

*(Translated from Arabic)*

*Permanent Mission of the Arab Republic of Egypt  
to the United Nations, the World Trade Organization  
and other international organizations in Geneva*

**Reply to the joint communication received from the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and others, regarding the arrest of a number of Nubians**

It should be stated from the outset that the complaint contains allegations that have no basis in fact, that relate to a case in which domestic remedies have not been exhausted and that, contrary to the truth, seek to suggest that human rights violations have taken place.

In that context, the Arab Republic of Egypt can confirm that persons from the district of Nasr Nuba in the governorate of Aswan are Egyptian citizens who enjoy the same constitutional and legal rights and duties as all other citizens. They reside in many different places throughout all the governorates of the Arab Republic of Egypt where they are part of a unified national fabric that admits neither discrimination nor distinction. The Constitution defines incitement to hatred as a crime punishable by law and requires the State to take the measures necessary to eliminate all forms of discrimination. In fact, article 53 of the Constitution states:

“Citizens are equal before the law and have the same public rights and duties. There can be no discrimination between citizens on the basis of religion, belief, gender, origin, race, colour, language, disability, social class, political or geographical affiliation, or for any other reason.

“Discrimination and incitement to hatred are crimes punishable by law.”

The same principles are upheld in other articles of the Constitution, including article 9 on equal opportunity; article 11 on non-discrimination against women; article 19 on education and instilling a sense of citizenship, tolerance and non-discrimination; and article 48 on access to culture for all citizens without discrimination.

These provisions are consistent with article 2 of the International Covenant on Civil and Political Rights.

In the light of the foregoing, it can be affirmed that the arrested persons who are the subject of the allegations contained in the communication were treated as Egyptian citizens who had failed to abide by the law and had committed offences that are punishable by law, as will be explained below:

**In responding to the allegations contained in the communication, the following subjects will be addressed:**

- I: The right to demonstrate and its constitutional and legal guarantees, the legal basis for the police’s decision to use force and how that was consistent with international standards (on the basis of the allegations in the communication);
- II: Guarantees regarding health care in places of detention and how they conform to international standards;
- III: Advanced medical care made available to Gamal Sorour and the circumstances of his death;
- IV: The outcome of investigations into the arrest of accused persons resident in the district of Nasr Nuba in the governorate of Aswan;
- V: Legal aid guarantees for accused persons;



VI: Measures taken to ensure that the state of emergency in Egypt does not violate the country's international obligation or the principles of equality before the law or presumption of innocence;

VII: Rules governing the dispersal of demonstrations and the use of force and arms, and how they conform to international standards;

VIII: Measures taken to fulfil the obligations enshrined in article 236 of the Constitution regarding the restoration of the Nubians to their lands;

IX: Allegations to the effect that the interrogation and trial of the accused persons failed to abide by international standards.

**The responses to the points listed above are as follows:**

**I: The right to demonstrate and its constitutional and legal guarantees, the legal basis for the police's decision to use force and how that was consistent with international standards (on the basis of the allegations contained in the communication)**

As part of its obligations under a number of international treaties, the Constitution and domestic law, the State respects the right of persons to gather together in a peaceful manner that does not threaten security. Article 73 of the Constitution of Egypt enshrines the right of citizens to organize public meetings, marches, demonstrations and all forms of peaceful protest without carrying arms of any kind, subject to prior notification as regulated by law.

That right is regulated under Act No. 107 of 2013 concerning demonstrations, article 1 of which states that citizens have the right to organize and participate in public meetings, marches and peaceful demonstrations.

The Act requires that any meeting, procession or demonstration be preceded by a notification giving its location, start and end times, and the reasons for calling it. This is in order to make the necessary dispositions to ensure that the event remains secure and that measures may be taken should it cease to be peaceful. The relevant provisions are set forth in articles 8 and 9 of the Act. In fact, article 9 states that the purpose of the measures is to make the necessary dispositions to ensure the security of a public meeting, procession or demonstration for which notification has been duly received, and to prepare the measures to be taken should it cease to be peaceful, in order to protect lives and property; prevent breaches of security and public order or disruption of production processes; prevent any harm to citizens that might endanger their interests or hinder them from exercising their rights or carrying out their work; avoid any impediments to the course of justice, the functioning of public institutions or the smooth running of transport, communications or traffic; and prevent any attacks against public or private property.

From the information given above it should be clear that, although legislators have introduced measures to regulate and manage public meetings, processions and demonstrations, as well as penalties for failure to respect the law, they have not banned such events or placed restrictions that would impede the exercise of that right. In fact, a ruling of the Supreme Constitutional Court, issued on 3 December 2016, upholds the right and states that it may be exercised subject to the condition of prior notification, but without having to await the approval of the administrative authorities. Furthermore, the ruling restricts the right of the authorities to ban a demonstration, which may be done only through the courts.

From the information given above it should be clear that, while legislators have taken action to regulate public meetings, processions and demonstrations, citizens have the right to organize and participate in such events on the condition of prior notification.

On 3 September 2017, Mohammed Saleh Sorour Amer, Mohammed Azmy Ahmed and more than 50 others held a demonstration for which no notification had been given and which blocked roads leading to a number of government installations on the Nile Corniche. For that reason, the demonstration could not be described as peaceful and, in fact, constituted an offence punishable by law in the context of offences discovered in flagrante delicto, as stipulated in articles 23, 30, 32, 34, 36 and 46 of the Code of Criminal Procedure

and article 54 of the Constitution. Thus, the police were compelled to intervene in order to impose the law and to carry out their duty to protect citizens, conserve public property and keep thoroughfares open. The participants were first advised to cease blocking the roadway and to disperse and, when they failed to heed the warning, 24 of them were arrested and brought before the State Prosecution Office, which proceeded to question them in accordance with the law.

