

(Translated from Arabic)

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**Response from the Government of the Arab Republic of Egypt to the joint communication concerning
Mr. Moaz al-Sharqawy**

The submission of this response by the Egyptian Government reflects its sincere desire to respond positively to the communications of United Nations rapporteurs and its commitment to compliance with its international human rights obligations. It also views the response as an opportunity to achieve transparency and to rectify concepts that may be based on unfounded information. The Egyptian Government's response is set out below.

I. The facts and legal procedures relating to the trial of Mr. Moaz al-Sharqawy

1. Following the revolution of June 2013, the terrorist "Muslim Brotherhood" group began to use force, violence, threats and intimidation with a view to undermining law and order in the country, jeopardizing the safety and security of society, harming and intimidating individuals, endangering their lives and freedoms, and endangering public and private rights as well as other rights and freedoms guaranteed by the Constitution and the country's legislation. They also sought to impede the public and governmental authorities from performing their duties, their aim being to overthrow the existing governmental regime by force, and to conduct hostile operations against the judiciary, the armed forces, the police and public institutions with a view to securing the downfall of the State.

2. Article 12 (2) of the Egyptian Counter-Terrorism Act¹ criminalizes membership of and participation in terrorist organizations. Participation includes all forms of material contributions, including information-based support and promotion of terrorist objectives that involve direct or indirect incitement to violence in order to achieve the same goals, with full knowledge thereof. Such criminalization is in line with the obligation of the Egyptian State to criminalize support for terrorist acts.

3. The investigations of the Public Prosecution Service revealed that Mr. Moaz al-Sharqawy had joined the armed wing of the terrorist Brotherhood organization, which seeks to spread chaos and violence in the country and to use armed force to enable the terrorist group to gain control over State institutions. He also participated in the gatherings and riots organized by the terrorist group in the vicinity of his residence, following the dispersal of the Raba'a and Al-Nahda sit-ins. He had agreed with recent acquaintances during the sit-ins to place four explosive devices (cylindrical objects with a timer) in the vicinity of one of the headquarters of the electoral committees, namely "Mustafa Abu Hussein School in Mit Habashi village, Tanta centre", which was to be used for a citizens' referendum on amendments to the Egyptian Constitution. Their aim was to cause terror and panic among the security staff and persons visiting the headquarters.

4. The person in question was arrested on 13 October 2018 pursuant to an arrest warrant issued by the Public Prosecution Service on 20 September 2018² in Supreme State Security Case No. 440 of 2018, which was registered as Serious Offences No. 1059 of 2021, Emergency State Security, Fifth Settlement. He was interrogated by the Public Prosecution Service in accordance with the provisions of article 36 (1) of the Code of Criminal Procedure,³ which are consistent with the provisions of the international treaties that Egypt has ratified, in particular article 9 (2) and (3) of

¹ Article 12 (2) of Counter-Terrorism Act No. 94 of 2015 stipulates that: "Anyone who joins a terrorist group or who participates in the group while being aware of its objectives shall be punishable by rigorous imprisonment."

² The arrest warrant was implemented in accordance with article 139 of the Code of Criminal Procedure, which stipulates that: "Arrest warrants and remand orders may not be enforced more than six months after the date of their issuance unless their extension is approved by the investigating judge."

³ Article 36 of the Code of Criminal Procedure stipulates that: "The criminal investigation officer shall listen to the statements of the apprehended suspect without delay."

the International Covenant on Civil and Political Rights. Prior to his interrogation, all guarantees prescribed by the Code on behalf of persons subject to such proceedings were complied with. He was informed of the charges filed against him and permitted to present a substantive defence, in accordance with article 124 of the Code of Criminal Procedure.⁴ He was charged with participating in a terrorist group with full knowledge of its goals, with deliberately disseminating fake news and rumours that were likely to harm the public interest, with deciding to participate in armed gatherings of the Muslim Brotherhood during 2014 and 2015 in the Mustafa Mahmoud Mosque in the Mohandessin neighbourhood, during which he and others fired shots at the crowd and the police, and with participating in the gatherings of the terrorist Brotherhood group at Tanta University in solidarity with so-called “Brotherhood detainees”.

5. The Public Prosecution Service issued its order for the detention of Mr. Moaz during the investigations. Regular sessions were subsequently held before the competent court to consider the extension of his pretrial detention. He and his defence counsel were permitted to present oral arguments and to submit requests and objections, in accordance with the procedures, grounds and periods set forth in articles 134,⁵ 142⁶ and 143⁷ of the Code of Criminal Procedure. The decisions regarding pretrial detention were based on objective considerations that had been taken into account, at its discretion, by the Public Prosecution Service, including fears that the investigation might be undermined by attempts to influence victims or witnesses, that the evidence might be tempered with, and that agreements might be reached with other perpetrators to alter or blur the facts. This is consistent with part 2 of Security Council resolution 1373 (2001) concerning criminal proceedings and the accompanying safeguards in cases involving investigations of terrorism.

6. On 25 August 2021, the Public Prosecution Service instituted criminal proceedings against the person in question and others in Supreme State Security Case No. 440 of 2018, which was registered as Serious Offences No. 1059 of 2021, Emergency State Security, Fifth Settlement. They were charged with membership of the prohibited terrorist Brotherhood group, with full knowledge of its goals, which consist in the use of force, violence, threats and intimidation with a view to undermining law and order in the country, jeopardizing the safety, interests and security of society, and obstructing the implementation of the provisions of the Constitution, laws and regulations.

7. On 29 May 2022, the court sentenced the accused Moaz Najah Mansour al-Sharqawy, in his presence, to rigorous imprisonment for a period of 10 years and to coverage of the costs resulting from the charges filed against him. In addition, he was to be placed under police supervision for a period of five years from the date of expiry of the sentence.

II. Comments on the allegations contained in the communication

⁴ Article 124 of the Code of Criminal Procedure stipulates that: “Persons suspected of committing felonies or misdemeanours punishable by a mandatory term of imprisonment shall not, except in cases of flagrante delicto or urgent situations in which the investigator records his substantiated fear of the loss of evidence, be questioned or confronted with other suspects or witnesses without their lawyer being invited to attend. [...] If the suspect does not have a lawyer, or if his lawyer fails to attend after being invited to do so, the investigator shall appoint a lawyer ex officio and the lawyer may enter in the record any pleas, requests or observations that he might wish to make.”

⁵ Article 134 of the Egyptian Code of Criminal Procedure entitles the investigating authority, after interrogating the accused and finding evidence of the commission of a felony or misdemeanour punishable by a term of imprisonment of at least one year, to issue a detention order based on any of the following four grounds: 1. In the event of flagrante delicto; 2. If there is a risk of flight of the accused; 3. If there is a risk that the investigation may be undermined by attempts to influence victims or witnesses, by tampering with evidence, or by agreements with other offenders to alter or blur the facts; 4. To prevent serious breaches of public order and security that may result from the gravity of the offence.

⁶ Article 142 authorizes the competent judge, after hearing the statements of the Public Prosecution Service and the accused, to issue an order to extend detention for an additional period or periods that shall not, in total, exceed 45 days. Otherwise, the case of the accused shall be referred to a higher court.

⁷ Article 143 authorizes the misdemeanours court of appeal (sitting in chambers) in cases involving terrorism to extend pretrial detention, after hearing the statements of the Public Prosecution Service and the accused, if the interests of the investigation so require. The period of detention of the accused may not exceed five months unless, prior to the expiry of that period, an order is obtained from the competent criminal court for extension of detention for a further period that shall not exceed 18 months in cases involving serious offences. Otherwise the accused must be released forthwith.

8. The communication alleges that the interrogation of Mr. Moaz al-Sharqawy was invalid because he was not informed of the details and components of the charges filed against him and that there was no lawyer present during the investigation procedures. This allegation is unfounded, since the safeguards guaranteed by law in such circumstances were complied with prior to the launching of the interrogation. He was also informed of the charges filed against him, in accordance with article 124 of the Code of Criminal Procedure, and was offered the opportunity to present his defence. The investigator questioned him in detail after informing him about the charges and his appearance before the Public Prosecution Service, but he denied the charges. The investigator also asked him, prior to the interrogation, whether he had a lawyer to accompany him during the interrogation procedures. He replied that he wished to request the presence of Mr. [REDACTED], a lawyer whose office is located in the [REDACTED] neighbourhood. As he did not possess his exact address or telephone number, the investigator sent a representative to the Bar Association to invite a lawyer to attend the interrogations, but it could not be arranged. The investigator nonetheless interrogated him in view of the circumstances, the nature of the terrorist crimes with which he was charged, the urgency of the case and the fear of losing evidence, all of which justified the interrogation of the accused by the Public Prosecution Service without the presence of a defence counsel at the outset. However, his lawyer was present for all subsequent procedures.

9. The communication alleges that the confession attributed to Mr. Moaz al-Sharqawy during the investigations by the Public Prosecution Service was invalid because it was made under physical and mental duress, because he had been subjected to torture and because no steps had been taken to ascertain its conformity with the facts. This allegation is unfounded because it was established from the investigations by the Public Prosecution Service and the registered ruling of the court of first instance that the investigator had examined the accused and confirmed that his body was free of any visible injuries. The accused also admitted that he was free of any injuries. The investigator then informed him that he would appear before the Public Prosecution Service, which would conduct the investigation procedures. When he informed him of the charges filed against him, he denied some of them and admitted to others. The logical and orderly account provided by the accused of his upbringing and biography fails to reflect what might be deemed physical or mental duress. He then confessed to having perpetrated acts that constitute crimes punishable by law. The content of his statements during the investigations clearly indicate that the accused was fully aware and willing to make his confession, and that he was not subjected to coercion or torture. In addition, his account of the events was fully consistent with the other evidence available in the case.

10. We wish to draw attention to the reference in Security Council resolution 1373 (2001) to prevention of the use of a region for terrorist purposes. This approach is adopted in the investigation of terrorist cases, since the pressing of charges in such cases is a complex and highly specialized procedure, given the major skills required by the investigations. Special investigative techniques and digital evidence are required to investigate all indications of the existence of a terrorist organization, such as the form and functions of the organizational structure required to implement its executive work, including divisions or wings, leaders at the various administrative levels, indications of its secrecy, its headquarters, its funding sources, its members as well as the role of individual members and their position in the structure. An overall view of these constituents serves as an effective method for detecting such crimes and compiling evidence of their scale. Anecdotal evidence is unreliable, such as confessions by individual accused persons. It is preferable to test all evidence separately in order to ascertain the extent to which it supports and is consistent with other evidence and devoid of contradictions.

11. When Mr. Moaz al-Sharqawy was referred to the competent court for trial, all sessions were held in public and in the presence of his lawyer. When considering the case and before handing down a judgment, the court took into account all the procedures conducted since the date of his arrest and referral to the legal investigating authorities.

During the proceedings, the court examined once again the evidence concerning Mr. Moaz al-Sharqawy in the presence of his defence counsel, Ms. [REDACTED]. There was no evidence of any injuries indicating that he had been subjected to torture or any injuries, and the decisions taken by the accused during the investigations conducted by the Public Prosecution Service were all made freely in a state of full awareness and without any subjection to physical or mental duress or torture. Accordingly, the allegation that the accused was subjected to torture to force him to confess is unreasonable and unimaginable from an objective and legal point of view.

12. The allegations that Mr. Moaz al-Sharqawy was denied a fair trial before the Emergency State Security Courts are unfounded. The law authorizes the establishment of special courts to consider cases involving terrorism referred to them by the criminal chambers of the Cairo Appeal Court. They are composed of normal judges and operate in accordance with all the procedures, without exception, that are prescribed in the Egyptian Code of Criminal Procedure. They guarantee the right of accused persons to a defence and all the conditions of a fair trial stipulated in the international treaties that have been ratified by the Egyptian State. The establishment of the special courts has had a positive impact, for instance by enhancing judges' capacity to understand the nature of terrorist crimes, the circumstances in which they are perpetrated, the underlying motives and the sources of funding. They are also familiarized with applicable legal provisions, means of securing evidence of the basic components of terrorist crimes, and means of distinguishing between them and other crimes in a manner that guarantees compliance with the principle of the rule of law.

