

(Translated from Arabic)

Reply to the urgent joint appeal from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and other mandate holders in the Human Rights Council, concerning the case of the lawyer Azza Soliman

Subject: Urgent joint appeal from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and other mandate holders in the Human Rights Council, concerning continued harassment of the lawyer Azza Soliman.

We will continue the response to the allegations contained in that communication as follows:

1. The Public Prosecution petitioned the Cairo Court of Appeal to instruct one of its competent criminal divisions to ban access by the entity “Lawyers for Justice and Peace” and Azza Soliman Hashim to movable and immovable property and liquid assets in accordance with article 208 bis, paragraph (a) (i), of the Code of Criminal Procedure on the following grounds:

The report of the fact-finding commission established under the terms of decision No. 7218 of 2011 issued by the Minister of Justice indicated that national security inquiries had shown that the entity “Lawyers for Justice and Peace” had obtained foreign funding from an endowment based in the United States of America in violation of the law since that entity was an illegal association and used those funds for illicit purposes.

Accordingly, the Chief Justice of the Cairo Court of Appeal issued order No. 325 of 2011 delegating a judge to investigate the issues raised in the fact-finding commission’s report.

The delegated judge began his investigation by requesting further inquiries by the national security authorities which, in August 2011, submitted two memorandums reporting that their inquiries had found that about 200 non-governmental entities were operating in the field of human rights and engaging in the activities specified in the Private Associations and Foundations Act No. 84 of 2002, including 75 local entities engaged in human rights-related activities in violation of the Act. Foreign funding and transfers to the entities under investigation were also found to have increased considerably in a manner prejudicial to the country’s national security insofar as they were intended to destabilize Egypt, instigate disorder and breaches of the peace, sow discord and division among sections of the Egyptian people and undermine the Egyptian authorities. One of these entities which received transfers was “Lawyers for Justice and Peace”, which Ms. Azza Soliman Hashim established as a civilian law firm for the purpose of practising law and conducting the defence of accused persons. However, she exploited that situation in order to engage in activities falling within the domain of civil society associations and her firm received funds from abroad in return for its organization of activities such as symposiums and conferences, in which attempts were made to besmirch the State’s reputation by claiming that Egyptian women were being persecuted and denied their rights, and its presentation of reports to the effect that they were subjected to large-scale sexual harassment and rape. The purpose of this was to tarnish Egypt’s image abroad and place the country under pressure from the United Nations Human Rights Council, the States of the European Union and other international organizations. She also joined the so-called “Forum of Independent Organizations”, which was founded by Mr. Bahi ed-Din Hassan, and she subsequently established the “Centre for Egyptian Women’s Legal Assistance” as an association registered with the Ministry of Social Solidarity in an attempt to elude State surveillance of the first entity.

The investigating judge therefore ordered the Banking Control Department of the Central Bank of Egypt to form a committee to examine the transactions conducted by “Lawyers for Justice and Peace” through banks operating in Egypt, as well as the account



of Azza Soliman Hashim, after obtaining the requisite permission from the Cairo Court of Appeal to lift banking confidentiality in order to determine whether she had received funds from abroad. The report presented by the committee contained the following findings:

