

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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
AL EGY 16/2017

30 October 2017

Excellency,

We have the honour to address you in our capacities 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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers and the Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 34/18, 32/32, 34/5, 26/7 and 15/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **continuation of the criminal and administrative proceedings pursued under Case 173/2011 against several human rights defenders, including Ms. Azza Soliman, as well as allegations of irregularities in the appointment of the investigative judge of the case.**

Together with the aforementioned, we would like to refer to the enactment of the Law No. 70 for Regulating the Work of Associations and Other Institutions Working in the Field of Civil Work. All of these measures have the impact of severely restricting the legitimate and independent work of human rights defenders and non-governmental organizations in Egypt.

Ms. Azza Soliman is a prominent Egyptian women's human rights defender and lawyer. She is an associate of the law firm Lawyers for Justice and Peace (LJP), which focuses on defending victims of human rights violations. Ms. Soliman is also one of the founders and the Chair of the board of trustees for the Center for Egyptian Women's Legal Assistance (CEWLA) in Cairo. The CEWLA works to raise legal awareness and campaigns on the equality of women in various domains with an emphasis on achieving legal or formal equality and the repeal of discriminative laws. It also provides free legal, social, and psychological services to women and marginalized groups. Since November 2016, Ms. Soliman has been facing legal proceedings under Case 173/2011, commonly referred to as the "foreign funding case". In particular, a travel ban was imposed upon her on 17 November 2016, her personal assets and her law firm's assets were later frozen, and she was accused of receiving foreign funding against the interests of the State as well as of tax evasion, leading to her arrest on 7 December 2017, and subsequent release on bail that same day.

Ms. Soliman has been the subject of three previous communications dated 13 April 2015 (EGY 4/2015), 22 November 2016 (EGY 15/2016) and 9 December 2016 (EGY 16/2016). While we acknowledge the replies of your Excellency's Government to EGY 4/2015 and EGY 16/2016, received on 28 July 2015 and 3 February 2017 respectively, we regret that they failed to address the main concerns expressed in them. In particular, we regret that the reply received on 3 February 2017 in response to EGY 16/2016 failed to explain how the activities of Ms. Soliman as a human rights defender, and those of the associations she belongs to, could be considered as having the aim of harming a national interest of the country in the terms of article 78 of the Egyptian Penal Code. In addition, the reply did not explain, as requested, how the measures and criminal proceedings against her have a legitimate purpose and meet the requirements for necessity and proportionality for restrictions to articles 12, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR).

Moreover, concerns regarding other human rights defenders prosecuted under Case 173/2011 have been the object of several other previous joint communications sent on 12 June 2015 (EGY 10/2015), 24 March 2016 (EGY 4/2016), 4 May 2016 (EGY 6/2016), 8 July 2016 (EGY 8/2016), 5 October 2016 (EGY 11/2016), 18 November 2016 (EGY 13/2016), 30 January 2017 (EGY 1/2017), and 13 April 2017 (EGY 3/2017). We welcome the replies received on 20 August 2015 and 5 April 2017 concerning cases EGY 10/2015 and EGY 11/2016 together with EGY 1/2017, respectively. We regret, however, that these replies were limited to explaining the general legal framework governing non-governmental organizations in Egypt, and gave little detail regarding the particular cases addressed in our letters. Specifically, these replies fell short of explaining how the legal restrictions to foreign funding in the Act No. 84 of 2002 (concerning civil society associations and foundations) are compatible with article 22 of the ICCPR, and moreover failed to clarify the grounds under which the persons and organizations involved were being accused of engaging in "activities conducive to instability in the country, the spread of anarchy, security upheavals and sedition among Egyptian communities with a view to undermining national security and obstructing the Egyptian authorities", so as to meet the conditions for prosecution under the Egyptian Criminal Code. Regarding cases EGY 8/2016 and EGY 13/2016, while we thank your Excellency's Government for the replies of 12 August 2016 and 28 December 2016, we regret that they transcribe articles out of the Constitution and the law asserting their compatibility with international law, without explaining how the particular facts and concerns addressed in the letter are themselves compatible with Egypt's international obligations.

Regarding the enactment of the Law No. 70 for Regulating the Work of Associations and Other Institutions Working in the Field of Civil Work ("the NGO Act"), communications were sent on 5 October 2016 (EGY 11/2016) and 22 November 2016 (EGY 14/2016), expressing concern about the possible implications of its approval and entry into force. We regret that no mention was made of this issue in your reply dated 3 February 2017 to EGY 11/2016, which focused on explaining the constitutional guarantees to freedom of association and the provisions of Act No. 80 of 2002 in this regard, but did not touch upon the draft legislation. Furthermore, we regret that EGY 14/2016, which made a thorough analysis of the law after its adoption by the Egyptian

Parliament, never received an answer by your Excellency's Government. The bill was also the object of grave concerns expressed by the Special Rapporteur on Freedom of Peaceful Assembly and Association in a press release made on 23 November 2016¹, and more recently by the United Nations High Commissioner for Human Rights in a press release issued on 1 June 2017², days after its enactment.

According to the new information received:

On the cases of Ms. Azza Soliman and Lawyers for Justice and Peace (LJP)

While the decisions of 2016 imposing a travel ban and an asset freeze under Case 173/2011 against Ms. Soliman and LJP are currently under appeal, the investigative authorities are said to be attempting to build a separate case of treason and espionage against her. This line of investigation appears to be based on claims that Ms. Soliman has met with foreigners to discuss the situation in Egypt and written reports about the country. The accusations, if successful, could entail severely heavy prison terms and additional sanctions against Ms. Soliman.

Similarly, member lawyers of LJP, including Ms. Seham Ali, have been allegedly summoned for questioning during July and August 2017 by the same investigative judge, and are being charged with similar accusations as Ms. Soliman. Ms. Ali, however, has been released on bail amounting of 5,000 EGP.

Regarding the tax evasion case against Ms. Soliman and LJP, it has been reported that the investigative tax committee that was set up for this purpose is not independent and impartial inasmuch as it includes among its members representatives from the Tax Administration Office and the Ministry of Social Solidarity. Thus, Ms. Soliman and LJP are waiting to be referred to a court so that the review of tax documents can be done under a judicial supervision.

The renewal of the investigative judge in Case 173/2011

During August 2017, the head of the Cairo Appellate Court decided through an administrative decree to renew the mandate of investigative Judge [REDACTED], who has been in charge of the investigations of Case 173/2011 at least since December 2014, and has issued several travel bans and asset freezes against the human rights defenders and associations involved during this time.

Such extension of the period for investigation and the renewal of the investigative judge is said to be contrary to the rules of the Code of Criminal Procedure, under which the investigative judge is required to complete the investigations in six months, with an opportunity to request an extension for another six months if there are credible reasons that prevented him from completing the investigations.

¹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20920&LangID=E>
² <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21678&LangID=E>

This notwithstanding, the investigative judge in charge of this case has reportedly been conducting investigations for a period of around three years.

On 27 August 2017, seven prominent human rights defenders accused under Case 173/2011, filed a lawsuit challenging the administrative decree of the Cairo Appellate Court renewing the mandate of the investigative judge. Among them are Mr. Bahey eldin Hassan (of the Cairo Centre for Human Rights Studies), Mr. Gamal Eid (of the Arab Network for Human Rights Information), Mr. Mohamed Zaree (of the Cairo Institute for Human Rights Studies), Ms. Mozn Hassan (of Nazra for Feminist Studies), and Ms. Soliman, referred to above.

Motions by some of the defendants of Case 173/2011 have been allegedly filed in the past months before the Cairo Appellate Court, requesting access to the documents supporting the mandate of Judge [REDACTED] and its extension. However, it has been reported that such motions have been turned to Judge [REDACTED] himself, who has rejected them without providing any legal basis for it.

Other procedural violations have been claimed to have taken place in the context of Case 173/2011. These include the intervention of more than one investigative judge in the case, allegedly in contravention of Article 65 of the Code of Criminal Procedure, as well as selection of Judge [REDACTED] himself, which has been said not to have followed the selection criteria for judges established in the jurisprudence of the Court of Cassation.

On the enactment of the “NGO Act”

On 24 May 2017, President Abdel-Fattah El Sisi signed into law the Law No. 70 for Regulating the Work of Associations and Other Institutions Working in the Field of Civil Work (the *NGO Act*), which establishes a new framework for the registration and oversight of non-governmental organizations in the country. As a bill, the NGO Act was the object of a number of serious concerns expressed by different Special Procedure’s mandate holders. Notably, the letter sent in case EGY 14/2016 dealt in depth with the particularities of this legislation, and regrettably never received a reply by your Excellency’s Government.

As enacted, the NGO Act still raises a number of serious issues. First, it introduces a general prohibition for any organization to conduct activities that “harm national security, public order, public morality, or public health”, the breach of which may lead to the loss of registration, administrative fines, and criminal prosecution.

The law also requires NGOs to notify the authorities of any donation they receive, and subjects these operations to their approval. In the case of donations received from Egyptian entities or individuals inside Egypt, NGOs are required to obtain permission 30 days in advance. In the case of donations by foreign entities, the NGOs are bound to inform the authorities of the operation and the funds remain

frozen for 60 days, during which the authorities may decide to fully reject it. Similarly, the law requires NGOs to report closely their activities and management decisions to the authorities.

In addition, the enforcement of the NGO Act is left to a new administrative body: the National Authority for the Regulation of Foreign Non-governmental Organizations. This authority will include representatives from the Ministries of Foreign Affairs, Defense, Justice, Interior, International Cooperation and Social Solidarity, as well as from the Egyptian intelligence services, the Central Bank of Egypt and the government's money laundering unit.

The bylaws implementing the NGO Act are still to be drafted and issued by the Prime Minister. NGOs currently operating in Egypt have until 30 May 2018 to renew their registrations before the National Authority for the Regulation of Foreign Non-governmental Organizations, in accordance to the new provisions.

We express serious concern at the continuation of the various criminal and administrative proceedings pursued under Case 173/2011 against several human rights defenders and civil organizations, which appear to be related to the legitimate exercise of their work denouncing and litigating against human rights violations, as well as providing legal aid to its victims. Furthermore, we are concerned at the allegations of irregularities in the appointment of the investigative judge of the case, and the overall lack of guarantees of due process in the proceedings.

Furthermore, we want to express our dismay at the enactment of the Law No. 70 for Regulating the Work of Associations and Other Institutions Working in the Field of Civil Work, which seeks to limit and criminalize the work of non-governmental organizations in Egypt, severely undermining civil society space in the country.

While we do not want to prejudge the accuracy of these allegations, they appear to be, if true, in contravention of the rights to due process of law, to freedom of expression, and to freedom of association, guaranteed by articles 14, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 1 January 1982.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore 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 information on the ongoing proceedings and the basis of the charges pursued against Ms. Azza Soliman, including any accusation of treason or espionage, and explain how these are compatible with articles 14, 19 and 22 of the ICCPR.
3. Please provide information on the basis of the accusations against Ms. Sehal Ali, Mr. Bahey El-Din Hassan, Mr. Gamal Eid, Mr. Mohamed Zaree and Ms. Mozn Hassan, as well as the other human rights defenders and organization prosecuted under Case 173/2011, and explain how these are compatible with articles 14, 19 and 22 of the ICCPR. In particular, please explain how their activities in defence of human rights can legally amount to “activities conducive to instability in the country, the spread of anarchy, security upheavals and sedition among Egyptian communities with a view to undermining national security and obstructing the Egyptian authorities”, and how these charges are necessary and proportional restrictions of the rights protected under articles 19 and 22 of the ICCPR.
4. Please explain how the appointment of investigative Judge [REDACTED] for an additional term in the investigations of Case 173/2011 is compatible with the Code of Criminal Procedure and article 14 of the ICCPR. Similarly, please provide information on the measures adopted by your Excellency’s Government to ensure the independence and impartiality of the judges and prosecutors involved in these cases.
5. Please explain how the provisions of the Law No. 70 for Regulating the Work of Associations and Other Institutions Working in the Field of Civil Work are compatible with articles 19 and 22 of the ICCPR. In particular, please explain how the broad prohibition of activities that “harm national security, public order, public morality, or public health”, the restrictions on the receipt of donations, the ample oversight powers of the National Authority for the Regulation of Foreign Non-governmental Organizations, and its composition, are necessary in a democratic society and thus compatible with international human rights standards.

While waiting for your response, we urge your Excellency’s Government to halt the procedures and take all necessary measures to guarantee the rights and freedoms of the human rights defenders involved.

We would like to inform your Excellency’s Government that we might want to publicly express our concerns regarding the issued discussed in this communication in the near future, as we believe the wider public opinion should be alerted. The press release 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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Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annalisa Ciampi
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán
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Annex
Reference to international human rights law

The above mentioned allegations appear to be in contravention of the rights to the guarantees of due process of law, to freedom of opinion and expression, and to freedom of association, guaranteed by articles 14, 19 and 22 of the ICCPR, ratified by Egypt on 1 January 1982.

In particular, the different procedures pursued under Case 173/2011 appear to fall short of the requirements of article 14 of the ICCPR, which establishes the right of everyone to a fair and public hearing by a competent, independent and impartial tribunal established by law. In this respect, the Basic Principles on the Independence of the Judiciary establish that “it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary” (Principle 1) and that “the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (Principle 2).” Regarding the allegations concerning the extension of the tenure of the investigative judge in the case, we would like to remind also that the Basic Principles determine that “the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law” (Principle 11).

Concerning the right to freedom of expression under article 19 of the ICCPR, we would like to refer to the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with the criteria established by international human rights standards. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality. We would similarly like to recall that, while national security is a legitimate basis for restricting the right to freedom of expression under article 19(3), it is not enough to claim it as a justification to pursue illegitimate purposes such as silencing critical voices. Governments have to demonstrate that the measures adopted are necessary to achieve a legitimate objective, and proportional in the means used to implement them. In any case, article 19(3) may never be invoked as a justification for the hindering of any advocacy of human rights (CCPR/C/G/34).

As does for the right to freedom of association under article 22 of the ICCPR, we would like to draw your Excellency’s Government attention to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which reminds States that it is their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, and to take measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law. Any restriction of this right can only be done exceptionally and in cases where this is necessary in a democratic society and in the interests of national security or public safety, public order, the protection of public health

or morals, or the protection of the rights and freedoms of others. In addition, the Human Rights Committee has interpreted these provisions to require States imposing such restrictions to duly consider all less intrusive measures to achieve this purpose (see *Lee v Republic of Korea* (1119/02)).

Moreover, we would like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 5 of the Declaration provides for the right to form, join and participate in non-governmental organizations, associations or groups.

In particular, we wish to note that articles 5 and 6 of the Declaration reiterate the rights to meet or assemble peacefully; to form, join and participate in non-governmental organizations, associations or groups; to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms; as well as the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights. We would also like to refer to provisions under article 12, which provides that State must take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would also like to remind your Government of Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Egypt on 18 September 1981, which provides that states parties will take all appropriate measures to eliminate discrimination against women in political and public life.

Also, as highlighted by the Working Group on discrimination against women in law and in practice in one of its reports (A/HRC/23/50), stigmatization, harassment and outright attacks have been used to silence and discredit women who are outspoken as leaders, community workers, human rights defenders and politicians. Women defenders are often the target of gender-specific violence, such as verbal abuse based on their sex; they may experience intimidation, attacks and death. Violence against women defenders is sometimes condoned or perpetrated by State actors.

We would also like to draw your attention to General Assembly resolution 68/181 in which States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective in their efforts to create a favorable environment for the defense of human rights. This should include the establishment of comprehensive, sustainable and

gender-sensitive public policies, as well as programs that support and protect women defenders. Such policies and programs should be developed with the participation of women defenders themselves.