

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 situation of human rights defenders**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 situation of human rights defenders, pursuant to Human Rights Council resolutions 40/16, 42/22, 36/6, 35/15, 34/18, 41/12 and 34/5.

In this connection, we express our serious concern about proposed amendments to the Terrorist Entities Law (Law 8 of 2015) and the Anti-Terrorism Law, (Law 94 of 2015), approved by the Parliament's Legislative Committee on 10 February 2020, which toughen the penalties for terror-related crimes, expand the definition of financing of terrorism, and impose the death penalty on those found guilty of funding of terrorist groups and acts. We also express our concern at the extensive limitations on and criminalization of the exercise of fundamental rights in Egypt. In particular, we offer comments on the effect and application of The Right to Public Meetings, Processions and Peaceful Demonstrations Law No. 107/2013, amended on 27 April 2017 (hereinafter generally referred to as the Protest Law), signed into law on 24 November 2013 and amended in 2017; the Law no.70/2017 on Associations and Other Foundations Working in the Field of Civil Work (hereinafter generally referred to as the Association Law), signed into law in June 2017 and repealed in August 2019; and Law No. 149/2019, which regulates the activities of nongovernment organizations (hereinafter generally referred to as the NGO Law), ratified on 19 August 2019 and whose eighth article repealed the Association Law. While the legislation spans from very recent to prior legislation, we view the totality of these legislative enactments, and their inter-related and cumulative effects, as having collective and corrosive effects on the promotion and protection of human rights.

The application of the Anti-Terrorism Laws, Protest Law, Association Law, and NGO Law raise serious concerns regarding increasing practices of arbitrary detention, allegations of torture and other forms of ill-treatment, the absence of judicial oversight and procedural safeguards, restrictions on freedom of expression, the right to freedom of

thought, and the right to freedom of peaceful assembly. The effects of these laws in the Sinai region, for instance, have also reportedly resulted in violations of socio-economic rights including the right to education, the right to secure housing, the right to sustainable development and the rights to food and water. Furthermore, we are deeply concerned about recent reports indicating that Egypt's counter-terrorism legislation is in the process of being amended to include a broader definition of the crime of funding of terrorism, as well as tougher sentences and punishments for those convicted of it.

We recommend review and reconsideration of certain aspects of this legislation to ensure that it is in compliance with Egypt's international human rights obligations. We note that best international practice encourages States to fully and independently review counter-terrorism and emergency law regularly to ensure that it remains both necessary and international law compliant. We also affirm that ordinary law, where sufficient, should be used to address security and terrorism challenges experienced by the State and, when exceptional or emergency law is utilized, it be applied in accordance with international law and the framework of derogation on the basis of necessity, proportionality, and non-discrimination.<sup>1</sup>

We concur with the conclusions of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism about the use of the terminology of 'extremism' in national law and practice.<sup>2</sup> She notes that 'extremist' crime is an overly vague and problematic categorization, and without a qualifier of 'violent' extremism conducive to terrorism, this ambiguity may lead to an encroachment on duly protected human rights. She further takes the view that the term "extremism" has no purchase in binding international legal standards and, when operative as a criminal legal category, is irreconcilable with the principle of legal certainty and per se incompatible with the exercise of certain fundamental human rights. Moreover, she has previously noted concern about when the term 'extremism' is used, not part of a strategy to counter violent extremism, but as an offence in itself.<sup>3</sup>

### **Overview of international human rights law standards applicable**

We would like to reiterate the obligation of your Excellency's Government to respect and protect individual rights guaranteed under the Universal Declaration of Human Rights (UDHR). The Arab Republic of Egypt also signed the International Covenant on Civil and Political Rights (ICCPR) on 4 August 1967 and ratified it on 14 January 1982. It signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 4 August 1967 and ratified it on 14 January 1982. It acceded to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) on 25 June 1986 and ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 18 September 1981, as well as the Convention on the Rights of the Child (CRC) on 6 July 1990; and signed the African

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<sup>1</sup> A/HRC/37/52, paras 10, 11 and 12.

<sup>2</sup> A/HRC/31/65, para. 21.

