

**Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of  
opinion and expression**

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to Human Rights Council resolution 25/2.

I would like to thank you for your **response of 3 September 2015, to the press release issued on 1 September 2015 by myself and endorsed by the Chair of the UN Working Group on Arbitrary Detention, regarding the arrest, detention, and sentencing of Al Jazeera journalists Mohamed Fahmy, Bahar Mohamed, and Peter Grete.**

My predecessors and colleagues have long enjoyed the support of your Excellency's Government as we strive to achieve the goals mandated by the Human Rights Council, in particular to promote and protect specific human rights worldwide. The mandates are most effective when States are receptive to entering into a dialogue about these important issues. I very much welcomed the opportunity to meet with you during the 29th Session of the Council in Geneva and I hope that we may be in a position to continue a constructive dialogue regarding the right to freedom of opinion and expression in Egypt.

First of all, I would also like to seize this opportunity to assure your Excellency that, before the press statement of 1 September 2015 was released, all information received from civil society organizations, international human rights organizations, and other sources, which corroborated news reports of the incident, was carefully considered.

I note that, in the weeks since the release of the press statement and your Excellency's response, President Abdel-Fattah al-Sissi has pardoned and permitted the release of Mr. Fahmy and Mr. Mohamed through the Presidential Decree No. 386 of 23 September 2015. I welcome this decision, as an important step to protect journalists and the right of a free media, which I hope would reinforce your Excellency's Government's

respect for and commitment to freedom of opinion and expression, and freedom of the press and media, as enshrined in articles 13 and 14 of the Egyptian Constitution and article 19 of the International Covenant on Civil and Political Rights (ICCPR).

I agree with your Excellency's statement in paragraph 7 of your response that article 19 ICCPR does not provide an absolute right to freedom of expression. However, article 19(3) expressly authorizes limitations on the freedom of expression only when such restrictions "are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals."

Freedom of expression is critical to the open exchange of ideas and information. As vehicles for broadcasting issues of importance to the Egyptian people and to the world, journalists play a central role in maintaining the functioning of a democratic state. Consequently, I urge your Excellency's Government to construe the restrictions referenced in article 19(3) narrowly and consistently with Egypt's obligation to uphold freedom of opinion and expression under international human rights law.

I acknowledge the concerns expressed in paragraph 3 of your Excellency's response; namely, the Egyptian Government's need to respect the principles of an independent judiciary, the rule of law, and separation of powers. I agree, of course, with this sentiment, though I note that it was not the judiciary which arrested and brought charges against the three journalists. At the same time, whereas all States must balance domestic obligations with their responsibilities under international law, I urge your Excellency's Government to avoid criminal sanctions and seek, only if necessary, administrative remedies.

While I welcome President Al-Sissi's decision to release Mr. Fahmy and Mr. Mohamed, I would like to take this opportunity to reiterate my concern regarding the situation of freedom of expression in Egypt. In recent years, I have noted an increasing trend of criminalization of expression and imprisonment of journalists. Information I have received from credible sources indicate at least eighteen journalists and/or media professionals are being held in prison in Egypt today. I have also learned of substantial crackdowns on civil society, including specific organizations, peaceful protesters, and political opposition. I urge that the Protest Law of 2013 be brought in line with article 73 of the Egyptian Constitution, as well as Egypt's international human rights obligations.

It is my deep hope that there is an immediate end to the practice of detention of protestors, and all those that have been arrested in connection with peaceful protests and exercise of rights to freedom of expression are released. It is especially important that the Government account for the whereabouts and status of all individuals in detention. The adoption of a NGO law drafted with an inclusive participation of all relevant actors is very important to ensure that civil society in Egypt has space to develop.

I recognize that your Excellency's Government perceives national security threats that need to be countered, but as noted in a recent joint communication of 21 July 2015

by UN Special Procedures Mandate Holders on Egypt's Law No. 94/2015 on Counter-Terrorism, provisions relating to freedom of expression are reportedly excessively wide in scope and go beyond the legitimate limitations on freedom of expression provided for in ICCPR. Again, I would take this opportunity to urge a focus on adopting only measures that are necessary and proportionate to achieve legitimate goals.

I commend the latest actions of President al-Sissi in releasing Mr. Fahmy and Mr. Mohamed and would like to thank you for your response and statement of continued commitment to freedom of opinion and expression under the precepts of international law moving forward. I look forward to a long and fruitful dialogue with your Excellency's Government regarding the maintenance of a vibrant, diverse media presence in Egypt and open atmosphere for journalists in which to work.

Your Excellency's Government's response of 3 September 2015 will be made available in a Communications Report to be presented to the Human Rights Council for its consideration. Although your Excellency's Government's response was addressed to my mandate, I have shared your response and also a copy of this letter with the Chair-Rapporteur of the UN Working Group on Arbitrary Detention. The Chair-Rapporteur has endorsed my response and this letter will also be included in the report to the Human Rights Council.

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

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression