investigations, as specified under article 67 of the Egyptian Judicial Authority Act;
- The Office of the Public Prosecutor is uniquely competent to initiate criminal proceedings and refer them to court. No other authority may bring proceedings, except under circumstances specified by law. The Public Prosecutor is competent to bring criminal proceedings, in other words he may initiate and refer proceedings to the courts. In addition, he may assign a member of the Office to do so, and is responsible for the judicial oversight of all members of the Office;
- When exercising its jurisdiction to launch an investigation, the Office of the Public Prosecutor is careful to respect the principle of procedural legitimacy, which sets out all of the procedures and conduct to be observed in accordance with the law and after all legal obligations have been fulfilled; in other words, it is careful to respect the law and to ensure that all law enforcement officers comply with the law;
- The Office of the Public Prosecutor is required to take all of the measures stipulated in the Egyptian Code of Criminal Procedure and to use the powers conferred upon it by law in conformity with the laws and regulations governing it, which are consistent with international standards. In the first place, the defendant must be

questioned and presented with evidence in the presence of his lawyer and his defence must be established in full. The period of time for which a person may be remanded in custody and the grounds for doing so must be in conformity with the Code of Criminal Procedure;

- The legal protection to which the Office of the Public Prosecutor is committed in accordance with the Code of Criminal Procedure extends to all measures that would prejudice personal freedom, such as arrest, searches, wiretapping and other measures that would violate and detract from the sanctity of the private life of individuals;
- The confidentiality of investigations is safeguarded by law. The Office of the Public Prosecutor is committed to ensuring the confidentiality of investigation procedures and to the non-disclosure of information in connection with an investigation to third parties, in accordance with the rules established in the Code of Criminal Procedure. Such information is disclosed once the investigation has ended, and acted upon.

II. Charges against the defendants

1. Mr. Ayman Mohamed Al-Mutawalli Gaballa is charged in Case No. [REDACTED] of 2013, Agouza Court of Misdemeanours.

Mr. Gaballa was arrested on 3 July 2013 under a warrant issued by the Office of the Public Prosecutor, based on the inquiries conducted by the General Directorate for the Investigation of Artistic Works and the Protection of Intellectual Property Rights which indicated that Aljazeera Mubasher Misr was using a live broadcast unit without a licence from the competent authorities. Pursuant to the warrant, the office of Aljazeera in Agouza was searched; a live broadcast unit was found, in addition to other items of satellite adjustment and broadcast equipment, and the defendant was arrested.

The defendant was questioned at the Office of the Public Prosecutor in the presence of his lawyer on the same day and presented with the inquiries conducted by the General Directorate for the Investigation of Artistic Works; he refuted the charges against him, stating that he was the Director of the channel and that the live broadcast equipment was rented from a company known as UMB.

The Office of the Public Prosecutor brought the following charges against the defendant: 1. Possession of wireless communications equipment used for satellite broadcasting without a licence from the competent authorities; 2. Establishment of a satellite broadcast communications network without a licence; 3. Showing and broadcasting audiovisual works without a licence.

The Office of the Public Prosecutor decided to release the defendant on bail and complete the investigation.

2. Mr. Mohamed Hasan Mohamed Salheh is charged in Case No. [REDACTED] of 2013, Dokki Court of Misdemeanours.

Mr. Mohamed Hasan Mohamed Salheh was arrested on 4 August 2013 in possession of satellite and television broadcast equipment without a licence, in addition to a number of cameras and electrical connections. The grounds for his arrest were the investigations conducted by the General Directorate for the Investigation of Artistic Works and the Protection of Intellectual Property Rights, according to which news channel Aljazeera had brought satellite broadcast equipment into Egypt from abroad, in violation of Egyptian law, which the defendant was to receive and take to the Aljazeera office in downtown Cairo.

The defendant was questioned on the day of his arrest by the investigations department in the Office of the Public Prosecutor, in the presence of his lawyer. He refuted the charges against him and stated that he was an engineer for Aljazeera; while on holiday as a tourist in Egypt, he had received a message from the management of Aljazeera asking

him to receive satellite broadcast equipment and some cameras from an import-export office and to bring them to the Aljazeera office in downtown Cairo. He asserted that responsibility lay with the management of Aljazeera.