- Azza Soliman Hashim opened an account in the name of “Lawyers for Justice and Peace” with [REDACTED] and presented a contract indicating that the entity was a partnership *in commendam*. The account showed credits of [REDACTED]. Her personal account with [REDACTED] showed credits [REDACTED] and her account with [REDACTED] showed the cashing of two cheques, each in the amount of [REDACTED], and an internal transfer in the amount of [REDACTED] solely up to 2012.
- When witnesses were heard, the responsible official in the Conformity and Compliance Department of [REDACTED] testified that Azza Soliman Hashim had opened an account in the name of “Lawyers for Justice and Peace” at the bank in which he was working and, during the period from 18 December 2013 to the date of his testimony, the account had received an amount of [REDACTED], an amount of [REDACTED], an amount of [REDACTED] and an amount of [REDACTED], which she had paid in at the bank in which he was working. He went on to say that another account, which she had opened in her name at the same bank, had received two cheques, each in the amount of [REDACTED], as well as an external transfer in the amount of [REDACTED].
- The competent official at [REDACTED] testified that Azza Soliman Hashim had opened an account in the name of “Lawyers for Justice and Peace” at the Obour branch of the bank in which he was working. The account had received transfers from abroad in the amount of [REDACTED] and [REDACTED]. Those amounts had been withdrawn and the account was closed on 31 July 2013.
- The lawyer at [REDACTED] confirmed the content of the above testimony.
- The financial comptroller at the Ministry of Social Solidarity testified that, at the committee’s request, he had gone to the main office of “Lawyers for Justice and Peace” but found that it had been closed. He added that the office was not registered with the Ministry of Social Solidarity and the basic objective of the establishment of that entity, according to its articles of incorporation, resembled the activities of associations.
- A report presented by a committee established by the Tax Department showed that “Lawyers for Justice and Peace” had no file with the Department and, in violation of articles 74, 75 and 135 of Act No. 91 of 2005, had not been registered for tax purposes.
- During her questioning by the investigating judge, at which 32 lawyers were present to defend her, she was confronted with that evidence but neither she nor her defence counsels were able to provide any documentary proof to refute the findings of the inquiries or the report of the above-mentioned committee.
- Consequently, it was decided that there was sufficient evidence on which to charge her with the offences criminalized under article 78, paragraph 1, and article 98 (c) and (d) of the Penal Code, article 11, article 17, paragraph 2, and article 76 of the Private Associations and Foundations Act No. 84 of 2002 and Act No. 91 of 2005.
- Whereas article 208 bis (a) (i) of the Code of Criminal Procedure stipulates that: “In cases in which the investigation finds sufficient evidence for the filing of charges ... and in which, by law, the court has an *ex officio* obligation to order the return of the amounts, or the value of the items, involved in the offence, or to award the victim compensation, if the Public Prosecution believes that there is a need to take precautionary measures, including a freeze on the defendant’s assets, it must bring the matter to the attention of the competent criminal court and petition for an order to that effect, in order to ensure the enforcement of any fines that might be imposed on the offender in accordance with the Penal Code or the Private Associations and Foundations Act, up to an amount equivalent to the value of what he received,

collected, spent or disposed of, which will either revert to the Private Associations and Foundations' Relief Fund or be returned or awarded in compensation.

- Whereas, under the provisions of the above-mentioned Act, anyone who, in his true or alleged capacity as head or member of a private association or foundation, receives funds from abroad, sends funds abroad or collects donations without the approval of the competent administrative authority is liable to a fine equivalent to the value of the amounts that he received, sent, collected, spent, speculated in or disposed of, as appropriate, and the proceeds of such a fine shall revert to the Private Associations and Foundations' Relief Fund.
- The case file, its substantiating documents and the investigations that have been conducted to date show that there is sufficient evidence to support the indictment of Ms. Azza Soliman Hashim on the above-mentioned charges, which warrant the taking of precautionary measures, until such time as the case is adjudicated, by ordering a freeze on her assets in the light of the findings of the inquiries, the testimonies of witnesses, the reports and statements of members of the committee formed by the Banking Control Department of the Central Bank of Egypt, the report of the Tax Department and the statements by officials of [REDACTED] and [REDACTED] to the effect that Azza Soliman Hashim established the entity "Lawyers for Justice and Peace" as a partnership *in commendam* without registering it with the Ministry of Social Solidarity despite the fact that, in violation of the law, it was engaging in activities similar to those of associations and propagating false reports and statements prejudicial to national security in return for the receipt of funds from abroad amounting to [REDACTED], [REDACTED] and [REDACTED] through [REDACTED], [REDACTED] and [REDACTED] through [REDACTED] and [REDACTED] paid into her personal account with [REDACTED], in addition to two cheques, each in the amount of [REDACTED], paid into her account with [REDACTED]. Accordingly, at this stage of the investigation, there is sufficient evidence to take precautionary measures by freezing the assets of the entity "Lawyers for Justice and Peace" and Azza Soliman Hashem in order to ensure the enforcement of any fines or compensation that might be imposed by the competent court pursuant to the Penal Code, the Private Associations and Foundations Act and the Tax Act, as indicated above. The freeze was therefore ordered by the court.