<sup>3</sup> A/HRC/31/65, para. 21.

Charter on Human and People's Rights on 16 November 1981 and ratified it on 20 March 1984.

### *Background*

Since the institution of a military regime in 2013, there have been several major developments in the country related to human rights and terrorism. The Muslim Brotherhood was declared a “terrorist group,” resulting in the rounding up of its members, leaders, and alleged supporters. President al-Sisi promulgated a series of decrees, many of which restricted freedoms, resulting in the imposition of sustained death sentences, the denial of the right to fair trial to many, a lifting of the moratorium on executions;<sup>4</sup> and a declaration of a state of emergency in April 2017, which has since been renewed eleven times by Parliament. A new Constitution was adopted in 2014 and the Anti-Terrorism Law no. 94/2015, the Terrorism Entities Law no. 8/2015, the Associations Law no. 70/2017, and the Protest Law 107/2013 were also passed in this period.

At the same time, we note that there has been a rise in violent attacks by armed groups, especially in North Sinai. These attacks have been directed primarily against police and other state officials, but civilians have also been killed as a result of the attacks. Egyptian Christians in particular have been targeted and forced out of their homes in the Sinai. It is understandable that the Government would need to issue new laws and decrees in response to violence in the Sinai. However, we underscore that such measures must pursue a legitimate aim, conform with the requirements of legality, and be necessary, proportionate and non-discriminatory. It has been noted in previous communications by this and other mandates that the legal changes that have occurred since 2013 have extensively restricted public space and limited fundamental freedoms. The extensive and cumulative use of such measures meets the threshold of a permanent state of emergency in the region of North Sinai in Egypt including widespread detention, exceptional trials and the use of the death penalty and/or extended punishment.

The 2014 Constitution limited the president’s powers to declare an indefinite state of emergency. As a result, a state of emergency must be renewed by Parliament every three months.<sup>5</sup> In April 2017, a state of emergency was declared following attacks on Coptic churches in Tanta and Alexandria. In January 2020, the state of emergency was renewed by Parliament for the eleventh consecutive time. The state of emergency gives the armed forces and police sweeping powers to regulate terrorist threats to private property and citizens. Increased powers include the ability to monitor mass media and communications, expropriate property, expand military and police power, try suspects in exceptional trials, and impose curfews. It also grants the President the power to refer civilians to the State Security Emergency Courts. The exceptionality of this court is underscored by the lack of any judicial appeal process of its decisions. Under article 4 of

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<sup>4</sup> See, EGY 2/2020, EGY 12/2019, EGY 11/2019, EGY 9/2019, EGY 12/2018, EGY 11/2018, EGY 8/2019, EGY 3/2019, EGY 2/2019.

<sup>5</sup> Egyptian Constitution, article 154.

the emergency law, the armed forces have the authority to address any violation of emergency law powers. In effect, the emergency measures have given the security forces the power to detain civilians for any period of time, for an overly broad and ill-defined range of reasons, while simultaneously giving security forces the power to restrict public gatherings and media freedom.

The Anti-Terrorism Law no. 94/2015, enacted on 15 August 2015 and the Terrorism Entities Law no. 08/2015 criminalize a wide range of acts to prevent terrorism. Law 70/2017 for Regulating the Work of Associations and Other Institutions Working in the Field of Civil Work signed into law in June 2017 and the newly ratified Law No. 149/2019 on Regulating Activities of Nongovernmental Organizations employ similar language to restrict the funding of and action by NGOs in the interest of national security. The Public Meetings, Processions and Peaceful Demonstrations Law No. 107/2013, signed into law on 24 November 2013 by interim President Adly Mansour, limits protests and demonstrations in the interest of national security.

The Anti-Terrorism Law has been reviewed and critiqued by various UN mechanisms for being overly broad and infringing on the fundamental freedoms of ordinary citizens, journalists, and NGOs.<sup>6</sup> Furthermore, UN mechanisms have repeatedly recommended the immediate end of incommunicado detention and for allegations of enforced disappearances to be investigated.<sup>7</sup> Despite these recommendations, the Anti-Terrorism Law has effectively codified enforced disappearances by allowing individuals to be arrested and held for seven days in incommunicado detention before being questioned by a prosecutor.<sup>8</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and of association has repeatedly noted that the Protest and Association Laws appear to be “deliberately drafted to curtail civil society’s ability to operate, and to stifle their ability to freely express themselves.”<sup>9</sup> The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders have similarly expressed their deep concern about these laws. The former UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein stated that Egypt had used the state of emergency and laws to “justify the systematic silencing of civil society and closure of civil space, under the guise of countering terrorism.”<sup>10</sup>

### *Definition of Terrorism*

We respectfully remind your Excellency’s Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566

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<sup>6</sup> See, e.g., A/HRC/WG.6/34/EGY/2, para. 12-14.

<sup>7</sup> See, e.g., A/72/44, paras. 58-71.

<sup>8</sup> *Id.* at art. 40 and art. 41.

<sup>9</sup> *Egypt NGO bill threatens to “devastate” civil society, UN expert warns*, OHCHR, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20920>.

<sup>10</sup> *UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein highlights human rights concerns around the world in an address to the 36th session of the Human Rights Council in Geneva, 11 September 2017*, OHCHR, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22044&LangID=E>.

(2004), 1624 (2005), 2178 (2014), 2242 (2015), 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. All these resolutions require that States ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, must comply with all of their obligations under international law. We would also like to recall 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 articles 1 and 2 which state that everyone has the right to promote and 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, as well as to articles 5(a) and (b), 6(b) and (c) and 12, paras 2 and 3. In this regard, we also wish to refer to the 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.<sup>11</sup>

The Anti-Terrorism Law and related laws<sup>12</sup> adopts a broad definition of terrorist acts which encompass a range of activities protected by the freedoms of opinion, expression, association, and political participation, such as “harms [to] national unity, social peace, or national security” or “prevent[s] or hinder[s] public authorities, judicial bodies, government facilities, and others.”<sup>13</sup> The law also criminalizes actions which harm communications and information.<sup>14</sup> Anyone who directly or indirectly facilitates or incites a terrorist crime, regardless of whether the crime actually occurs, is liable for the same crime as those who commit the crime.<sup>15</sup> In addition, the proposed amendments to the Anti-Terror legislation will reportedly expand the definition of terrorist funding to include providing suspected terrorists with documents in any way or form, as well as supporting or financing the travels of an alleged terrorist, even if the provider does not have a direct link to the terrorist crime. It also announced harsher sentences for those accused of funding terrorist groups, including life sentences and capital punishment.

We would like to bring to the attention of your Excellency’s Government that counter-terrorism legislation should be sufficiently precise to comply with the principle of legality recognised in international human rights law, so as to prevent the possibility that it may be used to target civil society on political, religious or other unjustified grounds.<sup>16</sup> We recall that the principle of legal certainty expressed in article 11 of the UDHR and in the ICCPR, 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

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<sup>11</sup> A/HRC/RES/22/6, para. 10; *See also* E/CN.4/2006/98, para. 47.

<sup>12</sup> Including article 86 of the Penal Code.

<sup>13</sup> Anti-terrorism Law, no. 94/2015 art. 2.

<sup>14</sup> *Id.* at art. 2.

<sup>15</sup> *Id.* at art. 7.

<sup>16</sup> A/70/371, para. 46(c).

consequence of committing such an offence.<sup>17</sup> This principle recognizes and seeks to prevent 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.<sup>18</sup> To be “prescribed by law,” the prohibition must be framed in such a way that the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct accordingly.<sup>19</sup> The failure to restrict counter-terrorism laws and implementing measures to the countering of conduct which is truly terrorist in nature, has the potential to restrict and infringe upon the enjoyment of rights and freedoms in absolute ways including exercising freedoms of expression, opinion, and assembly.<sup>20</sup>

The UN Security Council’s definition of terrorist acts requires intentionality to cause death or serious bodily harm and the act must be committed with the purpose to provoke a state of terror.<sup>21</sup> As there is no universal and comprehensive definition of terrorism, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stressed that the definition of terrorism and terrorist activity must be confined to acts that are ‘genuinely’ terrorist in nature in accordance with UNSCR 1566 and the model definition of terrorism developed by this mandate and recommended as best practice.<sup>22</sup> However, Egypt’s Anti-terrorism Laws do not require intentionality or purposive action, nor do they reflect the scope and definition of terrorist acts defined in the international conventions and protocols relating to terrorism.<sup>23</sup> By defining terrorist acts so broadly and criminalizing a range of both direct and indirect actions, the law allows for the conflation of civil disobedience and opinions critical of or contrary to that of the government with “terrorism.” To avoid such risks, criminal offences must be in “precise and unambiguous language that narrowly defines the punishable offence.”<sup>24</sup>

The Law Regulating the Work of Associations and Other Institutions Working in the Field of Civil Work, no. 70/2017, used similarly ambiguous and overly broad language as the Anti-Terrorism legislation, prohibiting all NGOs from conducting activities that “harm national security, public order, public morality, or public health.” Parliament claimed that the law would make NGOs more secure by ensuring robust government oversight of foreign funding and everyday actions of NGOs, including their

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<sup>17</sup> UA G/SO 218/2 Terrorism.

<sup>18</sup> A/73/361, para. 34. Other human rights mechanisms have also commented on the Anti-Terrorism law being overly broad and infringing on the fundamental freedoms of ordinary citizens, journalists, and NGOs. *See, e.g.,* A/HRC/WG.6/34/EGY/2, para. 12-14.

<sup>19</sup> Human Rights Committee, General Comment 34, para. 25; E/CN.4/2006/98, para. 46.

<sup>20</sup> E/CN.4/2002/18, Annex, para. 4(b).

<sup>21</sup> UNSCR 1566 (2004) para. 3.

<sup>22</sup> A/HRC/16/51, para. 28.

<sup>23</sup> E/CN.4/2006/98, para. 37.

<sup>24</sup> Inter-American Court of Human Rights, *Castillo-Petruzzi et al v Peru*, Judgment of 30 May 1999, Series C, No. 52, para. 121; *see also* E/CN.4/2006/98, para. 38.

choice of leadership and scheduling of internal meetings. The Right to Public Meetings, Processions and Peaceful Demonstrations Law No. 107/2013 signed into law on 24 November 2013 by interim President Adly Mansour also uses overly broad language including granting security officials discretion to ban protests and forcibly disperse a protest if a single protestor throws a stone; and the criminalization of a range of activities including “influencing the course of justice,” “impeding the interests of citizens,” and “blocking traffic.”<sup>25</sup> These activities are broad and ill-defined, criminalizing a range of legitimate public meetings and demonstrations. In tandem, the legislation framework functions to define acts so broadly that it has the potential to profoundly impinge upon the legitimate exercise of the freedoms of expression, association, and opinion.

*Arbitrary detention, Absence of Judicial Oversight and Right to a Fair trial*

We would respectfully like to refer to Egypt’s human rights obligations related to judicial guarantees and deprivation of liberty under articles 6, 7, 8, 9 10, 11 of the UDHR and articles 9, 10, 14, and 15 ICCPR. In particular, articles 9, 10, and 11 of the UDHR stipulate that all individuals have the right to be free from arbitrary arrest, are entitled to a fair and public hearing by an independent and impartial tribunal, and should be presumed innocent until proven guilty at a trial with all the guarantees necessary for his or her defense. Similarly, article 9 (1) of the ICCPR establishes that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as established by law. Article 9 (2) and (3) specify that anyone who is arrested shall be informed, at the time of the arrest, of the reasons for such arrest and be brought promptly before a judge for the purpose of legal assessment and challenge of the detention. Article 14 (3) stipulates that, in the determination of any criminal charge, everyone should have adequate time and means to communicate freely with counsel of choice and to effectively prepare their defense. Furthermore, the right to have access to a lawyer without delay and in full confidentiality is also enshrined in the Basic Principles on the Role of Lawyers (Principles 7 and 8) and in the UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, Principle 9 and Guideline 8).