The procedures followed in the case of these accused persons were consistent with international treaties, including article 11 (1) of the Universal Declaration of Human Rights on the presumption of innocence and articles 9 (1) and 19 of the International Covenant on Civil and Political Rights, respectively on security of the person and freedom of opinion and expression.

Thus, the procedural rules set forth in Act No. 107 of 2013, as amended, regulating the exercise of this right, which were followed by the State authorities against the complainants, are consistent with international treaties.

## **II: Guarantees regarding health care in places of detention and how they conform to international standards**

In accordance with article 9 of the International Covenant on Civil and Political Rights, the Egyptian Constitution contains safeguards to protect persons deprived of their liberty and requires that such persons be brought before an independent judiciary. Legislators have not envisaged any exceptions to those guarantees save under counter-terrorism or emergency legislation. The law decrees that personal liberty is a natural and inviolable right and that, except in cases of crimes discovered in flagrante delicto, no one may be arrested, searched, imprisoned or have their freedom restricted save in accordance with a reasoned judicial warrant. Persons deprived of their liberty must be informed immediately of the reasons for their arrest and provided with written information about their rights, and they may immediately contact their family and a lawyer. In addition, they must be referred to the investigating authorities within 24 hours of their detention and may only be questioned in the presence of a lawyer. Persons without a lawyer shall have one appointed for them. Persons deprived of liberty, and others, have the right to submit a complaint to the courts. Persons who have been arrested or imprisoned, or whose liberty has been restricted, are to be treated in a manner that protects their dignity and they may not be detained or imprisoned except in places designated for that purpose and adequately equipped for human habitation and health. Accused persons have the right to remain silent. Prisons are places of reform and rehabilitation; all prisons and detention centres are under judicial supervision and all acts that might undermine human dignity or endanger human health are forbidden. These guarantees are set forth in articles 54, 55 and 56 of the Constitution. The same provisions are contained in domestic legislation such as articles 40, 41 and 42 of the Code of Criminal Procedure and articles 5, 6, 85 and 86 of the Prisons Regulatory Act No. 396 of 1956.

### **The rights of inmates in detention centres**

Persons held in detention centres enjoy a number of rights, including the following:

#### **Right to health care**

The health care of persons deprived of their liberty is addressed in article 33 of the Prisons Regulatory Act No. 396 of 1956, as amended, and its implementing regulations. According to that article, each penitentiary or prison must have one or more medical officers, one of whom must be resident, to provide health care for inmates. If the prison medical officer finds that the treatment required by a prisoner is not available in the prison hospital, he must transfer the prisoner to an external hospital after referring the matter to the Medical Department of the Prison Service. In cases of emergency, the prison doctor can take all measures he deems necessary to preserve prisoners' health (article 37 of the above-mentioned regulations). The State medical service is required to provide treatment for prisoners in government and university hospitals in order to ensure that they receive high-quality care.

It should be noted in this context that medical care in detention facilities is regulated by an integrated structure consisting of different facilities that specialize in preventive or

therapeutic medicine. The structure is run by a specialized medical services management board in coordination with the Ministry of Health, and the aim is to ensure that prison inmates enjoy health-care treatment comparable to that available to the external community.

In addition, persons deprived of their liberty also enjoy other rights such as the provision of means of sustenance, education, and culture, the prohibition of all forms of degrading or inhuman treatment, the right to correspondence and to receive visits, and the right to communicate with lawyers and to meet with them in private. These rights are set forth in the Constitution, in articles 28, 29, 30 and 39 of the Prisons Regulatory Act and in articles 64, 64 bis, 71 and 85 of the Act's implementing regulations.

The safeguards protecting these rights are consistent with articles 2, 25 and 26 of the Universal Declaration of Human Rights, articles 2, 9 and 10 of the International Covenant on Civil and Political Rights, and article 12 of the International Covenant on Economic, Social and Cultural Rights.

In that context, the persons in question received 49 visits while in detention, between 3 September and 15 November, with a total of 2,407 visitors. They also received 21 medical visits and some of them were taken to the Aswan General Hospital or the University Hospital to receive the treatment they needed.

### **III: Advanced medical care made available to Gamal Sorour and the circumstances of his death**

Investigations in Aswan First Division Administrative Case No. 6700 of 2017 regarding the death of Mohammed Saleh Sorour, known as Gamal Sorour, showed that Aswan University Hospital, where he was taken on 4 November 2017, stated that he was admitted suffering from acute exhaustion and, despite being provided with the requisite initial care, subsequently died.

The medical report stated that the cause of death was respiratory failure leading to acute circulatory failure and death, with no suspicion that a criminal act had taken place.

The State Prosecution Office launched its investigations by questioning the competent officer who stated that, while passing by the visiting cell assigned to persons being held in provisional detention in connection with Aswan First Division Administrative Case No. 5653/2017, he was told that one of the detainees was suffering from acute exhaustion. Upon opening the door of the cell, he discovered that the detainee in question was Mohammed Saleh Sorour. The medic was summoned who examined the patient and, discovering that his sugar levels had risen, gave him a shot of insulin which, however, did not have any effect. At that point, an ambulance was called and the patient was taken to Aswan University Hospital to be examined by a doctor. The officer was later informed that he had died immediately after being admitted to hospital. This was confirmed by the police officer [REDACTED]. The State Prosecution Office also questioned the accused persons being held in detention in the same cell and in connection with the same case as the deceased. Mohammed Azmy Mohammed Ahmed stated that, while being held in the detention room, Mohammed Saleh Sorour had begun to feel faint. They had knocked on the door of the room and the officer had come and summoned the medic who examined the patient and, discovering that his sugar levels had risen, gave him a shot of insulin which, however, did not have any effect. An ambulance was called immediately and the patient was taken to Aswan University Hospital. The same statement was rendered by [REDACTED]

[REDACTED], who all endorsed the same version of events.