2. The extent to which these measures are in compliance with international human rights law:

First of all, we would like to point out that Egypt respects the right of its citizens to form political parties, private associations and foundations and trade unions and federations, which are entitled to conduct their activities in a free and democratic manner and the independence of which is guaranteed by the State in conformity with Egypt's commitment to a number of international instruments emphasizing the need to respect those rights and freedoms, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

These principles are also enshrined in articles 62, 65, 74, 75, 76 and 77 of the Egyptian Constitution which affirm the right of citizens to form political parties, private associations and foundations and trade unions and federations, all of which are entitled to conduct their activities in a free and democratic manner and the independence of which is guaranteed by the State. None of them may be dissolved or placed under receivership except by a court order and administrative authorities are not permitted to interfere in their affairs. In fact, their opinion is sought on bills of law concerning trade unions. The Constitution also takes care to lay down standard rules governing the activity of those associations in such a way as to ensure that they do not engage in political, religious, military, paramilitary or any other form of activity of a secret nature or contrary to the principles of democracy.

Those provisions recognize the right of citizens to freedom of movement, residence and migration. Citizens cannot be prohibited from leaving the territory of the State, nor can

they be placed under restricted residence or prevented from residing in a specific location, except under the terms of a substantiated court order.

We find that those rules are in conformity with the provisions of article 12, paragraph 1, of the International Covenant on Civil and Political Rights which stipulates that “everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”. Paragraph 3 thereof further stipulates that “the above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others”.

Under the terms of the Private Associations and Foundations Act No. 84 of 2002, Egypt undertakes to respect and comply with international treaties and to authorize foreign non-governmental organizations to act as private associations and foundations provided that they obtain a permit from the Ministry of Social Solidarity on the basis of the agreement concluded between those organizations and the Ministry of Foreign Affairs.

Therefore, in the light of the above, all forms of freedom of opinion and expression, as well as freedom of association, are guaranteed under the Constitution and the law in conformity with international norms and are not subject to any restriction provided that they act within the framework laid down by the law and the regulations.

On the basis of the above, it is evident that:

Azza Soliman Hashim established an entity in violation of the law and stands accused in case No. 173 of 2011 of receiving funding from foreign bodies, without the approval of the Egyptian authorities, in order to engage in activities likely to threaten national security. The case is being investigated by a judge delegated by the Cairo Court of Appeal and the measures taken against her were ordered by the investigating judge because they were required in the interests of the investigation. She is legally entitled to lodge an appeal and challenge those measures before the competent bodies.

The investigations are being conducted by independent, neutral judicial bodies any interference in the affairs of which constitutes an imprescriptible offence.

Investigating judges are impartial and fully aware of the importance of human rights and the obligations of the Arab Republic of Egypt under the binding international instruments that it has ratified, as well as its moral obligations under the instruments for the ratification of which the procedures have not yet been completed or under the declarations, rules and guidelines adopted by the United Nations in this regard.

The judicial order under which her assets were frozen was issued by the competent court in case No. 173 of 2011, recorded as case No. 7 of 2016, after hearing the defendant's objection thereto and verifying that the legally required conditions for an order freezing her assets had been met.

It is evident, therefore, that the allegations referred to in the joint appeal received from the Special Rapporteurs are false insofar as all the proceedings were conducted in conformity with the Constitution, the law and international norms and standards.

The allegation to the effect that human rights defenders are being persecuted is refuted by the fact that the Constitution and the law guarantee the security and independence of lawyers and their right to perform their professional functions in accordance with the standards laid down in international instruments, as can be seen from the following:

The Egyptian legislation promulgated in this regard stipulates that the freedom to which all citizens are entitled must be respected. It likewise guarantees the independence of lawyers and their right to perform their functions in a free and independent manner in conformity with Egypt's obligations under the international instruments that it has ratified, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which emphasize the need to respect those rights and freedoms.

These rights are guaranteed in the detailed manner specified in article 54 of the Egyptian Constitution which stipulates as follows: “Every person whose freedom is restricted, or any third party, shall have the right to file a judicial appeal against that measure. A decision shall be taken on such appeal within one week from the date on which it is filed; otherwise, the person must be released immediately. The procedures and grounds for, and the duration of, remand in custody, as well as the circumstances in which the State might be liable for payment of damages in respect of such remand in custody or of any penalty suffered which is subsequently revoked under the terms of a final judgment, shall be regulated by law.”

Anyone whose freedom is restricted must be immediately notified of the reasons therefor, must be informed of his/her rights in writing, must be immediately enabled to contact his/her relatives and lawyer and must be brought before the investigating authority within 24 hours from the time at which his/her freedom was restricted. A suspect can be questioned only in the presence of his/her lawyer. A lawyer must be appointed for persons who do not have one and the requisite assistance must be provided, in accordance with the legally prescribed procedures, for persons with disabilities. Every person whose freedom is restricted, or any third party, shall have the right to file a judicial appeal against that measure. A decision shall be taken on such appeal within one week from the date on which it is filed; otherwise, the person must be released immediately. The procedures and grounds for, and the duration of, remand in custody, as well as the circumstances in which the State might be liable for payment of damages in respect of such remand in custody or of any penalty suffered which is subsequently revoked under the terms of a final judgment, are regulated by law. It is not permissible under any circumstances to prosecute a person accused of an offence punishable by imprisonment unless a lawyer appointed by the accused or by the court is present.

Under article 55 of the Constitution: “Anyone who is arrested or detained or whose freedom is in any way restricted must be treated in a manner that preserves his dignity. He may not be tortured, intimidated, coerced or physically or mentally harmed. He may be confined or detained only in places designated for that purpose and which meet humanitarian and health requirements. The State shall provide special facilities for persons with disabilities. Violation of any of these provisions shall constitute a legally punishable offence. An accused person has the right to remain silent and any statement proved to have been made by a detainee under any of the above-mentioned forms of duress, or threat thereof, shall be deemed null and void and shall not be admissible as evidence against him.”

Under article 99 of the Constitution: “Any violation of personal freedom, of the privacy of citizens or of any other public rights and freedoms which are guaranteed by the Constitution and the law shall be a punishable offence and criminal and civil proceedings arising therefrom shall not be barred by prescription. The aggrieved party shall have the right to bring a direct criminal action and the State shall guarantee fair compensation for the victims of such violations. The National Council for Human Rights may report any violation of these rights to the Public Prosecution and may intervene in the civil proceedings in support of the aggrieved party if the latter so requests. All these procedures shall be regulated by law.”

The Egyptian Constitution thereby established a framework for the drafting of legislation under which the State would be obliged to protect personal freedom and compensate persons who have been restricted in their freedom for any period of pretrial detention or any penalty suffered which has been subsequently revoked under the terms of a final judgment. The State also has a constitutional obligation to compensate persons whose legally recognized freedom or rights have been violated.

Under article 95 of the Constitution: “Penalties are personal; there is no crime or punishment except as provided by law; no penalty may be imposed except pursuant to a court judgment; and penalties may be imposed only in respect of acts committed subsequent to the entry into force of the legislation under which they were criminalized.”

Article 96 of the Constitution further stipulates that: “Accused persons shall be presumed innocent until proved guilty in a fair legal trial in which their right to defend themselves is guaranteed”.

In addition to the above, the Egyptian legislature has taken care to safeguard, protect and regulate the personal freedom of individuals in a manner that is consistent with the public interest and respects human dignity as the basis of all human rights and freedoms. Criminal legislation, as illustrated by articles 34, 35, 36, 39/1, 40 and 41 of the Code of Criminal Procedure (Act No. 150 of 1950), places fundamental restrictions on the exercise of official authority and enables individuals to prevent any abuse of such authority since, under article 40 of the Code, persons who are restricted in their freedom must be treated in a manner that preserves their dignity and it is prohibited to subject them to physical or mental harm.

Far from being confined to the above, legislative protection also extends to the rights of legally convicted detainees insofar as the latter are entitled to submit oral or written complaints to the prison warden, who has an obligation to transmit them to the competent representatives of the judicial authority. Under article 43 of the Code, prisoners or third parties acting on their behalf have a constitutional right to submit a complaint concerning their detention in premises not designated for that purpose, or concerning any other matter.

Under the Prisons Regulatory Act No. 396 of 1956, persons remanded in pretrial custody must be segregated from persons whose freedom has been restricted pursuant to enforceable court judgments. They must wear different clothing and are permitted to have whatever food they require brought in from outside the prison. They are also allowed to contact their families and relatives and be visited by them once a week and their lawyers can also visit them provided that they obtain permission from the competent authorities (arts. 14, 15 and 16 of the Act). Under article 39 of the Act, persons who are restricted in their freedom are permitted to contact and meet with their lawyers in private after permission has been obtained from the competent judicial authorities.

The Act also makes provision for the education of persons who are restricted in their freedom by stipulating that the Minister of the Interior, in collaboration with the Minister of Education, must draw up a curriculum for male and female detainees (arts. 28 and 29). A library containing books of a religious, scientific or ethical nature must be established in every prison and inmates are permitted to have books, newspapers and magazines brought in from outside (art. 30). The prison administration has an obligation to encourage inmates to acquire an education and is required to facilitate the studies of those wishing to pursue further educational courses and permit them to take the requisite examinations in the relevant examination centres (art. 31).

With regard to the health-related rights of persons restricted in their freedom, under article 33 of the Act every penitentiary or prison must have one or more physicians, one of whom must be resident, to provide the inmates with health care.

Egypt's Constitution and national legislation emphasize the need to respect the guaranteed rights of all citizens who are restricted in their freedom and to ensure that they are brought before independent judicial bodies. No exceptions are made in regard to these rights, even in counter-terrorism and emergency legislation.

Lawyers enjoy additional rights and guarantees under the terms of article 198 of the Egyptian Constitution of 2014, which stipulates as follows: "The practice of law is a liberal profession which, in partnership with the judicial authority, ensures justice and the rule of law and safeguards the right to defence. It shall be practised by independent attorneys and by attorneys of public authorities and companies in the public and business sectors. In the performance of their function as defence counsels before the courts, all attorneys shall enjoy the rights and protection guaranteed to them by law. Such rights shall also be accorded to them before investigative and fact-finding bodies. Except in cases of *flagrante delicto*, it shall be prohibited to arrest or detain attorneys exercising their right to provide defence counselling. The procedures in regard to the above shall be regulated by law."

Article 49 of Act No. 17 of 1983 promulgating the Code of Conduct for the Legal Profession, as amended, stipulates that: "When appearing before the courts and other bodies, attorneys shall be entitled to be treated with the respect due to their profession."

By way of exception to the provisions of the Codes of Civil and Criminal Procedure concerning offences committed during judicial hearings, if an attorney attending a hearing

in order to perform his duty, or due to the manner of his performance thereof, commits a breach of court procedure or any other infraction for which he can be held professionally or criminally liable, the presiding judge orders the preparation of a report on the occurrence which he transmits to the Public Prosecution and to which he draws the attention of the competent branch of the Bar Association.

Under article 50 of the said Act: “It is not permissible to arrest an attorney or remand him in custody on the ground of his alleged commission of any of the offences specified in the preceding article, including verbal or written defamation, abuse or contempt, during or by virtue of his performance of any of the professional duties referred to herein. In such a case, a report on the occurrence shall be prepared, transmitted to the Public Prosecution and copied to the board of the Bar Association. The Public Prosecutor may institute criminal proceedings if the attorney’s behaviour constitutes an offence punishable under the Penal Code or may refer the matter to the board of the Bar Association if the said behaviour merely constitutes a breach of procedure or of professional conduct. In the former case, the offender shall be prosecuted at a closed hearing in which neither the judge nor any member of the bench before which the offence was committed may participate.”

Article 51 of the same Act further stipulates that: “An attorney may be questioned and his office searched only by a member of the Public Prosecution. The Public Prosecutor must give the board of the Bar Association or its branch sufficient prior notice before beginning the investigation of any complaint against an attorney and, if the attorney is accused of a felony or misdemeanour relating to his work, he may be questioned only in the presence of the President of the Bar Association, the head of its branch or an attorney delegated to represent them. The board of the Bar Association or its competent branch may request copies of the investigation report, which shall be provided without charging fees therefor.”

Under article 54 of the Act: “Anyone who commits an act of aggression against an attorney or insults him by gesture, word or threat, during or because of his performance of his professional duties shall be liable to the penalty prescribed for the commission of such an offence against a member of the bench.”

Under article 55 of the Act: “Neither the attorney’s office nor any of its contents used for the practice of his profession may be sealed or seized.”

In the light of the above provisions, it is evident that the State shows special concern for attorneys and human rights defenders and accords them the rights and guarantees needed to enable them to perform their duties in a free and proper manner without fear or harassment.