We are concerned that the Anti-Terrorism Laws, Association Law, and Protest Law are increasing the power of prosecutors, particularly the Supreme State Security Prosecution (SSSP), in contravention with the Government’s international human rights obligations related to judicial guarantees under articles 6, 7, 8, 9 10, 11 UDHR and articles 9, 10, 14, and 15 ICCPR. Prosecutors in Egypt now have greater power to detain suspects without judicial review and increased surveillance power of terrorist suspects. Prosecutors have been granted the power to issue binding judicial decisions, that are not followed by judicial review or checks, including arrest warrants, summons for

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<sup>25</sup> It also used to allow the Interior Ministry to ban any meeting “of a public nature” with more than 10 people present in a public space including political meetings, non-disrupting demonstrations, and urgent and spontaneous demonstrations. However, in December 2016, the Supreme Court ruled this clause unconstitutional and in April 2017 the parliament passed an amendment to the law that stripped the Interior Ministry of its authority. Nevertheless, despite these rulings, public gatherings continue to be severely restricted in Egypt.

questioning, and search and seizure warrants. The Prosecution is empowered to hold individuals suspected of having committed a state security crime for up to 150 days and to hold individuals for seven days without any questioning or access to family, friends, or attorneys.<sup>26</sup> The right to contact family or a lawyer may be suspended for up to 28 days to protect the interest of the investigation under the Anti-Terrorism Law at the Prosecutor's discretion and without any judicial decisions. Detainees may be held for a maximum of 150 days in pre-trial detention before being brought before a judge for renewal. Detainees have consistently reported their inability to appeal prosecutorial decisions because they lack written statements of the charges against them and the reasoning for their pre-trial detention, which is in contradiction with article 9(2) and 14(3)(A) of the ICCPR. It is also highly problematic that only Supreme State Security Prosecution (SSSP) lawyers may approve appeals against pre-trial detention. Not only is this a conflict of interest, but available statistics demonstrate that the SSSP seldom accepts requests to appeal detention orders by the SSSP or judges, thereby effectively blocking suspects' access to judicial review regarding pre-trial detention. Individuals or entities may be labelled "terrorist" for three years subject to renewal without providing courts with any substantiating evidence and may be renewed without a conviction for a terrorist crime. This label allows for individuals' assets to be frozen, denies them political rights, and makes them ineligible for employment in public service or representative bodies. The labelling of an organization as 'terrorist' warrants its dissolution. Because of the broad definition of terrorist acts under the Terrorism Entities Law and other related legislation, many peaceful human rights activities may be labelled as terrorist actions attributable to both the organization and individuals, such as human rights defenders. From the information provided, it is unclear when and how an individual or entity can have the label of 'terrorist' removed.<sup>27</sup>

We respectfully recall that judicial oversight of detention is a fundamental safeguard of personal liberty and essential towards ensuring that detention has a legal basis.<sup>28</sup> Under article 9(3) of the ICCPR, individuals must be brought before a judge promptly after their arrest or detention. This right should not be restricted even during times of emergency.<sup>29</sup> Individuals also have a right to challenge the lawfulness of their detention before a court. The court must rule on detention challenges without delay and order the detainee's release if the detention is found to be unlawful.<sup>30</sup> For the purposes of the initial detention order, prosecutors are not judicial officers under international law. Under international law, a prosecutorial decision regarding pre-trial detention is not enough to provide a basis for detention; the individual charged must still be brought

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<sup>26</sup> Anti-Terrorism Law, art. 40-41.

<sup>27</sup> Anti-terrorism Law, no. 94/2015.

<sup>28</sup> A/HRC/39/45, para. 60; A/HRC/30/37, para. 3.

<sup>29</sup> A/49/40, vol. I, annex XI, p. 119, para. 2; HRC, General Comment no. 29, ff 9; *see also* HRC, Concluding Observations: Israel, UN Doc. CCPR/C/ISR/CO/3 (2010), para. 7(c); HRC, Concluding Observations: Thailand, UN Doc. CCPR/CO/84/THA (2005), paras 13 and 15.