The State Prosecution Office also undertook an examination of the body of the deceased, which revealed the presence of three plasters on the man's chest and traces of blood in a cannula on the back of his left hand. The Prosecution Office questioned the health examiner for Aswan who stated that the patient had no signs of injury to his body and that the cause of death was respiratory failure leading to acute circulatory failure and death, with no suspicion that a criminal act had taken place. He also stated that there were signs of an open heart procedure to fit a stent and that the fact that there was a cannula in

his left hand and another in his right indicated that he had been alive upon being admitted to hospital.

During the course of the investigations, [REDACTED], [REDACTED] was also questioned and stated that [REDACTED] had previously undergone open heart surgery in France and that he was suffering from pancreatic cancer, high blood pressure and diabetes. He accused no one of [REDACTED] death, had no suspicion that a criminal act had taken place and did not wish an autopsy to be carried out. The death had been the will of God.

Furthermore, in statements [REDACTED] to the media, [REDACTED] stated that [REDACTED] had been in contact [REDACTED] prior to his death and had said that he was receiving the health care he needed inside the detention centre. He had also said that he had received the medicines he required, [REDACTED] sent him from France and which the prison authorities had not prevented him from receiving (annex 1).

The State Prosecution Office completed its work by surrendering the body of the deceased Mohammed Saleh Sorour to his family and authorizing his burial, and by registering and archiving the case in the record of administrative complaints. Any suspicion that a crime had taken place was excluded. The death had come about by the will of God, as the [REDACTED] had stated and as was corroborated by the other persons questioned during the course of the investigation ([REDACTED]), as well as by investigators and the medical examiner.

From the investigations and from the statements of [REDACTED], [REDACTED], who were all in detention along with the deceased in connection with Aswan First Division Administrative Case No. 5653 of 2017, it emerged that the deceased was receiving treatment in line with the directives of his French doctor and that he had in his possession a bag containing the drugs that the doctor had prescribed. In addition, phials of insulin were kept in a fridge by the security forces and brought to him at his request, and he had been taken to Aswan University Hospital more than once during the period he was in detention in connection with Aswan First Division Administrative Case No. 5653 of 2017. The medical report showed that he was taking his medication regularly and that he had undergone four medical examinations after suffering a health crisis while in detention. No shortcomings were found in the health care given to him or to any of the other detainees. Finally, [REDACTED] submitted documents relating to the latter's health, which showed that he had received all his medical rights (copy of the reports in annex 2).

The information given above clearly shows that the prisoner received the medical care he required, which is a right guaranteed by the Constitution and the law in Egypt, particularly articles 33, 36 and 37 of the Prisons Regulatory Act No. 396 of 1956, as amended, in line with relevant international instruments and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

The same information shows that the allegations in the communication to the effect that the prison authorities denied or delayed health care to this or any other prisoner are unfounded.

#### **IV: The outcome of investigations into the arrest of accused persons resident in the district of Nasr Nuba in the governorate of Aswan**

With regard to allegations in the communication relating to the unlawful arrest of 14 Nubian protestors, it should be emphasized that those persons had committed offences punishable by law. All the suspects were subjected to a physical examination by the State Prosecution Office before being questioned. Their clothing was also inspected and they were asked whether or not they had suffered any recent injuries. The examinations revealed no signs of injury and neither the accused persons nor their lawyers, who were present during the questioning, made any claims concerning injuries. The persons concerned were duly questioned and confronted with the facts as set forth in the evidence-collection record, and those facts were not substantially controverted as the State Prosecution Office continued its investigations. Once sufficient evidence had emerged to send them to trial,

charges were levelled against them on the basis of the investigations of the State Prosecution Office, and they were duly referred for trial, as detailed below.

**(b) Aswan First Division Administrative Case No. 5653 of 2017, which was subsequently registered as Aswan First Division Emergency State Security Court Misdemeanour Case No. 26 of 2017**

The investigations conducted by the State Prosecution Office showed that Mohammed Saleh Sorour Amer, Mohammed Azmy Ahmed and others had held a demonstration without informing the competent authorities. Nor did they limit themselves to expressing their views but blocked roads leading to a number of government installations on the Nile Corniche and endangered the lives of citizens. As has been stated, those actions amount to instances of offences discovered in flagrante delicto. The police first advised them to cease blocking the roadway and to disperse, then arrested 24 persons who were in the course of committing the crimes mentioned above. Those persons were then referred to the State Prosecution Office within 24 hours of being arrested, in accordance with article 54 of the Constitution and article 36 of the Code of Criminal Procedure. The State Prosecution Office interrogated them in the presence of their lawyers, as set down in the case file, and questioned officers and others who had been present at the arrest.

