

*(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**

**Response of the Arab Republic of Egypt to the joint communication concerning Patrick Zaki, Gasser Abdel Razeq, Karim Ennarah, Mohamed Bashir and Hossam Bahgat**

The submission of this response by the Egyptian Government reflects its sincere desire to respond positively to the communications of Special Rapporteurs and its commitment to compliance with its international human rights obligations. The Egyptian Government also views the response as an opportunity to achieve transparency and to rectify concepts that may be based on unfounded information.

**Information concerning the allegations contained in the communication**

**I. Patrick George Michel Zaki Suleiman**

1. The investigations revealed that Mr. Patrick Zaki was associated with leaders of an organization that engaged in incitement to terrorism, that fomented hostilities against Egypt from abroad and that organized systematic campaigns of incitement against State institutions. In addition, the person in question exploited his Facebook account in the name of Patrick George Zaki to spread fake news, misinformation and rumours aimed at promoting violence and hatred. He published and disseminated such material with a view to spreading chaos and thereby jeopardizing the security and stability of the Egyptian State.

2. On 23 September 2019, the Public Prosecution Service issued a reasoned arrest warrant in Cairo Criminal Court Case No. 1766 of 2109, in accordance with the provisions of the Egyptian Code of Criminal Procedure,<sup>1</sup> to apprehend Mr. Patrick Zaki and the other participants in criminal acts.

3. The accused was arrested on 8 February 2020 and he was interrogated in the presence of his lawyers, [REDACTED] and [REDACTED], within a period that did not exceed 24 hours from the date of his arrest, in accordance with the provisions of article 36 (1) of the Code of Criminal Procedure.

4. The investigating authority issued a decision to place Mr. Patrick Zaki in pretrial detention. He appeared on several occasions before the competent criminal court, and the judge considered during the sessions whether his pretrial detention should be extended. He and his lawyers were permitted to present oral arguments and to submit requests and objections, in accordance with part 2 of Security Council resolution 1373 (2001) concerning criminal proceedings and the accompanying safeguards in cases involving investigations of terrorism.

5. The investigations revealed that Mr. Patrick Zaki had participated in targeted campaigns on social media sites and the Internet on behalf of organizations engaged in incitement to violence.

6. These campaigns constitute incitement to activities that are criminalized, since they exceed the scope of the right to freedom of expression that is regulated by Egyptian law and they jeopardize the security and stability of the Egyptian State, in accordance with Security Council resolution 1624 (2005), which calls upon all States to adopt such measures as may be necessary and appropriate to prohibit incitement to commit terrorist acts and attempts to justify

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<sup>1</sup> The arrest warrant was in line with the provisions of article 35 of the Egyptian Code of Criminal Procedure, which entitles the Public Prosecution Service to issue a reasoned arrest warrant if there is sufficient evidence to charge a person with having committed a serious offence. In addition, article 40 of the Code stipulates that the arrest or detention of a person shall be based on a warrant from the competent investigating authorities, and it requires the person who implements the arrest warrant to treat the arrested person in a manner that preserves his or her dignity. Article 46 of the Code permits the person implementing the arrest warrant to search the person concerned. This is consistent with the provisions of article 91 of the Code, which stipulates that house searches shall be based on a substantiated order issued by the investigating authority pursuant to the charge filed against a person residing in the house, or based on evidence indicating that the person possesses items of relevance to the crime.

or glorify such acts, and urges States to prevent the exploitation of sophisticated technology and communications to incite support for criminal acts.

7. The communication alleges that the legal proceedings instituted against Mr. Patrick Zaki were connected to an article that he published about the Coptic community in Egypt. This is an unfounded and politicized allegation, since the person in question is being tried on charges of breaching article 80 (D) (1) of the Criminal Code, which criminalizes the dissemination of false news, reports or rumours concerning the country's internal situation that damage its national interests. The said person was charged with that criminal offence based on the investigating authority's evidence that he was involved in systematic campaigns through his links with a terrorist organization that damaged the country's interests.

8. On 14 September 2021, criminal proceedings were instituted against Mr. Patrick Zaki in Mansoura Second Division Emergency State Security Misdemeanour Case No. 1086 of 2021.

9. On 7 December 2021, the court decided to release Mr. Patrick Zaki pending a criminal trial. The case is still pending before the court. He is represented by a team of lawyers, who submit requests and evidence of their diverse defence pleas. The court has considered their requests, allowed them to present their defence pleas, and responded to their requests to postpone the hearing of the case for defence purposes.

