

**Mandates of the Independent Expert on the promotion of a democratic and equitable international order; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on extrajudicial, summary or arbitrary executions**

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Excellency,

We have the honour to address you in our capacities as Independent Expert on the promotion of a democratic and equitable international order; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 27/9, 24/5, 22/20, 26/7, 25/13, 22/8, 25/2, and 26/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a number of provisions of the draft anti-terrorism law that would be incompatible with Egypt's international human rights obligations under the International Covenant on Civil and Political Rights.

According to the information received:

On 2 July 2015, the Egyptian State Council approved a number of amendments to the Egyptian anti-terrorism law (hereafter the "draft law"). The draft law should enter into force after the President approves it. The amendments were reportedly introduced after the killing of the prosecutor general in a car bomb attack in Cairo on 29 June 2015, and a number of simultaneous attacks launched on several checkpoints in North Sinai, in early July 2015.

Articles 1 and 2 of the draft law, substantially, would define terrorism as the use of force or violence, threats or intimidation, in Egypt or abroad, for the purpose of disturbing public order, or to endanger the society, harm individuals and spread terror amongst them, or jeopardizing their lives and liberties, or public and private rights guaranteed by the Constitution. Under these provisions, any conduct carried out to achieve one of the aforementioned purposes, including calling out the authorities to act, or not to act, would be considered as a terrorist act.

Article 6 would provide that those responsible of the implementation of the draft law shall not be held criminally responsible if they use force to carry out their duties, or to protect themselves from an imminent danger to life or property, to the extent that the use of such force is necessary to prevent that danger. Under the current legal framework, including the Police Act, police officers are permitted to use firearms to disperse gatherings or demonstrations of at least five people when public order is under threat, and after warning the protesters to disperse.

Article 26 would stipulate that any person who promotes or prepares for the promotion of the commission of a terrorist crime, whether orally, in writing, or by any other means, is punishable by a minimum of five years in prison.

Article 27 would punish, by a minimum of five years in prison, the creation or use of a website to promote ideas or beliefs, which are deemed to encourage the commission of terrorist acts or to mislead security authorities, to affect the course of justice in terrorism-related proceedings, or to exchange messages or assign responsibilities within terrorist groups. Article 27 would also stipulate that illegitimately accessing a governmental website to acquire, change, erase, damage or forge information on the website for committing a terrorist crime would be punishable by at least ten years in prison.

Article 29 would punish anyone who would collect information on people in charge of implementing the new anti-terrorism law for the purpose of threatening or harming them.

Article 33 would punish by a minimum of two years in prison the publishing of false news or data, which would contradict official data on terrorist operations.

Article 38 would provide that, within twenty-four hours from his or her arrest, a person accused of a crime covered by the new anti-terrorism law shall be brought before a prosecutor, or other competent investigative authorities, who may extend the remand in custody for up to one week.

According to Article 39, the defendant would have the right to inform relatives of his or her choice and to have access to a lawyer when this does not prejudice to the interests of the investigations.

Pursuant to Article 40 and 41 of the draft law, applied together with Article 143 of the code of criminal procedure, at the end of the seven-day period, provided for in Article 38, the person concerned should be brought before the prosecutor again. The prosecutor could then question the person within a further period of up to forty-eight hours, and decide whether he or she should be released or remanded in further preventive detention for consecutive periods of up to forty-five days, over a maximum period of six months, where the interests of the investigation would so require.

Article 42 of the Draft law would state that a judge shall hear an appeal by the accused against a preventive detention order within three days or the accused shall be released.

Article 44 would grant the Office of the Public Prosecutor, or investigating authorities, the power to decide to monitor, record and/or intercept any communication, message, materials or packages, for a determined period or periods of time.

Article 48 would establish a special court with jurisdiction for terrorism-related cases. The Supreme Judicial Council is responsible for setting out the composition and the methods of work of this court. The court shall judge cases expeditiously.

Article 51 would allow appealing verdicts on terrorist crimes within forty days, thus reducing by twenty days the period for lodging appeals in non-terrorism related cases.

Under Article 54, the President would have the power to take the necessary measures, such as evacuations, isolation of an area or curfews, to maintain public security, where there is a danger of terrorist acts. Any such decision should be submitted to the Parliament (or the Cabinet when the Parliament is not in session) for approval within seven days.

We are expressing our most serious concern at the reported draft law, several provisions of which have the potential to severely undermine the most fundamental human rights and freedoms, including the right to freedom of thought, conscience and religion, the right to privacy, the rights to freedom of peaceful assembly and association and the right to freedom of opinion and expression.

We are concerned about the proposed definition of terrorism and terrorist acts. By allowing interpretation of terrorism to include broad categories of behavior, such as disturbing public order, endangering the society or jeopardizing individuals' lives and liberties, ambiguities and confusion may arise as to what the State deems a terrorist offence to be.

Based on the principle of legal certainty, enshrined in Article 15 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14

January 1982, the requirement of criminal liability shall be limited to clear and precise provisions in the law, so as to ensure reasonable notice of what actions the law covers, without unduly broadening the scope of the proscribed conducts.

While the existing international legal framework does not provide for a comprehensive definition of the concept of terrorism, any offence defined in domestic law as a terrorist crime should be confined to acts that meet the following three conditions: (a) committed against members of the general population, or segments of it, with the intention of causing death or serious bodily injury, or the taking of hostages; (b) committed for the purpose of provoking a state of terror, intimidating a population, or compelling a Government or international organization to do or abstain from doing any act; and (c) corresponding to all elements of a serious crime as defined by the law. This approach is also reflected in Security Council resolution 1566 (2004), which provides further guidance for what crimes can be defined as terrorist ones under item (c), by referring to existing international conventions and protocols relating to terrorism.

Closely connected to this, is the matter of criminalization of terrorist organizations. Any assessment of whether an organization may be characterized as terrorist, should be carried out on a case by case basis - in light of factual evidence of its activities, not just limited to its goals - and by an independent judicial body, following a due process procedure, including the possibility to appeal a proscription decision.

Counter-terrorism laws, policies and practices must be limited to the countering of terrorism alone, as properly defined, and comply with the principle of non-discrimination. An inadequate national legal framework can lead to unforeseeable and arbitrary application, and is, therefore, open to potential abuse.

In this regard, concern is expressed at the provisions of the Draft law reportedly regulating the use of force by law enforcement officials. The use of excessive physical force, and in particular the unjustified use of firearms, amounts to a criminal offence which should be duly investigated and, if found proved, be punished to the full extent of the law, including reparation to the victims or their family members. Under the ICCPR, Egypt has an obligation to protect the right to life of those under its jurisdiction. Limitations to this right must be exceptional, and must meet the standards of legality, necessity, proportionality and non-discrimination. Any deprivation of life would be arbitrary, if any of these requirements is not met. Furthermore, any plausible and credible allegation of civilian casualties triggers the State's duties of investigation and transparency. Counter-terrorist operations that result in loss of life must therefore be subjected to penetrating judicial or other independent scrutiny.

A combination of vague legislation and broad unchecked powers also carry the potential for other human rights violations, including, as said, of the right to freedom of thought, conscience and religion, the right to privacy, the rights to freedom of peaceful assembly and association and the right to freedom of opinion and expression. Proscribing incitement to terrorism, for example, is integral to the protection of national security and public order, which are both set out as legitimate grounds for limiting freedom of

expression in article 19 paragraph 3 of the ICCPR. Care must be taken, however, to ensure that any restriction on the right to freedom of expression is both necessary and proportional. This is especially important given that freedom of expression is an essential foundation of a democratic society.

Concern is also expressed at the measures reportedly regulating the cycle of investigation and trial process, particularly in relation to the exercise of prosecutorial discretion, including in the use of special investigative methods, the administration of pre-trial detention, and the possible prosecution of terrorism-related cases in special courts.

As a State party to the ICCPR, Egypt is under an obligation to adopt all appropriate measures necessary to ensure the proper administration of justice. This includes full compliance with the principles of equality before the law, the right to an effective remedy, the right to liberty and security, the presumption of innocence, the right to a fair and public hearing without undue delay by a competent, independent and impartial tribunal established by law, the fundamental procedural guarantees of persons charged with a criminal offence, and the principle of legality.

Any departure from these rights should be kept to an absolute minimum and must be counterbalanced by appropriate procedural guarantees that ensure that the fairness of proceedings is not unjustifiably compromised. Public prosecutors, for instance, do not correspond to the notion of an independent and impartial tribunal, within the meaning of Article 14 of the ICCPR. Their intervention lacks the guarantees of a judicial procedure (such as the participation of the person concerned or the holding of hearings); they make decisions of their own motion, whereas a tribunal would normally become competent to deal with a matter if it is referred to it by another person or entity; they enjoy considerable discretion in determining what course of action to pursue; and finally, they can hardly be deemed as sufficiently impartial, since they may act in proceedings against the person concerned. In order to comply with Article 14 of the ICCPR, the prosecutor's decisions should always be subject to review by a judicial body having full jurisdiction.

On the other hand, while the national judge does have an obligation to intervene, when necessary, to expedite proceedings, in order to ensure that the effectiveness and credibility of the administration of justice is not jeopardized, this does not justify disregarding such a fundamental principle as the right to adversarial proceedings. A party to the proceedings must have the possibility to familiarize itself with the evidence before the court, as well as the possibility to comment on its existence, contents and authenticity in an appropriate form, and within an appropriate time.

The combination of all these legal and procedural safeguards are also essential for upholding the absolute and non-derogable nature of the prohibition of torture. Shortcomings in the administration of justice, as well provisions such as Article 6 of the Draft law, which reportedly eliminates criminal responsibility for the use of excessive physical force, including unjustified use of firearms, risk creating conditions conducive to torture.

These safeguards must be stringently observed in cases where a death penalty may be imposed. Under international human rights law, capital punishment may be resorted to only for the most serious crimes, and only after the most rigorous judicial process.

In connection with the above allegations and concerns, we would like to refer to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism A/HRC/16/51. Drawing upon international treaties, resolutions adopted by international organizations and the jurisprudence of international and regional courts, the report identifies ten areas of best practices in counter-terrorism and proposes ten legislative models, for wider adoption and implementation by United Nations Member States, for the effective countering of terrorism, in full compliance with international law, including human rights, humanitarian and refugee law.

The ten areas address questions relating to normal operation and regular review of counter-terrorism law and practice; the implementation of effective remedies for violations of human rights as a result of counter-terrorism laws and/or practices; the rights of victims of terrorism; the definition of terrorism and related incitement to terrorism offences; the listing of terrorist entities; as well as the arrest and interrogation of terrorism suspects.

Furthermore, in his report to the General Assembly A/63/223, the Special Rapporteur emphasizes basic principles as elements of best practice in securing the right to a fair trial in terrorism cases. In his report to the Human Rights Council A/HRC/22/52, the Special Rapporteur also sets out framework principles for securing the right to truth and the principle of accountability for gross or systematic human rights violations committed by public officials while countering terrorism.

In his report to the Human Rights Council A/HRC/20/27, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, also calls upon States to “strictly and narrowly define the offence of terrorism in line with international law” and to “ensure that any restrictions on the rights to freedom of peaceful assembly and of association are prescribed by law, necessary in a democratic society, and proportionate to the aim pursued, and do not harm the principles of pluralism, tolerance and broadmindedness. Any restrictions should be subject to an independent, impartial, and prompt judicial review” (paragraph 84 (d) and (e)).

Similarly, in his report to the Human Rights Council A/HRC/24/38, the Independent Expert on the promotion of a democratic and equitable international order urges States to “refrain from misusing anti-terror legislation to intimidate and suppress dissent and thus undermine participation in the democratic process”.

Finally, we would also like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national

security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and comment you may have on the accuracy and the merit of the above-mentioned allegations;
2. Please articulate in detail how the Draft law, as reported above, is consistent with international norms and standards on human rights, particularly as set forth in the International Covenant on Civil and Political rights, including Articles 2, 4, 6, 7, 9, 10, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 26, and what are the measures provided for therein to protect against abuse.

We would appreciate receiving a response within 60 days.

We would also like to seize this opportunity to kindly ask Your Excellency to consider bringing the present letter to the kind attention of the President of the Republic.

We may publicly express our concerns in the near future as we may form the view that the information on which this letter is based, and which may inform a press release, is sufficiently reliable to indicate a matter warranting immediate attention. If a press release is issued it will indicate that we have been in contact with your Excellency's Government to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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