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*Permanent Mission of the Arab Republic of Egypt
to the United Nations Office, World Trade
Organization & Other International Organisations
at Geneva*



البعثة الدائمة لجمهورية مصر العربية
لدى الأمم المتحدة ومنظمة التجارة العالمية
والمنظمات الدولية الأخرى
في جنيف

URGENT

CHAN. 2015.112

The Permanent Mission of the Arab Republic of Egypt to the United Nations Office, World Trade Organization, and Other International Organizations at Geneva presents its compliments to the Office of the High Commissioner for Human Rights (Special Procedures Branch), and with reference to the Joint Communication dated 21st of July 2015 concerning "a number of provisions of the draft anti-terrorism law that might be incompatible with Egypt's international human rights obligations under the ICCPR" (Ref: OL EPY 11/2015), has the honor to attach herewith the response provided by the Government of the Arab Republic of Egypt in relation to the allegations included in the aforementioned Joint Communication regarding an alleged new draft law, and looks forward that the enclosed information be brought to the attention of the mandate-holders who presented the aforementioned communication, and 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 Office, World Trade Organization, and Other International Organizations at Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights (Special Procedures Branch), the assurances of its highest consideration.

Geneva, 5 August 2015



A.R.

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(Translated from Arabic)

Memorandum in response to the letter from the Ministry of Foreign Affairs concerning allegations contained in the joint communication sent to the Egyptian Government by the Independent Expert on the promotion of a democratic and equitable international order, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and others, regarding the new anti-terrorism bill

Subject

The joint communication makes the following points:

1. The anti-terrorism bill came in response to the assassination of the Prosecutor General and the attacks on a number of checkpoints in Sinai.
2. Certain provisions of the bill could be exploited to undermine human rights and the wording of some of its articles is incompatible with Egypt's international obligations.
3. Certain objections are raised against specific articles of the bill.
4. Egypt is reminded of its obligations under international human rights law in regard to the administration of justice and fair trials.
5. Egypt is requested to respond to the allegations before 20 September, otherwise a press release will be issued expressing concern in this regard.
6. A request is made to bring the allegations to the attention of the President of the Republic.

We may respond to those points as follows:

Firstly, the bill is still in the drafting stage. It is not yet complete and has not passed into law. Therefore, the allegations can be totally rejected insofar as the State is being held to account for its ideas and proposals. That constitutes blatant interference in a country's internal affairs and is incompatible with article 2, paragraph 7 of the Charter of the United Nations which reads as follows:

“The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII”.

Moreover, the allegations could abort the efforts being made to deal decisively with the terrorism which is afflicting the entire region and which States of the region and of the entire world are combatting in all its forms and manifestations.

Nonetheless, we will continue our response to the points raised in the allegations as follows:

I. The claim that the anti-terrorism bill came in response to the assassination of the Prosecutor General and the attacks on a number of checkpoints in Sinai.

Egypt does not legislate in response to some specific event. Rather, it follows the practice adopted in many developed countries and enacts legislation to rectify shortcomings and fill loopholes that emerge in the context of current events. The

United States of America did the same thing after 11 September 2001, as did the United Kingdom after the London attacks and France following the incident at Charlie Hebdo, and other States have done likewise.

Egypt has been confronting terrorism since the 1980s and has introduced many amendments to its Criminal Code, Code of Criminal Procedure and other relevant legislation.

With the growth of organized crime and of multiple forms of terrorism, and with the means and the modern technologies that terrorists use to commit their crimes, it became necessary to issue legislation bringing all those amendments together and defining the concept of terrorism in the light of relevant international treaties.

II. The claim that certain provisions of the legislation could be exploited to undermine human rights and the wording of some of the articles is incompatible with Egypt's international obligations.

With regard to the first part of the allegation, concerning the possibility of the bill undermining human rights, having examined the draft text we cannot find anything therein that undermines freedom of religion, thought, belief, opinion or expression, unless those rights are used to commit terrorist crimes in which case they would be considered as criminal acts and not as rights to be protected.