The Office of the Public Prosecutor charged the defendant with possession of wireless communications equipment without a licence.

The Office of the Public Prosecutor decided to release the defendant on bail after questioning. The case remains under investigation by the Office of the Public Prosecutor.

3. Mr. Abdelfattah Mohamed Mustafa Fayed and Mr. Ahmad Hassan Magdi Awad are charged in Case No. [REDACTED] of 2013, Bulaq Abu Al-'Ala' Court of Misdemeanours.

Mr. Awad was arrested on 3 July 2013, while the Artistic Works Police were monitoring Aljazeera Mubasher Misr to investigate the issuance of licences to use the live broadcast equipment at the Aljazeera office in Bulaq Abu Al-'Ala'.

The defendant was questioned by the investigations department in the Office of the Public Prosecutor. He refuted the charges against him and stated that he worked as an engineer for Aljazeera and that the director of Aljazeera, who was responsible for the licences, was Mr. Abdelfattah Mohamed Mustafa Fayed.

The Office of the Public Prosecutor charged the defendant with managing a channel without a licence and possession of wireless communications equipment without a licence. It decided to release the defendant on bail of 1,000 Egyptian pounds (LE) after questioning.

On 4 July 2013, Mr. Abdelfattah Mohamed Mustafa Fayed was arrested pursuant to a warrant from the Office of the Public Prosecutor on the basis of inquiries conducted by the General Directorate for the Investigation of Artistic Works and the Protection of Intellectual Property Rights, according to which Aljazeera Mubasher Misr was broadcasting news items from its office in Bulaq Abu Al-'Ala' without having obtained a licence to do so from the competent authorities, in addition to owning and being in possession of satellite news gathering (SNG) live broadcast equipment without having obtained licences, and broadcasting news items from Egypt in a manner prejudicial to national security.

On 5 July 2013, the defendant was questioned at the Office of the Public Prosecutor in the presence of his lawyer and presented with the findings of the police inquiries. He refuted the charges against him, stating that he possessed a licence for the activities of the Egypt branch of the Aljazeera network in 6 October City, which was valid for the activities of that branch from the Media Free Zone, while it did not approve the opening by Aljazeera Egypt of an affiliated liaison office outside that zone.

The Office of the Public Prosecutor charged the defendant with the following offences: 1. Possession of wireless communications equipment used for satellite broadcasting without a licence from the competent authorities; 2. Establishment of a satellite broadcast communications network without a licence.

The Office of the Public Prosecutor decided to release the defendant after questioning on bail of LE 10,000. The case remains under investigation by the Office of the Public Prosecutor.

4. Mr. Mohamed Badr Mohamed Mohamed is charged in Case No. [REDACTED] of 2013, Ezbekiyya Court of Misdemeanours, with a number of other defendants.

Mr. Mohamed Badr Mohamed Mohamed was arrested on 5 July 2013 and charged, with two other defendants, for blocking Ramses Street in Cairo Governorate and obstructing pedestrian and vehicular traffic, for obstructing traffic on 6 October Bridge using two vehicles carrying bricks and for resisting and attacking the authorities with

firearms and blade weapons and for throwing stones and empty bottles when the Central Security Forces intervened to open the road.

The defendant was questioned by the investigations department in the Office of the Public Prosecutor in the presence of his lawyer and presented with the police investigation report, which stated that he was a participant in the hostilities and that he had been arrested in possession of a camera that he was using to film particular scenes and broadcast them in order to arouse public opinion, when those scenes were not accurate. The defendant refuted the charges against him.

The Office of the Public Prosecutor charged the defendant with the following offences: 1. Participating in a gathering with intent to attack persons and property; 2. Causing wilful damage to public property and State-owned buildings; 3. Forcefully resisting security forces personnel in order to prevent them from carrying out their work; 4. Disrupting public transport; 6. Attempted murder of the victims mentioned by name in the investigation file, with other persons; 7. Possession of explosive materials; 8. Possession of firearms and ammunition without a licence; 9. Demonstration and use of force for the purpose of intimidating the victims mentioned in the investigation file.

