

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
AL EGY 10/2019

9 October 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 33/30, 34/18, 34/5 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and ongoing detention of human rights defender Mr. **Ramy Shaath**, the terrorism-related charges and smear campaign against him, and the deportation of his spouse to France.

Mr. **Ramy Shaath** is an Egyptian-Palestinian political activist and human rights defender who has co-founded several coalitions and movements advocating for democratisation in Egypt. In 2015, he co-founded and became the coordinator of the Boycott, Divestment and Sanctions (BDS) Movement in Egypt, a coalition created by several political parties, student and trade unions, and human rights organisations to advocate for the rights of Palestinians and denounce the human rights violations committed in the Occupied Palestinian Territory.

The BDS movement defines itself as "an inclusive, anti-racist human rights movement that is opposed on principle to all forms of discrimination, including anti-Semitism and Islamophobia", that targets corporations and institutions deemed "complicit" in the State of Israel's violations of international human rights and international humanitarian law.

The conflation of human rights activities with terrorism, and the targeting of human rights defenders within this framework has previously been the subject of several communications sent by Special Procedures mandate holders to your Excellency's Government, including the joint letters sent on 28 May 2019 (case no. EGY 6/2019), 19 July 2019 (case no. EGY 7/2019) and 2 September 2019 (case no. EGY 8/2019). We regret that no response has yet been received to these communications and look forward to receiving the Government's replies to both the aforementioned communications and the present one soon.

According to the information received:

In April 2012, the Ministry of Interior refused to renew Mr. Shaath's passport, arguing that he was not an Egyptian citizen. On 7 July 2012, Mr. Shaath filed a lawsuit against the Ministry at the Administrative Court of the Egyptian State Council, in connection with the aforementioned decision. On 26 March 2013, the Court ruled in his favour and ordered the Ministry of Interior to renew his passport. The Ministry complied with the Court order. However, on 23 May 2013, the Minister of Interior and the head of the General Administration of Passports, Emigration and Nationality appealed the ruling at the Supreme Administrative Court of the State Council. Appeal procedures at the Trial Chamber of the Supreme Administrative Court have since been suspended pending consideration of a broad case related to the status of Palestinians holding Egyptian citizenship by the Department for Unification of Principles of the Supreme Administrative Court.

In recent months, Mr. Shaath participated in public events and gave interviews in which he strongly opposed the US Government's plan to end the Israeli-Palestinian conflict, known as the "deal of the century". He was also critical of Egypt's participation in the Manama meeting held on 25-26 June 2019, where the aforementioned plan was discussed.

On the night of 5 July 2019, approximately 10 heavily armed State security agents raided Mr. Shaath's house in Cairo and arrested the human rights defender. No warrant was presented, and the officers refused to identify themselves or to provide the reason for the raid and arrest. During the raid, computers, hard drives and mobile phones were seized.

Mr. Shaath's spouse, a French national, who had resided and worked in Egypt for over seven years, was present during the arrest of her husband. During the raid, one of the security agents prevented her from calling her friends and the French consulate in Cairo. She was allegedly told that since she insisted on calling the consulate, it was the Egyptian State's right to deport her. She was given 10 minutes to collect some of her belongings before being taken to Qasr el-Nil police station. Her phone and laptop were confiscated and she was later transferred to Cairo International Airport. There, she was forced to buy a ticket to Paris and kept in custody for the whole night until the departure of her flight the next morning. She was not informed about the grounds for her deportation, nor permitted to contact anyone, including the French consulate, despite having presented the card of consular protection issued by the consulate. To date, Mr. Shaath's spouse has not been provided with the reason for her deportation.

The next morning, Mr. Shaath's family members and lawyers reported his disappearance at Qasr el-Nil police station. Police officers denied having him in their custody. Mr. Shaath's whereabouts remained unknown for 36 hours, until he was brought before the State Security Prosecution on 6 July 2019. Although he

had not been permitted to contact his family or legal counsel, a lawyer who happened to be present at the State Security Prosecution at the time, was allowed to attend Mr. Shaath's interrogation by the Prosecutor.

During the interrogation, it was revealed that Mr. Shaath had been added as a defendant to the ongoing State Security case no. 930/2019, known as the "Hope Plan" case. The investigations in this case concern the alleged cooperation of civil society activists, politicians and journalists with the Muslim Brotherhood, aimed at undermining State security. The Prosecutor charged Mr. Shaath with "assisting a terrorist group", punishable with no less than 5 years in prison under article 28 of the Law Against Terrorism. Mr. Shaath was reportedly questioned about his political activities in Egypt and the BDS movement. Neither Mr. Shaath, nor his lawyers were presented with the secret file gathered by the National Security Agency (NSA), used as evidence against Mr. Shaath. The file is reportedly being used as evidence despite the 2015 ruling of the Court of Cassation that NSA investigations cannot be considered as evidence on their own.

During the interrogation, the Prosecutor decided to place Mr. Shaath in detention for 15 days pending investigations. Since then, Mr. Shaath's detention has been renewed every 15 days in automatic renewal hearings. Under the Code of Criminal Procedures and the 2015 Law Against Terrorism, prosecutors can order pre-trial detention against individuals charged with "terrorism-related" offences for up to 150 days, without referring them to a judge.

Mr. Shaath has been detained in Torah prison. For the first month, he was held with around 30 other detainees, some seriously ill, in a cell measuring approximately 30 square meters. There was no space for him to lie down and he was not allowed to exercise outdoors. In the first week of August, he was transferred to a cell with fewer detainees and since then, has been allowed one hour outside per day. His family members have been permitted to visit him once a week for approximately 20 minutes.

On 21 August 2019, Mr. Shaath's family issued a public statement about his detention. Since then, he has been the subject of a smear campaign led by both state-owned and private media outlets, who have sought to deny his Egyptian nationality, and have accused him of embezzling Palestinian money in order to "target" the Egyptian police and military, and fund the Muslim Brotherhood.

Until recently, Mr. Shaath had only been allowed to see his lawyers during the hearings at the State Security Prosecution. Following several requests, on 12 September 2019, one of his lawyers was permitted to visit him in prison. They were only allowed to talk for 30 minutes and the visit was supervised by the prison authorities.

We express grave concern at the arrest and ongoing detention of Mr. Shaath, the charges brought against him, as well as the deportation of his spouse, which appear to be

directly linked to his exercise of the right to freedom of expression and his activities in defense of human rights. We raise serious concern at the terrorism-related charges under the Code of Criminal Procedures and the 2015 Law Against Terrorism, which allows for pre-trial detention and which would represent the use of counter-terrorism legislation to restrict human rights and to target those seeking to promote and protect human rights in Egypt in response to their crucial work.

We further wish to express our concerns over the alleged restriction of Mr. Shaath's ability to have contact with his lawyers and family.

With regards to the reported smear campaign against Mr. Shaath led by the media, we reiterate our concern that allegations of terrorism published against human rights defenders risk broadly conflating the peaceful defence of human rights and freedom of expression with terrorist activity, denigrating their important work in the eyes of the public. We also reiterate our concern that widespread public smear campaigns can create a chilling effect on civil society as a whole, leading human rights defenders and other members of civil society to abandon their work and self-censor.

We also reiterate our serious concerns over the overall worrisome climate for civil society organisations, human rights defenders and journalists in Egypt, given the use of counter-terrorism legislation to target those expressing dissent and seeking to promote and protect human rights.

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 be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal and factual bases for the arrest (including allegations that it was carried out without a warrant and without information being given as to the reasons for arrest), continued pre-trial detention, and charges brought against Mr. Shaath, and explain how these comply with the standards of international human rights law.
3. Please provide detailed information on what steps have been taken to ensure that Mr. Shaath is able to meet with family members and legal representation without undue restrictions. Please further provide information on what steps have been taken to ensure that fair trial guarantees have been afforded to Mr. Shaath in line with international

human rights standards, including ensuring that Mr. Shaath and his lawyers have access to all evidence to be presented against him.