The Egyptian Constitution has an entire chapter devoted to those rights and freedoms. The chapter comprises articles 51 to 93 and is entitled "Public Rights, Freedoms and Obligations", and no law may be passed which contravenes those provisions.

As for the second part, which claims that the wording of some of the articles is incompatible with Egypt's international obligations, the allegation is too general and fails to identify the articles wherein the wording contravenes those obligations. An examination of the draft bill shows, in fact, that it is compatible with all the State's international obligations.

III. Objections raised against specific articles of the bill.

1. The allegation that the draft bill contains a broad definition of terrorism.

The crime of terrorism was previously defined in article 86 et seq. of the Egyptian Criminal Code. The article was added to the Code by Act No. 97 of 1992 and subsequently amended by Act No. 95 of 2003. All that the legislature has done in the drafting of this bill is to formulate an authoritative legislative text which reflects the development of terrorism and the expansion of its scope.

Moreover, the definition is applicable only to matters involving acts of terrorism.

2. The claim that any assessment of whether an organization may be characterized as terrorist should be carried out on a case-by-case basis by an independent judicial body and that any decision should be open to appeal.

Article 2 of Legislative Decree No. 8 of 2015 concerning terrorist groups and terrorists stipulates that the State Prosecution Office shall draw up a list of such groups on the basis of rulings issued by the criminal chambers of the Cairo Appeals Court in response to a request from the Prosecutor General supported by documentation and details of the investigations. Article 6 of the Legislative Decree makes provision for appeals against such rulings, which are to be heard by the Court of Cassation in accordance with the usual appeals procedure. Hence, the body which makes the request to include a terrorist group on the list is the State Prosecution Office which, under article 189 of the Constitution, is an integral part of the judiciary, which is competent to examine and rule on requests for the inclusion of a group on the list

and to hear any appeals against such rulings. Therefore, this entire matter is effectively assessed by an independent judicial body and any decision is open to appeal.

3. The claim that the articles allowing law enforcement officials to use lethal force in combating terrorism are too broad in scope and make no provision for regulations that accord with international standards, etc.

We can respond to this by referring to article 6 of the anti-terrorism bill itself, which allows force to be used only if necessary in order to protect life or property from imminent danger, and to the degree necessary to prevent harm. This complies with provisions regulating the legal right of defence as stipulated in all international laws and treaties and the use of force is, in any case, subject to judicial supervision.

4. The concerns expressed about restrictions on the right to freedom of opinion, expression, religion, belief, etc.

Article 19, paragraph 3, of the International Covenant on Civil and Political Rights reads as follows:

“The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order, or of public health or morals.”

The bill is intended precisely to protect security and public order. The restrictions that it imposes are necessary to that end and are in conformity with international treaties.

5. The concerns expressed in the allegation regarding the jurisdiction of the State Prosecution Office and the possibility of terrorist cases being referred to special courts.

The response to this must be that it constitutes blatant interference in the work of the State Prosecution Office which, as we indicated earlier, is a fundamental component of the judiciary which enjoys full independence under the Constitution and the law. Moreover, the comments were vitiated by the fact that they were highly general and made no reference to specific cases, making it difficult to respond to them. As for the fact that terrorist cases are being heard by special courts, this is a procedural matter the aim of which is to speed up the adjudication of such cases without infringing the rules governing fair trials, as guaranteed by the Constitution and the law in accordance with international standards.

IV. Egypt is reminded of its obligations under international human rights law in regard to the administration of justice and fair trials.

We shall reply to this as follows:

1. Criminal trials in Egypt are conducted in accordance with the standards set forth in international human rights law. Article 93 of the new Constitution stipulates that the State shall abide by the international human rights instruments ratified by Egypt, which have the force of law after being published in accordance with the specified procedure.