On 17 July 2013, the Office of the Public Prosecutor decided to remand the defendant in custody for a period of 15 days, renewed by the aforementioned Court of Misdemeanours for a further period of 15 days. The defendant in this case was transferred to the Criminal Court, and a date for the trial remains to be set.

5. Mr. Abdullah Al-Shami Nashi Ali is charged in Case No. [REDACTED] of 2013, Medinat Nasr Administrative Control Authority, with a number of other defendants

Mr. Abdullah Al-Shami Nashi Ali was arrested on 14 August 2013 for his participation in the acts of violence attendant upon the dispersal of the sit-in staged by the Muslim Brotherhood in Al-'Adawiyyah Square.

The operation to disperse the sit-in was launched after numerous reports were received that protesters staging the sit-in in Al-'Adawiyyah Square had obstructed normal pedestrian traffic and disrupted and endangered public transport in the area, that they were in possession of firearms and ammunition and were killing or torturing people merely for coming close to the sit-in.

The police began to disperse the sit-in gradually, in accordance with the law. They issued a warning to vacate the area, which the protesters ignored. The protesters threw stones at police and launched groups against the police and public buildings, with violence.

The security forces responded by firing tear gas, while some armed protesters fired gunshot and threw Molotov cocktails. Police and protesters were injured. The police were obliged to use live bullets to confront the armed protesters, who were using a construction site in Tayran Street as a cover from which to attack the security forces. The security forces were nevertheless able to arrest many of those who perpetrated these offences and to bring the area in which the incidents occurred under control.

The defendant was questioned by the investigations department in the Office of the Public Prosecutor in the presence of his lawyer, and presented with the facts established in the police report concerning the arrest. He refuted the charges against him.

The Office of the Public Prosecutor charged him with the following offences: 1. Murder and attempted murder; 2. Demonstration of force for the purpose of terrorizing citizens; 3. Resisting the authorities; 4. Acquisition of firearms and ammunition.

The Office of the Public Prosecutor decided to remand the defendant in custody after questioning for a period of 15 days, extended for a further 15 days by the competent court

in the presence of numerous lawyers. The case remains under investigation by the Office of the Public Prosecutor.

In connection with the deaths of four journalists during the sit-in in Al-'Adawiyyah Square, namely: 1. Mr. Mick Deane, a cameraman for British channel Sky news; (2) Ms. Habiba Ahmed Abd Elaziz of the United Arab Emirates, a journalist who worked for Xpress news; (3) Mr. Ahmed Abdel Gawad, a journalist for Al-Akhbar newspaper; and (4) Mr. Mosab Al-Shami, a photographer for Rassd news website, the investigations of the Office of the Public Prosecutor in respect of Case No. 15899 of 2013, Medinat Nasr Administrative Control Authority, found that Ms. Habiba Ahmed Abd Elaziz is named as one of those who died during the sit-in in Al-'Adawiyyah Square and that Mr. Mick Deane and Mr. Ahmed Abdel Gawad are also named as victims of the incidents there. Autopsy reports are being prepared in respect of the victims of these incidents and investigations into the case are being completed, with a view to identifying those responsible for the violence.

Report No. 69 of 15 August 2013 was issued in respect of the death of Mr. Mosab Mustafa Hasan Abdulhamid Al-Shami, according to which Mr. Abdulrahman Ali Hassan reported the death of Mr. Al-Shami, his late brother-in-law. Mr. Hassan refused an autopsy and so an external medical examination report was issued by the Health Inspector.

In conclusion, having clarified the position of Egypt with regard to the international instruments concerned and the legal framework for the protection of the rights of defendants during arrest, detention and trial procedures, it would appear that the allegations contained in the urgent appeal submitted to the Permanent Mission of Egypt in Geneva are not accurate. The legal grounds for the arrest of the defendants concerned is their violation of Egyptian legal procedures regulating the operation of satellite channels, and their failure to obtain the necessary licences from the competent government authorities. The defendants arrested in the context of the incidents related to the sit-in in Al-'Adawiyyah Square were arrested because the investigations department found that they had participated in acts of violence punishable by law.

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