13. The State Security Emergency Court is an ordinary court in terms of its formation, guarantees and applicable rules and regulations. Emergency Act No. 162 of 1958 does not provide for special procedures during sessions of State Security Emergency Courts, and the provisions of the Code of Criminal Procedure are applicable to all proceedings. Convicted persons are entitled to file a complaint against the Court's judgments, and the admissibility of such appeals is ascertained by a group of judges.

14. The communication claims that there is no legal basis for including Mr. Moaz al-Sharqawy in the lists of terrorists. We wish to point out, in connection with this allegation, that the Public Prosecution Service submitted a request, based on the interim ruling handed down on 19 February 2018 by the competent court to include the person in question in the terrorist lists, thereby exercising its right pursuant to the provisions of articles 2 and 3 of Act No. 8 of 2015 Regulating Lists of Terrorist Entities and Terrorists. He exercised his right to object to the ruling before the Court of Cassation. The Court issued its decision to annul the ruling on 1 February 2020. He was subsequently reincorporated into the lists of terrorists pursuant to interim ruling No. 1 of 2021 issued on 12 January 2021 and published in the Official Gazette on 24 January 2021. The person in question was thus included, together with others, in the lists of terrorists for a period of five years based on the charges filed against the convicted person in Supreme State Security Case No. 440 of 2018.

15. With regard to the allegations in the communication concerning the deteriorating health condition of Mr. Moaz al-Sharqawy and the failure to provide him with the necessary medical care, we wish to point out that the Public Prosecution Service had examined the person in question at the opening of the investigations in order to ensure that his body was free of any injuries, and had considered a request to have him examined by a specialized physician due to his chronic medical condition. The reports issued by the competent authorities also indicate that his general state of health is sound and stable, and his vital signs have been at a normal level during his detention. He is provided with all kinds of health care, on request, just like other inmates.

16. With regard to the allegation in the communication that adequate measures have not been taken to ensure that Mr. Moaz al-Sharqawy is able to undertake his activities as a human rights defender in a safe environment without

fear of being threatened, the Egyptian Government reiterates its commitment to the promotion and protection of human rights for all citizens without discrimination. No one may be prosecuted except for the commission of a crime that is punishable by the laws in force at the time of its commission. The provisions of the Constitution and the law are fully consistent with the obligations of Egypt pursuant to article 20 (2) of the International Covenant on Civil and Political Rights, which stipulates that any advocacy of hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Paragraph 2 of general comment No. 11 of the Human Rights Committee states that the provisions of article 19 of the Covenant should be taken into account when implementing article 20. Accordingly, **the terms political activists or human rights defenders** are applicable to the exercise of legitimate activities and should not be treated as a means of securing legal immunity and immunity from prosecution for infringements or wrongdoing.

17. In light of the foregoing, we wish to underscore that Egyptian laws provide all necessary guarantees for a fair and impartial trial and for the filing of appeals against the judgments handed down. With regard to the issues addressed in the communication, it has been proven that the arrest of the said person was consistent with the Code of Criminal Procedure and was based on a warrant issued by the competent Public Prosecutor's Office after it established that he had been involved, together with others, in perpetrating the offences mentioned in the legal proceedings instituted against them. He was presented to the Public Prosecution Service within the legal deadline prescribed by Egyptian law, and he was able to seek the assistance of lawyers to defend him and to accompany him at all stages of the investigations.

18. In conclusion, the Egyptian Government urges the Special Rapporteurs to continue scrutinizing the information that they have received and to engage in a continuous dialogue with the Egyptian Government in order to avoid being driven by politicized allegations submitted by some parties, who seek to undermine the reputation of the Egyptian State in the international community. Terrorist groups, for instance, are systematically engaged in producing false allegations, distorting the facts, and questioning the legal and judicial measures that have been taken as well as their outcome. The Egyptian Government reiterates that it is committed to the promotion and protection of human rights and fundamental freedoms for all citizens without discrimination. According to the Constitution, it is responsible first and foremost to the vigilant Egyptian people. The independent Egyptian judiciary is the sole authority with competence to ascertain the veracity of allegations of human rights violations, to hold the perpetrators accountable and to guarantee redress for the victims.