4. Please provide detailed information about the reasons for the overnight detention of Mr. Shaath's spouse and her subsequent deportation, as well as her alleged preclusion from contact with the French Consulate.
5. Please provide information on the fate of goods seized by State security agents during the raid at Mr. Shaath's house.
6. Please explain the legal basis for the Ministry of Interior's decision to appeal the ruling of the Administrative Court of the Egyptian State Council, concerning the renewal of Mr. Shaath's passport.
7. Please provide information in details of how your Excellency's Government's counter-terrorism efforts comply with the United Nations Security Council resolutions [1373 \(2001\)](#), [1456\(2003\)](#), [1566 \(2004\)](#), [1624 \(2005\)](#), [2178 \(2014\)](#), [2341 \(2017\)](#), [2354 \(2017\)](#), [2368 \(2017\)](#), [2370 \(2017\)](#), [2395 \(2017\)](#) and [2396 \(2017\)](#); as well as Human Rights Council resolution [35/34](#) and General Assembly resolutions [49/60](#), [51/210](#), [72/123](#) and [72/180](#), in particular with the necessity to respect and observe international human rights law.
8. Please find provide information on what steps have been taken to ensure that defamatory statements made in the media against human rights defenders and civil society organisations are remedied immediately.
9. Please provide detailed information as to the specific measures that have been put in place to ensure human rights defenders and other civil society actors in Egypt can carry out their legitimate work in a safe and enabling environment without fear of judicial harassment of any kind.

We would appreciate receiving a response within 60 days. Thereafter, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982, which guarantee the right not to be deprived arbitrarily of liberty, to fair proceedings before an independent and impartial tribunal, and the rights to freedom of expression and freedom of peaceful assembly, respectively. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights under articles 19 and 22 of the ICCPR must be provided by law and be necessary and proportionate to the aim pursued.

The scope of the right to freedom of expression is broad. Article 19(2) of the ICCPR "protects all forms of expression and the means of their dissemination", including political discourse, commentary on one's own and on public affairs, canvassing and discussion of human rights, such as boycott movements, see General Comment 34, paras. 11 & 28. Boycotts have long been understood as a legitimate form of political expression in international human rights law.

We wish to reiterate as well the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We would also like to refer your Excellency's Government to the fundamental principles set forth in 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both

in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;

- Article 12, paragraphs 2 and 3, which provides that the State shall 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 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. (OP 10).

In this regard, we would like to bring to your Excellency's Government's attention that in his report to the General Assembly on impact of counter-terrorism measures on civil society, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. (A/70/371, para 46(c)).

With respect to the use to counter terrorism and extremism justifications to restrict the legitimate exercise of freedom of expression, we would like to underline that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under ICCPR and non-violent exercise of these rights is not a criminal offence. Counter terrorism legislation should not be used as an excuse to suppress peaceful minority groups and their members.

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism would like to bring to the attention of the Government paragraphs 74 to 78 of A/HRC/37/52. In addition, the Special Rapporteur would like to bring to the attention of the Government her 2018 report to the Human Rights Council A/HRC/40/52, in particular paragraphs 36, as well as, paragraphs 75 (a) to (i).

With regard to the Code of Criminal Procedures and the 2015 Law Against Terrorism, we note the exceptionally wide definition of terrorism therein. We bring your Excellency's Government attention to the "principal of legal certainty" under international law (ICCPR Article 15(1); ECHR Article 7(1)) which requires that criminal

laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations (A/73/361, para.34).

With regards to the deportation of Mr. Shaath's wife, we would like to refer your Excellency's Government to Article 13 of the ICCPR, which states that "an alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority." Furthermore, in connection with the alleged preclusion of Mr. Shaath's wife from contact with the French Consulate, we would like to refer your Excellency's Government to Article 36 of the Vienna Convention on Consular Relations, ratified by Egypt on 21 June 1965, which states that "if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner."