

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the independence of judges and lawyers**

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 25/2, 24/5, and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged arbitrary and unfair disciplinary proceedings against at least 71 judges in two cases referred to as the "July 2013 Statement Case" and the "Judges for Egypt Case", reportedly for exercising their rights to freedom of expression and opinion, and freedom of peaceful assembly and association.**

According to the information received:

**The so-called "July 2013 Statement Case"**

On 24 July 2013, the Deputy President of the Court of Cassation read out a public statement in Rabaa Square, Cairo, where a protest was taking place, following the ouster of former President Mohamed Morsi. The statement was reportedly endorsed by 75 Egyptian judges and noted, *inter alia*, the removal of Egypt's elected President; the dissolution of the elected parliament; the suspension of the Constitution; the closure of media outlets without judicial decisions; and thousands of deaths and injured individuals. The statement also reaffirmed the role of judges in protecting citizens' rights and freedoms. It further emphasised that the judges endorsing the statement were not involved in politics and did not support any particular side. Finally, the statement called upon the authorities to

reinstate the Constitution; engage in a dialogue with all political factions and parties; and respect of the right to peaceful protest while rejecting violence in all its forms.

On the same day, members of two judges' associations, the "Judges' Club" and the "Committee for the Protection of Judges", filed a complaint with the Public Prosecutor against the Deputy President of the Court of Cassation for reading out the statement. The Public Prosecutor referred the complaint to the High Judicial Council. On 25 July 2013, the President of the technical chamber of the Court of Cassation filed a separate complaint with the Court of Cassation and the High Judicial Council.

On 28 July 2013, the High Judicial Council referred both complaints to the Minister of Justice and requested him to select an investigative judge to examine the complaints. The Minister of Justice then requested the President of Cairo's Court of Appeal to select an investigative judge.

On 2 August 2013, the investigative judge issued travel bans against 13 of the judges who had allegedly endorsed the statement. However, it was not until 8 March 2014 that the investigative judge began his investigation. The concerned judges were reportedly not formally informed of the investigation against them and first heard of the proceedings from the media. Furthermore, it is alleged that the investigative judge was biased due to his personal ties to one of the complainants and that he caused harm to the reputation of the judges under investigation by failing to keep his investigation confidential.

On 13 November 2014, the investigative judge closed his investigation and referred 56 judges from various courts across Egypt to the Disciplinary Board for "unfitness" proceedings under article 111 of the Judicial Authority Law (Law No. 46 of 1972).

The Disciplinary Board held six hearings in relation to the "unfitness proceedings" against the 56 judges on 17 November 2014, 27 November 2014, 15 December 2014, 29 December 2014, 10 January 2015 and 26 January 2015. It is reported that the 56 judges' right to a fair hearing was compromised in many ways throughout the proceedings. The judges were not given prior notice of the hearings, as a result many of them waited outside the hearing room every day in case a hearing would take place. They were denied adequate time and facilities to prepare their defence, in particular they were not provided with access to the case file until the fourth hearing, despite their requests. The judges' choice of counsel was also restricted. Indeed, under Egyptian law they could only be represented by a judge or a former judge. The judge who initially represented them withdrew from the case after receiving written warning for alleged misconduct in relation to a statement he had made two years earlier. After their counsel resigned, the judges were unable to find another judge willing to represent them and had to defend

themselves before the Disciplinary Board. Finally, it is reported that only one of the 56 judges was allowed to make oral submissions; the other 55 judges could only make written submissions. The Disciplinary Board restricted the scope of these submissions to procedural matters.

On 14 March 2015, the Disciplinary Board decided that 31 of the 56 judges were not fit to hold judicial office and removed them from office by forcing them into retirement. In its judgment, the Board criticized the judges for expressing political opinions and becoming involved in politics, contrary to article 73 of the Judicial Authority Law which prohibits a judge from “discussing or commenting on legislative and governmental decisions as long as it does not pertain to a case that he is looking into as part of his judicial function”. The Board found that the appearance of a judge during a demonstration could undermine his credibility, dismissing all the arguments based on the judges’ rights to freedom of expression and opinion, and freedom of assembly. The Board concluded that the July 2013 Statement discussed the political situation in the country and was not linked to the exercise of judicial functions. It further concluded that the judges’ actions gave the impression that they were against the “revolution of 30 June 2013” and that they supported the Muslim Brotherhood.

The Disciplinary Board decided that the remaining 25 judges had not been involved in any impropriety so they were not subjected to disciplinary measures.

On 12 April 2015, the 31 judges who were forced into retirement by the decision of the Disciplinary Board lodged an appeal before the Supreme Disciplinary Board. The Public Prosecutor also appealed the acquittal of the other 25 judges. It is reported that the judges’ right to a fair hearing was violated again throughout the appeal proceedings. Many judges were not informed on more than one occasion about the dates of the hearings. They were unable to find other judges to represent them until the hearing of 22 February 2016. Furthermore, the Board did not permit the judges to make oral submissions. The written submission of one judge, who was absent as he was completing his studies abroad, was rejected. At the hearing of 22 February 2016, the Board decided to question the judges individually, without allowing them to plead their cause and refusing to discuss any of the issues that the judges wanted to raise. When the hearing was adjourned to the next day, a judge who was requesting to be heard on 22 February rather than 23 February as he lived far from Cairo was placed under arrest and interrogated in the absence of an authorization from the High Judicial Council which is required under Egyptian law.

Finally, the impartiality of the Supreme Disciplinary Board was questioned, especially as one of the judges on the Board signed one of the complaints against the judges. On 21 February 2016, some of the accused judges attempted to submit a request for the impeachment of several members of the Supreme Disciplinary Board, but both the courts of appeal and cassation refused to accept or even

register the request. The next day, the requests were made again and one employee who reportedly accepted the request was allegedly threatened with disciplinary actions.

On 28 March 2016, the Supreme Disciplinary Board reportedly upheld the decision to remove the 31 judges from their offices.

### **The so-called “Judges for Egypt Case”**

In the “Judges for Egypt Case”, “unfitness” disciplinary proceedings were initiated against a group of 15 judges, who were accused of being members of a movement called “Judges for Egypt”. “Judges for Egypt” is not a registered association but a group of judges who had allegedly called for the return of former President Morsi and is viewed by the authorities as pro-Islamist. Some of the judges in this group were also among the judges subject to “unfitness” disciplinary proceedings in the July 2013 Statement Case mentioned above.

Many of the accused judges deny that they are members of “Judges for Egypt”.

The disciplinary proceedings against the 15 judges reportedly focused on their alleged involvement in politics, including by participating in an illegal group. During the proceedings, the Disciplinary Board predominately relied on statements given by the judges to the media or posted by the judges on social media; and the judges’ alleged participation in demonstrations and the work of “Judges for Egypt”.

In its decision dated 14 May 2014, which, contrary to Egyptian law, was not read out in a hearing, the Disciplinary Board found, that “Judges for Egypt”, *inter alia*, supported one party against another and one presidential candidate against another in the 2012 elections. The Board concluded that the judges, as members of the “Judges for Egypt” movement, had involved themselves in politics and hence had compromised the eminence of the judiciary, its high stature and dignity.

All 15 judges were forcibly retired as a result of the proceedings. They subsequently appealed the decision before the Supreme Disciplinary Board.

The appeal proceedings consisted of two hearings held on 14 and 21 February 2016 respectively. It is alleged that the judges’ right to defence was severely undermined during these hearings. With regards to the first hearing, it is reported that the Supreme Disciplinary Board did not permit two judges representing the accused judges to attend the hearings. The Board further restricted the pleading time of each judge to two minutes and imposed a two-page limit on written pleadings. With respect to the second hearing, 14 of the 15 accused judges were not able to attend the hearing as it had been moved to another room without their knowledge. The one judge who attended the hearing did so because he happened

to pass by the new room. He informed the Board of the presence of the other judges who were waiting in another room in the same building, but the Board refused to notify them and instructed the judge to plead his case only. After the hearing ended, the other judges were informed that the hearing had taken place in their absence. The Board further refused to accept the written submissions of the 14 judges, without providing any explanation.

In a decision issued on 21 March 2016, the 15 judges were forcibly retired from their office by the Supreme Disciplinary Board. The decision was read out to the judges in a non-public hearing, in contravention of Article 107 of the Judicial Authority Law.

With regards to both cases, it is reported that Egypt does not have a judicial code of conduct, meaning that the standards applied in both disciplinary proceedings are not based on established standards of judicial conduct.

We express serious concern about the disciplinary proceedings against the 71 judges, particularly with regards to their right to a fair hearing before an independent and impartial organ, which could amount to serious interference in the independence of the judges. Grave concern is also expressed about the reported arbitrariness of the standards of judicial conduct applied to the judges. Further serious concern is expressed as the disciplinary proceedings against the judges appear to be directly related to the legitimate exercise of their rights to freedom of expression and opinion, and freedom of peaceful assembly and association. Finally, we are particularly concerned that the alleged arbitrary and unfair disciplinary proceedings described above may form part of a widespread crackdown carried out by the Egyptian authorities against members of the judiciary that are perceived to be critical of issues of governance in the country.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Concerning the disciplinary proceedings, we would like to remind your Excellency's Government that the UN Basic Principles on the Independence of the Judiciary clearly stipulate that: a complaint made against a judge shall be processed fairly, that the judge shall have the right to a fair hearing and that at its initial stage the proceedings should be kept confidential (principle 17); judges shall be subject to removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties (principle 18); and that all disciplinary proceedings shall be determined in accordance with established standards of judicial conduct (principle 19). The UN Human Rights Committee has established in its case-law that disciplinary procedures against judges must be in compliance with due process and fair trial guarantees enshrined in article 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt in 1982.

With respect to the alleged infringements of the judges' rights to freedom of expression and opinion, and freedom of peaceful assembly and association, we would like to refer your Excellency's Government to articles 19, 21 and 22 of the ICCPR. The UN Basic Principles on the Independence of the Judiciary also stipulate that members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly (principle 8).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

As 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 be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide detailed information on the legal grounds for the disciplinary proceedings against the 71 judges, specifying how the authorities' actions are compatible with international human rights norms and standards related to the independence of the judiciary, as stated, inter alia, in the International Covenant on Civil and Political Rights and the Basic Principles on the Independence of the Judiciary.
3. Please provide detailed information on the disciplinary proceedings in the two cases mentioned above, in particular please explain how the rights to due process of law and a fair hearing were respected prior and during the hearings held in the two cases.
4. Please provide detailed information on the standards of judicial conduct applied in the two cases described above.
5. Please provide information on any measure taken to ensure that judges in Egypt can exercise their rights to freedom of expression and opinion, and freedom of peaceful assembly and association, in full compliance with international human rights standards on the matter.
6. Please provide information on any measure taken to ensure that the independence of judges is not undermined by unfair and arbitrary disciplinary proceedings.

While awaiting a reply and in view of the urgency of the matter, we urge that all necessary measures are taken to safeguard the rights of the judges mentioned above in

compliance with international instruments, including a revision of the disciplinary proceedings against the 71 judges that would provide the guarantees to a fair hearing before an independent and impartial organ. We would greatly appreciate a response on the initial steps taken in that regard.

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

We also wish to inform your Excellency's government that we reserve the right to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention.

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

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