The investigations showed that Mohammed Saleh Sorour Amer was in possession of the sum of 28,205 Egyptian pounds (LE) and was responsible for financing the demonstration, while Mohammed Azmy Ahmed was in possession of 91 leaflets and a third accused of 35 leaflets. All of them had been involved in instigating and participating in the demonstration. The rest of the accused persons had also been carrying leaflets calling for a demonstration to take place on 3 September 2017. As a result of the demonstration, a public thoroughfare was blocked and traffic was interrupted, which itself constitutes a crime punishable by law. Inquiries by the competent departments within the Ministry of the Interior showed that the arrested persons had been involved in plans the purpose of which was to impede the State's design for economic development and revival. To that end, they had held a number of preparatory meetings during which they had agreed on a systematic campaign of demonstrations and sit-ins in public squares across the governorate of Aswan in an attempt to undermine public stability, peace and security. They also planned to film the demonstrations and sit-ins with a view to broadcasting them across various foreign satellite television channels.

Nothing emerged from the investigations or the statements of the accused persons to suggest that army units had intervened in the incident. The accused were arrested by police officials, in accordance with the law for cases involving crimes discovered in flagrante delicto; i.e., articles 23, 30, 32, 34, 36 and 46 of the Code of Criminal Procedure, which are consistent with article 54 of the Constitution and article 9 of the International Covenant on Civil and Political Rights. These provisions have been upheld by the Court of Cassation in a number of its rulings, including appeal No. 4366 of 1989, session No. 59.

The State Prosecution Office proceeded by registering a criminal case under articles 7, 8, 18, 19, 21 and 22 of Act No. 107 of 2013, as amended, and article 133 (1) of the Criminal Code, against ██████████ and others on the grounds that they, on 3 September 2017, in the jurisdiction of the Aswan First Division in the governorate of Aswan, held a demonstration without notifying the competent authorities, and instigated, participated in and obtained funding for the said demonstration, contrary to the law, thereby disrupting public order and public safety, endangering citizens and threatening their interests, blocking thoroughfares and insulting police officers who were carrying out their duties.

The accused persons were held in custody and referred to the session of 15 November 2017 during which the court decided to release them and to suspend the case until the session of 12 December 2017. On that date, some of the accused submitted that certain emergency laws and prime ministerial decrees were, in fact, unconstitutional, and the court ruled to suspend the case until 30 January 2018 for the submission of documents and memoranda.

Article 29 of Act No. 48 of 1979 regarding the Supreme Constitutional Court states:

“The Court shall be responsible for the judicial oversight of the constitutionality of laws and regulations, in the following manner:

“(a) If, in the course of examining a case, a court or other body with judicial jurisdiction believes that a text within a law or a regulation that is significant for the resolution of the dispute under examination is unconstitutional, it shall halt the case and, without fee, refer the files to the Supreme Constitutional Court for it to decide on the issue of constitutionality;

“(b) If one of the parties to a case being examined by a court or other body with judicial jurisdiction submits that a text within a law or a regulation is unconstitutional, and the court or other body decides that the submission is justified, the case shall be suspended and the party that made the submission shall be given a maximum of three months to submit the matter to the Supreme Constitutional Court; if the matter is not submitted within three months it shall be considered null and void.”

Article 49 of the same Act states:

“The rulings of the Court in constitutional cases and its explanatory decrees are fully binding upon all the authorities of the State.

“The rulings and decrees referred to in the preceding paragraph shall be published without charge in the Official Gazette within a maximum of 15 days from the date of issue.

“If a text within a law or a regulation is ruled to be unconstitutional it shall not be applied from the day following the publication of the ruling, unless the ruling itself specifies an earlier date. Rulings on the unconstitutionality of fiscal legislation shall have only immediate effect, without prejudice to the right of the plaintiff to benefit from a ruling of unconstitutionality.”

It follows from the foregoing that it is up to the competent court to evaluate the submission. If it decides that the submission is justified, the case shall be suspended and the party that made the submission shall be given a maximum of three months to submit the matter to the Supreme Constitutional Court; if the matter is not submitted within three months it shall be considered null and void. If the appeal is accepted and a ruling of unconstitutionality is handed down, that ruling is binding upon all the authorities of the State. Once the submission is presented to the court, the latter is responsible for examining it and making a decision on the basis of the reasoning presented and of its own examination of the disputed texts.

**With regard to claims made in the complaint that visits to the accused took place through a fenced window, etc.**

Detained persons are allowed to receive visits from their families during which the two sides can listen to and see one another. This system is applied in Egypt as in many other countries.

The defence lawyers of the accused persons were allowed to visit their clients and meet with them in private, a right that is guaranteed under the Constitution and the law. Article 53 of Act No. 17 of 1983, regulating the exercise of the legal profession, as amended, states as follows: “Lawyers authorized by the State Prosecution Office to visit persons detained in general prisons have the right to visit their clients at any time and to meet with them privately in an appropriate location inside the prison.” The same provisions are contained in article 125 of the Code of Criminal Procedure.

The interrogation of the accused persons Maysara Abdelaziz Mohammed Ali and Mohammed Azmy Mohammed Ahmed began at 6.30 a.m. on 4 September 2017. When the investigator from the State Prosecution Office realized that they were not accompanied by a lawyer, a delegate was sent to the local office of the Bar Association in Aswan with a request to appoint a lawyer to attend the interrogation. This is consistent with article 124 of the Code of Criminal Procedure, which states as follows: “In a case involving a major or serious offence which carries a mandatory prison sentence, investigators may not interrogate an accused person or confront him or her with other accused or witnesses unless

they have summoned a defence lawyer to attend, save in cases of flagrante delicto or where urgency is imperative in order to avoid evidence being lost, as the investigator shall explain in the record. The accused shall indicate the name of a lawyer to the court registrar or the prison director, or notify the investigator. The lawyer may also undertake to provide such indication or notice. If the accused does not have a lawyer, or the lawyer fails to attend after having been summoned, investigators must appoint a lawyer themselves.”

However, the delegate returned and stated before the State Prosecution Office that there were no lawyers present at the Bar Association and that the door of the Association was closed. The investigator took note of this then, fearful that evidence might be lost and due to the fact that the suspects had been apprehended in flagrante delicto, proceeded to interrogate them. His actions were based on article 124 of the Code of Criminal Procedure, which waives the requirement for a lawyer to be present in cases of flagrante delicto or where there is a fear that evidence might be lost. Counsel for the suspects was subsequently allowed to examine the case file and to make submissions on behalf of the defence, both to investigators and to the court. At the court session of 6 September 2017, the accused persons were represented by numerous lawyers, including those named below:

[REDACTED]

[REDACTED]. At the session of 13 September 2017, in addition to the aforementioned names, the accused were also represented by [REDACTED] for Mohammed Saleh Sorour and by the following lawyers for the other accused persons:

[REDACTED]

They all also attended subsequent sessions on 20 September, 3 October, 9 October, 17 October and 30 October 2017 until the accused were eventually released on 15 November 2017.

## **2. Aswan Division Misdemeanour Case No. 15603 of 2017, which was registered for investigation as Case No. 791 of 2017**

The facts contained in the police report dated 3 October 2017 may be summarized as follows: After the court had issued its ruling to extend the detention of the suspects in Aswan First Division Administrative Case No. 5653 of 2017, the families of those detained gathered with some 150 other persons and held a demonstration, blocking thoroughfares, preventing the flow of traffic and pedestrians and pulling up paving stones. The participants were advised to open the roadway to traffic and pedestrians but they failed to heed the warning and began pelting the security forces with stones. This caused an injury to constable [REDACTED] who received a contusion on the right side of his abdomen under the rib cage, as explained in the medical report attached to the case file. Seven of those present were arrested and referred to the State Prosecution Office, which interrogated them. The Office also questioned officers and others who had been present during the incident. Their statements were corroborated by inquiries conducted by the competent departments within the Ministry of the Interior. The State Prosecution Office also examined the site of the incident where it noted the existence of a certain level of destruction, consisting in broken paving stones and rocks thrown on the roadside. An examination of the video evidence showed a number of persons in the street. A white car appeared among them, its number plates not visible, then some of the accused persons came



into view throwing stones at the police and causing them to take refuge inside the court building. The video is in the possession of the court and may be viewed by all parties concerned.

The State Prosecution Office completed its investigations by:

I. Dismissing suspicions regarding the offences of resisting authority or disrupting public transport, which are penalized under articles 137 bis (1) and (2) and 167 of the Criminal Code;

II. Registering a criminal case under articles 136, 137 (1) and (2) and 102 (1) and (2) of the Criminal Code, and articles 7, 8, 9, 19 and 21 of Act No. 107 of 2013;

III. Referring the accused persons for trial.

The case file was referred to the Aswan Division Misdemeanour Court and the case is scheduled to be heard on 21 January 2018.

### **3. Nasr Nuba Administrative case No. 1674 of 2017, which was registered for investigation at Aswan High Court as Case No. 10 of 2017**

The facts of this case, as contained in the police report dated 7 November 2017 compiled by the competent officer, may be summarized as follows: That officer was at the Kalabsha police post in the district of Nasr Nuba to monitor the security situation when he received information from persons and motor vehicles passing along the Aswan-Luxor secondary road that a group of persons was blocking the road with rocks and barricades, and setting fire to vehicle tyres. Workers at Kalabsha railway station also informed him that a group of persons was lighting fires and placing barricades on the railway line, thereby disrupting train traffic. The officer proceeded to the site of the incidents and saw that the accounts he had heard were true: a group of persons had gathered, blocking the public thoroughfare and disrupting the passage of trains. He advised them to open the roadway but they failed to heed the warning and began pelting the security forces accompanying the officer with stones. As a result, tear gas grenades were used to break up the crowd, open the thoroughfare, remove the barricades from both road and railway and extinguish the fires, with the assistance of the Civil Defence. [REDACTED]

[REDACTED] were all arrested. Other participants were able to make their escape.

At that moment the officer was informed by personnel stationed at the Kalabsha police post that dozens of people had gathered near the post and near Kalabsha railway station and were throwing stones. Corporal [REDACTED] and constable [REDACTED] sustained injuries, and damage was caused to the police post itself as well as to police vehicle No. B 15/8212 and Kalabsha railway station. In response, the police used tear gas to break up the crowd. [REDACTED]

[REDACTED] were all arrested. Other participants were able to make their escape.

Attached to the file is the medical report in respect of constable [REDACTED], which shows that he suffered a contusion to his left foot, knee and thigh, and the medical report in respect of corporal [REDACTED], which shows that he suffered a cut to his scalp requiring four stitches.

Also attached to the file is a statement detailing the damage to Kalabsha railway station. The glass in the entrance and exit doors, windows, the door to the ticket office and to the station mosque was smashed, as was the illuminated sign, lighting and the window and doors of the signal room. In addition, telephone wires were cut and the internal loudspeakers were destroyed.

The State Prosecution Office launched its investigations by interviewing the police officer who had drawn up the report and the other officers present at the scene of the incident, all of whom confirmed the above version of events. The scene of the incident was also inspected and the following was observed:

- The glass in the main door, the waiting room and the lighting of Kalabsha railway station had been smashed;
- The station's illuminated sign had been smashed;
- The glass in the doors to the station mosque, buffet and left luggage depository had been smashed;
- The door to the booking office, the glass of the signal room window and a room in block No. 1 of Kalabsha railway station had all been damaged;
- The widescreen of police vehicle No. B 15/8212 had been smashed;
- The glass of Civil Defence vehicle No. B 15/7947 had been smashed.

In addition, the State Prosecution Office also noted traces of burnt tyres on the road around 500 metres from the Kalabsha police post, and signs of a recent fire in a tree on the right-hand side of the road.

It also noted traces of a fire on harvested sugarcane belonging to [REDACTED], located on the west side of the road.

Inquiries conducted by the competent departments within the Ministry of the Interior showed that [REDACTED], who resides in Austria, had called upon Nubians to demonstrate in squares across the governorate of Aswan, in collaboration with [REDACTED] and others.

The inquiries also revealed that the aforementioned individuals had held a meeting during which they had agreed to take part in a demonstration and had sent out invitations with a view to encouraging large numbers of other Nubians to participate. They had also sought support for the purchase of materials to use during their march and arms with which to defend the demonstration and to attack security forces should they attempt to intervene.

The inquiries confirmed that [REDACTED] and others had organized a demonstration in the district of Nasr Nuba on 7 November 2017, during which they blocked the railway line and disrupted the movement of trains in both directions, interrupted road vehicle traffic and disturbed public peace and security. This also led to the injury of the above-mentioned police officers and caused damage to the police post and the railway station of Kalabsha. Ten persons who participated in the demonstration were arrested and the case is still being investigated.

On 8 November 2017, the 10 arrested suspects were ordered to be held in detention for four days while the investigations proceeded. On 11 November 2017, their detention pending further investigation was extended by the competent judge for 15 days. On 25 November 2017, the court ruled to extend their detention for another 15 days. Eventually, on 9 December 2017, the court ordered their release if they met the bail requirement of LE 5,000 each, otherwise they would be held for a further 15 days. They paid the sum and were duly released.

From the information given above, it should be clear that the persons whose names figure in the communication had committed offences punishable by law, as shown and described in detail by the State Prosecution Office. The investigations produced enough evidence for a probable conviction so the suspects were sent for trial in both cases. In accordance with the law and international treaties, they were allowed to defend themselves and were guaranteed due process.

Thus, the procedural rules enshrined in the Act regulating demonstrations — which were followed by the authorities in dealing with the suspects — are consistent with international treaties.

It has been shown, then, that the allegations in the communication relating to unlawful arrests, the restriction of freedom of opinion and expression, etc., are untrue and that the persons concerned had committed offences punishable by law, as explained above.

## **V: Legal aid guarantees for accused persons**

The suspects, including [REDACTED] and [REDACTED], were able to exercise their right to receive legal aid and, in fact, dozens of defence lawyers attended the interrogations and were present when the suspects' detention was being extended. They were allowed to examine and obtain official copies of all the documents relevant to the investigation, which they did on 5 September 2017 and 31 October 2017, in accordance with articles 124 and 125 of the Code of Criminal Procedure, article 54 of the Constitution and article 14 of the International Covenant on Civil and Political Rights.

All parties who requested permission to visit the suspects were allowed to do so, and the State Prosecution Office denied no requests in that regard.

Numerous defence lawyers accompanied the suspects at all the sessions until they were released, as detailed in section IV above in the information regarding Aswan First Division Administrative Case No. 5653/2017.

## **VI: Measures taken to ensure that the state of emergency in Egypt does not violate the country's international obligation or the principles of equality before the law or presumption of innocence**

According to article 4 (1) and 19 of the International Covenant on Civil and Political Rights, when public safety and citizens' lives are threatened, the competent authorities may proclaim a state of emergency, on condition that citizens are duly informed of its existence, purpose and physical and temporal extent. They may also impose certain restrictions, on condition that they are necessary and regulated by law.

In that regard, article 154 of the Constitution reads as follows:

“The President of the Republic may, after consulting the Council of Ministers, proclaim a state of emergency in the manner regulated by law. The proclamation must be submitted to the House of Representatives for consideration within the following seven days. If the proclamation takes place when the House of Representatives is not in regular session, a session is to be called immediately in order to consider it. In all cases, the proclamation of a state of emergency must be approved by a majority of members of the House of Representatives. The proclamation is to be for a specified period not exceeding three months, which may be extended only for another similar period and with the approval of two-thirds of the House. In the event the House of Representatives is dissolved, the matter is to be submitted for approval to the Council of Ministers on condition that it is then submitted to the new House of Representatives during its first session. The House of Representatives may not be dissolved while a state of emergency is in force.”

Terrorism, in its various local, regional and international manifestations, has become a global phenomenon which, not confined to any particular region, culture or society, threatens peace and security at national and international level, and hinders economic, social and cultural progress. As part of the international requirement to combat terrorism, Egypt also seeks to face up to and tackle the threat, taking the measures necessary to that end within the limits of the Constitution and the law. Despite facing unprecedented dangers that call for an exceptional response, Egypt has been striving to combat terrorism while protecting human rights and basic freedoms, and promoting freedom of opinion and expression as guaranteed under the international instruments it has ratified.

A state of emergency was declared in the country in response to terrorist and criminal operations, with a view to curbing such acts and mitigating their consequences. In fact, offences of that nature represent a direct attack against the right to life and personal security. In addition, they threaten freedom of opinion and expression, spread fear, undermine national infrastructure, disrupt transport and utilities, paralyse the national economy, hinder development and cause a security breakdown that could undermine national stability.

In line with the aforementioned provisions of international treaties and in accordance with the Constitution and national legislation, including the Act regulating demonstrations,

all appropriate legal measures were taken in regard of the accused persons, as detailed in section IV above.

**Effect of the imposition of the state of emergency on human rights (freedom of expression and of peaceful assembly)**

Egypt respects the right of peaceful assembly if there is no breach of security. This is in line with its obligations under article 21 of the International Covenant on Civil and Political Rights, which became part of domestic law in Egypt when it was ratified, on 15 April 1982. Furthermore, article 73 of the Constitution states that citizens have the right to organize public meetings, marches, demonstrations and all forms of peaceful protest without carrying arms of any kind, subject to prior notification, as regulated by law.

The right is regulated under Act No. 107 of 2013 concerning demonstrations, as explained above. Article 1 of the Act states that citizens have the right to organize and participate in public meetings, marches and peaceful demonstrations, while article 2 requires notification to be provided before the start of the meeting, march or demonstration.

With reference to the incident mentioned in the communication, the investigations conducted by the State Prosecution Office showed that the persons held in detention had organized a demonstration without giving prior notification, as required by the law regulating the right to demonstrate, and had committed offences punishable by law. Thus, there is no relation between the proclamation of the state of emergency and the incident in which those persons were arrested and referred for trial. They were arrested because they had committed offences punishable by law, irrespective of any other consideration.

**VII: Rules governing the dispersal of demonstrations and the use of force and arms, and how they conform to international standards**

Article 11 of Act No. 107 of 2013, as amended, regulating the right to hold demonstrations states as follows:

“In the context of the procedures and methods established by the committee indicated in article 9, the security forces may take the steps necessary to safeguard public meetings, marches and demonstrations for which notification has been received, and to ensure the safety of participants, protect lives and conserve public and private property, without obstructing the purpose of the event.

“If during the course of a public meeting, march or demonstration, the participants commit an act that amounts to an offence punishable by law, or the event ceases to be peaceful, uniformed security forces may, at the order of the competent field commander, intervene to break up the meeting or disperse the march or demonstration, and to arrest persons suspected of having committed offences.

“The security commander in situ, before proceeding with the dispersal or arrests, may ask the ad hoc judge in the competent court of first instance to appoint an individual to corroborate the non-peaceful nature of the public meeting, march or demonstration. The judge’s decision in that regard shall be issued promptly.”

Article 12 of the same Act states as follows:

“In cases where the law allows the dispersal or break-up of public meetings, marches or demonstrations, the security forces shall be required to abide by the following procedures:

“1. Participants in the public meeting, march or demonstration shall be requested to depart voluntarily by means of repeated and audible oral warnings to break up the meeting, march or demonstration and disperse; the warnings shall also indicate the routes participants may follow in order to disperse;

“2. If the participants in the public meeting, march or demonstration fail to respond to the warnings, security forces shall proceed to disperse them, following the progressive steps listed below:

- Use of water cannon;
- Use of tear gas;

- Use of truncheons.”

Article 13 of the Act states as follows:

“If the means described in the preceding article prove insufficient to disperse or break up the participants in the meeting, march or demonstration, or if they use violence or damage and destroy public and private property, or attack individuals or the authorities, security forces may escalate their own use of force as follows:

- Use of warning shots;
- Use of sound or smoke bombs;
- Use of rubber bullets.”

“If the participants in the meeting, march or demonstration resort to the use of firearms, thereby creating a basis for the right of self-defence, they shall be treated and countered with means commensurate to the degree of danger posed to life, assets or property.”

Thus it may be seen that domestic legislation gives police officers the right to use force when carrying out their duties only if necessary to achieve the legitimate aim of enforcing the law.

The Court of Cassation has rules on cases involving the use of force by police officers dealing with criminal activities: “The condition of verification and analysis, which are required by law before firearms can be used against suspects, is not fulfilled until after having ascertained that the suspicion is grounded and after having exhausted other means such as intimidation, which may lead to the arrest of the suspects with having to resort to the use of firearms.”

The purport of this is that, if law enforcement officials resort to the use of force they must do so only to the degree necessary; i.e., in a manner commensurate to the entity of the danger they are facing. This is known as the principle of proportionality. Any unannounced use of force, or use of force not commensurate with the degree of danger is liable to be punished.

(Appeal No. 7255 – Year 54 Q – date of session 31 March 1985 – technical bureau 36 – part No. 1 – p. 508)

#### **Extent to which those rules correspond to international standards on the use of force and firearms**

A number of international instruments have set limits and imposed rules on the use of force and firearms by police officers, and proposed ways to restrict such use. For example, paragraph 2 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990, states as follows:

“Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.”

Paragraph 5 of the same document reads:

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

“(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

“(b) Minimize damage and injury, and respect and preserve human life;

“(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

“(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”

Paragraph 9 states:

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

Paragraph 10:

“In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

Paragraph 13:

“In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.”

Paragraph 14:

“In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.”

Consistent with those principles, article 102 (1) of the Police Act No. 109 of 1971 states as follows:

“Police officers may use force to the degree necessary to carry out their duties if that is the only way in which they can fulfil those duties. The use of firearms is limited to the following situations:

...

“(2) The dispersal of gatherings and demonstrations composed of a minimum of five individuals, if public safety is threatened. This may be done only after warning the participants and ordering them to disband, and following a command to use firearms issued by a commanding officer.”