10. The principle of public hearings is of fundamental importance and manifests the transparency and oversight of the work of the judiciary. The courts comply with that principle in order to meet the requirements of the law. This contradicts the allegation in the communication that representatives of foreign embassies have been prevented from attending the hearings. They have in fact been attended by a representative of the Italian Embassy in Cairo in addition to the team of lawyers, the public, and various media and civil society organizations with an interest in the trial.

11. The adoption of legal measures to prevent or deter incitement to violence with a view to protecting national security and public order is a legitimate justification for the restriction of the right to freedom of expression enshrined in article 19 (2) of the International Covenant on Civil and Political Rights. It is actually a State obligation pursuant to article 20 (2) of the Covenant, which requires States to prohibit any advocacy of hatred and incitement to violence whenever the restriction is necessary and proportionate.<sup>2</sup>

12. Egyptian law criminalizes membership of and all forms of participation in terrorist organizations, especially pursuant to the provisions of article 12 (2) of the Counter-Terrorism Act, which stipulates that anyone who participates in such organizations while being aware of their objectives shall be punishable by rigorous imprisonment. 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 action by the Egyptian State is in line with its obligations pursuant to paragraph 1 (d) and paragraph 2 (a) of Security Council resolution 1373 (2001) to criminalize support for terrorist acts and recruitment of members of terrorist groups.

13. Presidential Decree No. 532 of 2013, which was published in the Official Gazette on 14 August 2013, declared a state of emergency throughout the Republic for a period of 30 days with effect from 14 August 2013. It was extended for successive periods until Presidential Decree No. 290 of 2021 extended the state of emergency for a period of three months, from 24 July 2021 to 24 October 2021. The President of the Republic issued no decree to extend it for an additional period, so that the implementation of the provisions resulting from the declaration ended on 25 October 2021.

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<sup>2</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/65/258, para. 46).

14. If a misdemeanour was submitted to the State Security Court prior to 25 October 2021, the accused would receive a summons and the Court would continue to hear the case in accordance with its usual procedures and issue a ruling on the case, in accordance with article 19 (1) of Emergency Act No. 162 of 1958, which stipulates that when a state of emergency is suspended, State Security Courts shall remain competent to hear the cases before them and shall continue to comply with the established procedures. The procedures prescribed in article 14 of the Emergency Act concerning the ratification of judgments handed down in cases concerning felonies or misdemeanours referred to the emergency State Security Courts prior to 25 October 2021 continue to be followed.

15. It is also alleged in the communication that appeals may not be filed against the judgments handed down by the State Security Court. This allegation is unfounded and contrary to the Egyptian judicial system. Judgments handed down by the State Security Courts comply with the customary procedures and with the Egyptian Code of Criminal Procedure. Convicted persons also have the right to file an appeal against a judgment handed down against them. Moreover, the President of the Republic may, on being presented with the judgment, mitigate the sentence imposed or waive all or some of the penalties.

## **II. Mohamed Abdel Moneim Mahmoud Bashir, Karim Medhat Ahmed Ennarah and Gasser Hussein Mohamed Abdel Razek**

16. The investigations of the Public Prosecution Service in Case No. 855 of 2020 revealed the involvement of the above-mentioned persons and others in a terrorist plot to escalate hostilities against the Egyptian State by publishing and broadcasting false reports and news and inciting citizens to assemble and engage in hostile operations.

17. The investigations revealed that the persons in question held meetings at their place of residence and at the Egyptian Initiative for Personal Rights centre, at which they agreed to use their personal social media sites to disseminate fake news and rumours and to issue statements against the State and its institutions through chat rooms on the Internet, to stick posters in public places and places of critical importance, to incite citizens to perpetrate violent acts against the State by exaggerating factional problems, and to incite citizens to assemble, to block public highways and to perpetrate hostile acts in order to spread chaos.

18. The National Media Authority submitted a request to take legal action against Hossam Bahgat in Cairo Appeal Investigation Case No. 35 of 2020 for publishing defamatory texts and social media posts, in which he opposed the National Media Authority.