2. The Constitution devotes an entire section to the judiciary, stating that it is competent to adjudicate all disputes and crimes. The State Prosecution Office is an

integral part of the judiciary and is responsible for investigating and instituting and conducting prosecutions in criminal cases. The members of the State Prosecution Office are respected for their integrity, independence and impartiality and have legal expertise in the procedures involved in investigating cases and referring them for trial. The State Prosecution Office is headed by the Prosecutor General who is chosen by the Supreme Judicial Council from among the vice-presidents of the Court of Cassation, presidents of Courts of Appeal and assistant prosecutors general and then appointed by decree of the President of the Republic for a four-year term of office or for the time remaining until reaching retirement age, whichever comes first. A person can be appointed to the post only once during his career.

3. Anyone arrested, detained or deprived of liberty must be treated in a manner respectful of his dignity. He must not be tortured, intimidated, coerced or subjected to physical or mental harm. He may be held or detained only in premises which are intended for that purpose and appropriately equipped to safeguard the health and welfare of the inmates. Any violation of these provisions constitutes a legally punishable offence. Any statement by an accused person which is found to have been made under duress or the threat of duress is invalid and inadmissible as evidence. Moreover, under article 55 of the Constitution accused persons have the right to remain silent.

4. Accused persons enjoy their rights at all stages of criminal proceedings. Persons deprived of liberty are immediately informed of the reason therefor and are given written notification of their rights. The most important of these rights is that of appointing a lawyer to defend them and of lodging an appeal against their deprivation of liberty. The appeal may be filed either by the person concerned or by a third party.

5. During the trial, all statements, depositions and confessions made by the accused under torture are declared invalid and no account is taken thereof.

6. In order to ensure a fair and non-discriminatory trial, men and women are treated equally.

7. Procedures in criminal trials are based on the principles of criminal law as set forth in article 95 of the Constitution which states that punishment is individual, there can be no crime or punishment except as specified by law, and penalties may be imposed only by a judicial sentence and in respect of acts committed subsequent to the enactment of the legislation prescribing them.

8. Accused persons are presumed innocent until proved guilty in a legal trial in which their right to defend themselves is guaranteed in conformity with article 96 of the Constitution.

9. Sentences are handed down by competent courts which are independent, impartial, lawfully constituted, permanent and not ad hoc or extraordinary.

10. Trial hearings are public unless the court decides to hold them in camera out of consideration for public order or morals. In all cases, the judgement must be pronounced in public.

11. Accused persons are tried without unjustifiable delays; thus, trial proceedings begin and end within a reasonable period of time the length of which depends on the circumstances of each case. Under article 97 of the new Constitution, the State has an obligation to ensure the prompt adjudication of cases and that obligation was reaffirmed by the legislature in article 276 bis of the Code of Criminal Procedure.

12. An accused person may not be tried for the same offence twice. According to the Code of Criminal Procedure, the criminal prosecution of an accused person on the

charges brought against him terminates with the delivery of a definitive verdict declaring him either innocent or guilty.

13. The right of defence in person or through legal counsel is guaranteed under the provisions of article 98 of the Constitution. The independence of the legal profession and the protection of its rights constitute a guarantee of the right of defence and, by law, persons lacking financial resources are provided with the means to seek legal remedy and uphold their rights. The right of defence during trial is supplemented by guarantees of the right to attend the proceedings, the right to call and cross-examine witnesses, the right to sufficient time and facilities to prepare a defence and, finally, the obligatory appointment of legal counsel to defend persons accused of a felony.

14. Article 96 of the new Constitution stipulates that the procedures for the lodging of appeals against judgements handed down in cases involving felonies shall be regulated by law. In this way, the two levels of litigation for which the Constitution makes provision in cases involving felonies guarantee the rights of convicted persons and ensure a fair and impartial trial.

- As already indicated, the bill of law is in draft form and has not yet been finalized. We have nevertheless replied to the points raised in the allegations in order to clarify the true situation, of which the mandate holders requesting a reply from the Egyptian Government might be unaware even though they have described their sources of information as being sufficiently credible. We trust that the said mandate holders will not jump to conclusions and form an opinion without hearing or considering the Egyptian Government's point of view on this matter notwithstanding their failure to specify the credible sources of their information.
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