Article 102 (2) of the same Act sets forth the phases to be followed before recurring to the use of firearms, in line with principles of progression and proportionality:

“In the three aforementioned circumstances, opening fire must be the only possible means to achieve those objectives. Police officers shall first deliver a warning that they are about to open fire, and only then may they actually open fire. In all cases, the procedures to be followed and the manner of delivering warnings and opening fire shall be defined by decree of the Minister of the Interior.”

In the light of the foregoing, it should be clear that the limits and rules on the use of force and firearms by police officers in Egypt are in line with the relevant international standards.

### **VIII: Measures taken to fulfil the obligations enshrined in article 236 of the Constitution regarding the restoration of the Nubians to their lands**

To begin, it should be pointed out that persons from the district of Nasr Nuba are not a minority, as stated in the communication. Rather, as was explained earlier, they are Egyptian citizens with the same rights and the same obligations as other citizens. This is shown by the fact that:

- A representative of groups affected by the consequences of the construction of the Aswan Dam was selected for the Committee of Fifty, which was charged with drafting the 2014 Constitution. That representative was Mr. Hajjaj Hassan Mohammed;
- The President of the Republic has taken a number of decisions relating to the implementation of article 236 of the Constitution, including:

(a) The establishment of the Higher Agency for the Development of Southern Egypt and the Border Areas. A bill relating to the Agency — which implements major national house-building projects — has been drafted and is currently being reviewed by the House of Representatives;

(b) The formation of a committee to identify and compensate persons who received no redress for damages suffered as a consequence of the construction of the Aswan Dam; to which end:

1. The Prime Minister issued Decree No. 478 of 2017 (annex 3) to form a national committee to review the situation of persons who had received no compensation for the consequences of the construction of the Aswan Dam. The committee is chaired by the Minister of Justice and its members are drawn from a number of ministries and government departments. The Minister of Justice issued Decree No. 3475 of 2017 (annex 4) to form the executive secretariat of the committee, which is charged with identifying persons entitled to compensation for the construction of the Aswan Dam and with reviewing the situation of persons who have not received the compensation to which they were entitled in the period prior to or following the construction of the Dam. The committee has almost completed its work and paid out due compensation to beneficiaries, in accordance with its own findings;
2. The sum of LE 320 million has been earmarked for a number of projects in Wadi Karkar and the south of the Aswan Dam. Currently 15 projects are being pursued and plans are being laid to transform Wadi Karkar into a fully integrated city;
3. The people of the district of Nasr Nuba had expressed the desire that an area of 12,500 feddan of land in For Qundi not be included in an agricultural development project affecting 1.5 million feddan of land, and that desire was met;
4. A seat in the House of Representatives has been reallocated for the district of Nasr Nuba; since 2015 it has been occupied by Yassin Abdel Subbour Mohammed;
5. Many Nubians work in leadership positions in different government departments, including the judiciary and the executive. In addition, they enjoy full political, civil, economic, social and cultural rights as well as the right to join political parties and to establish associations and clubs of their own.

### **IX: Allegations to the effect that the interrogation and trial of the accused persons failed to abide by international standards**

Article 96 of the 2014 Constitution states: “Accused persons are innocent until proven guilty in a fair and legal trial in which they are guaranteed the right of defence. Appeals against criminal sentences shall be regulated by law. The State shall provide protection to the victims, witnesses, accused persons and informants, as necessary and in

accordance with the law.” Article 98 of the Constitution states: “The right of defence is guaranteed, either in person or by proxy. The independence of lawyers and the protection of their rights are ensured as a guarantee for the right of defence. The law shall guarantee that persons unable to afford a lawyer shall have the means to access justice and defend their rights.” These provisions are consistent with article 14 of the International Covenant on Civil and Political Rights.

It is clear from the two articles quoted above that the Constitution of Egypt enshrines a number of fundamental safeguards against the danger of unfair trials. Accused persons are human beings and the presumption of their innocence is not lost merely by being charged. If there are grounds for charges they must be accompanied by guarantees of the right of the accused to a fair trial. These constitutional provisions were duly applied in the interrogation and trial of the persons accused in these cases: they were first questioned then sent for trial before their natural judge — the competent judge at the time the offence was committed — and they enjoyed all fundamental safeguards relative to the right to a fair trial, in accordance with international standards, as follows:

- They were informed immediately and in detail of the charges they were facing;
- They were given the time and facilities necessary to prepare their defence and to communicate with lawyers of their own choosing;
- The lawyers were allowed to examine all the documents relative to the investigation and to obtain copies thereof;
- They were sent for trial without undue delay;
- Those being held in custody were present at their trials and were able to exercise their right to defend themselves or to request legal assistance, according to their own choice;
- The trials were held in public;
- All evidence was transparently presented during the trial;
- All trials procedures were duly documented.

### **Conclusion**

From the above exposition it should be clear that the procedural rules enshrined in law to regulate the exercise of the right to demonstrate, as applied by the State authorities, are consistent with international instruments. Furthermore, the persons named in the communication were accused of having committed crimes punishable by law, as described in the registration and characterization of the offence by the State Prosecution Office. Investigations produced enough evidence for a probable conviction and they were, therefore, referred for trial in cases 1 and 2. Under the law, they were guaranteed the right to use all available means of defence and to enjoy a fair trial, as set forth in international instruments.

From the above, then, it is clear that the allegations in the communication of unlawful arrest, restriction of the freedom of belief and expression, denial of access to health care, etc., are all untrue. The persons concerned had all committed crimes punishable by law, as explained above.

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