19. On 31 October 2020, the Public Prosecution Service issued a reasoned arrest warrant for the persons in question. On 15 November 2020, the Public Prosecution Service interrogated Mr. Mohamed Abdel Moneim Mahmoud Bashir within 24 hours of his arrest. He was interrogated in the presence of his lawyers, [REDACTED] and [REDACTED], in accordance with the provisions of article 124 of the Egyptian Code of Criminal Procedure. He denied the charges filed against him. He acknowledged that he worked as Director of Human Resources at the Egyptian Initiative for Personal Rights, and that he was responsible for assessing its members and paying their salaries. He was arrested on 14 November 2020 and, contrary to the allegation in the communication, his lawyers were permitted to present all their defence pleas and requests to the Public Prosecution Service.

20. On 19 November 2020, the Public Prosecution Service interrogated Mr. Karim Ennarah in the presence of his lawyers, [REDACTED] and [REDACTED], and he denied the charges filed against him. He acknowledged that he worked as Director of the Criminal Justice Unit at the Egyptian Initiative for Personal Rights, and that he was responsible for publishing studies conducted by the Egyptian Initiative on the Internet. He also acknowledged that he had been arrested on 18 November 2020 and that his lawyers had presented all their defence pleas and requests to the Public Prosecution Service.

21. On 20 November 2020, the Public Prosecution Service interrogated Mr. Gasser Abdel Razek in the presence of his lawyers ( [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] ), in accordance with the provisions of article 124 of the Egyptian Code of Criminal Procedure. He denied the charges filed against him. He acknowledged that he worked as Executive Director at the Egyptian Initiative for Personal Rights, that he prepared reports on human rights in Egypt, and that the Initiative relies on funding contracts with the German Ministry of Foreign Affairs and other foreign bodies. His lawyers then presented all their defence pleas and requests to the Public Prosecution Service.

22. The Public Prosecution Service reviewed the website of the Egyptian Initiative for Personal Rights on the Internet, which had been mentioned in the statements by the persons concerned during the investigations by the Public Prosecution Service. It examined all the evidence presented in the case and issued a decision to release the person in question on 3 December 2020.

### **III. Hossam al-Din Mohamed Ali Bahgat**

23. On 27 December 2020, the National Media Authority submitted a request to take legal action against Hossam Bahgat in Cairo Appeal Investigation Case No. 35 of 2020 for publishing posts containing fake news and reports.

24. On 16 June 2021, the Public Prosecution Service summoned the person in question and interrogated him in the presence of his lawyers ( [REDACTED], [REDACTED] and [REDACTED] ). He was charged with insulting a State institution, publishing fake news and reports, and using his online account on the Internet to commit the two aforementioned offences, which are punishable pursuant to the provisions of the Criminal Code and Act No. 175 of 2018 on Combating Cybercrime.

25. The procedures for arresting all of the aforementioned defendants, for charging and interrogating them, and for handing down a judgment were conducted in accordance with the Egyptian Code of Criminal Procedure. They were also consistent with articles 2, 9, 10 and 12 of the International Covenant on Civil and Political Rights, and with articles 2, 9 and 13 of the Universal Declaration of Human Rights.

26. It should be noted that the Egyptian Counter-Terrorism Act No. 94 of 2015 was promulgated pursuant to article 273 of the Egyptian Constitution, which stipulates that: “The State is committed to combating all forms of terrorism and to tracking its sources of funding within a specific time frame, since it constitutes a threat to the nation and its citizens. The State is also committed to guaranteeing public rights and freedoms. The law regulates the provisions and procedures for combating terrorism and for providing fair compensation for damages resulting from it and on account of it.” The Act is consistent with the decisions handed down by the principal United Nations bodies, including Security Council resolution 1373 (2001) on measures aimed at eliminating international terrorism, which was adopted pursuant to Chapter VII of the Charter of the United Nations, and which requires the State to implement a comprehensive national strategy to combat terrorism, while taking into account the provisions of international human rights conventions and treaties.

In conclusion, the Egyptian Government deplores the allegations made by the mandate-holders of the Human Rights Council that the decisions to release the persons in question were issued in response to pressure from a number of members of Parliament and civil society organizations and in response to external pressure. This undermines the Egyptian judicial system, which enjoys independence and integrity in all its decisions. We therefore encourage special procedures mandate-holders to exercise caution and to distance themselves from any actions that may suggest interference in Egyptian affairs and lack of the necessary respect for the principles underlying the rule of law, in particular the principle of independence of the judiciary.