<sup>30</sup> ICCPR, art. 9(4); CRC art. 37(d); Principle 32 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Guideline 32 of the Robben Island Guidelines; Section M(4) and (5) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa; *see also* ); Art. 14(6) ACHR.



before a judge.<sup>31</sup> We express concern at the lack of judicial involvement in the arrest and detention process. The absence of an independent judiciary and judicial oversight on arrest warrants and the initial detention process is in direct violation of fundamental freedoms and guarantees.

We also note that detainees have consistently reported that they are not informed of their rights and the reason for their detention, that their lawyers are not present during questioning, and that defendants are not allowed to properly prepare a defence. The Egyptian Constitution states that all detainees “shall be immediately informed of the causes” of their detention, that they shall be notified of their rights in writing, that they shall be allowed to contact their family and/or their lawyer immediately, and that questioning may only be conducted with a lawyer present.<sup>32</sup> The Code of Criminal Procedure similarly requires detainees to be informed of the reason for their detention and also allows for them to contact family or friends as well as a lawyer. Both the Code of Criminal Procedure and the Guidelines to the Public Prosecution state that detainees have the right to a lawyer and that detainees shall be provided with a lawyer if they cannot afford one. However, both the Code of Criminal Procedure and the Guidelines to the Public Prosecution make an exception for instances when prosecutors fear losing evidence.

While the Guidelines to the Public Prosecution state that prosecutors must ensure that the parents of children younger than 18 years old are informed of the legal proceedings against their child, neither the Code of Criminal Procedure nor the Guidelines to the Public Prosecution make exceptions or provide any additional protection for children regarding legal representation during interrogations. Thus, children may be questioned without a lawyer present if there is a fear that evidence might be lost. Additionally, according to information shared with the experts, children who are being detained under the Anti-Terrorism Law may be detained for 28 days without their parents being informed of their detention or the reason for their detention. These practices are in violation of articles 3 and 40 of the CRC.

We express concern at reports from detainees that SSSP prosecutors also interrogated children without counsel present and that detainees were not asked by the SSSP prosecutors if they would like to call their lawyers before being interrogated. According to these reports, questioning of detainees begins immediately after many of the detainees are forcibly disappeared or while they are being held incommunicado. Individuals are reportedly often subjected to coercive methods during questioning by the SSSP. Interrogations typically last between two and five hours but can last up to 18 or more hours of continuous interrogation. Information received allege that interrogations

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<sup>31</sup> See, e.g., HRC, *Kulomin v. Hungary*, UN Doc. CCPR/C/50/D/521/1992 (1996), para. 11.3. See also HRC, *Reshetnikov v. Russian Federation*, UN Doc. CCPR/C/95/D/1278/2004 (2009), para. 8.2; HRC, *Zheludkova v. Ukraine*, UN Doc. CCPR/C/75/D/726/1996 (2002), para. 8.3; HRC, *Concluding Observations: Tajikistan*, UN Doc. CCPR/CO/84/TJK (2005), para. 12 HRC, *General Comment General comment No. 35- article 9 (Liberty and security of person)*, UN Doc. CCPR/C/GC/35; WGAD, *China*, UN Doc. E/CN.4/2005/6/Add.4 (2004), paras 32(c), 78(a).

<sup>32</sup> Article 54 of the 2014 Constitution of the Arab Republic of Egypt.

typically begin with an “informal chat” between the prosecutor and the suspect in the prosecutor’s office. Here, the detainee is asked about his or her life history and opinions, all while being told that the conversation will not be admissible in court. The interrogation then becomes increasingly obtrusive and can include threats to be sent back to the National Security Agency (NSA), deliberately offending detainees’ personal, cultural, and religious sensitivities, deceiving them into making self-incriminatory statements during “informal chats,” and keeping them blindfolded until after the interrogation has ended. If the detainees had access to a lawyer during questioning, these violations of their rights would be less likely to occur. While there have been instances, particularly in cases involving high-profile suspects, in which the SSSP informed lawyers that detainees would be questioned and allowed the lawyers to attend the questioning, these instances are reportedly not the norm. Furthermore, there have been several cases where detainees objected to counsel appointed by the SSSP to represent them but the appointment occurred regardless, and later proved to be ineffective in their representation of the detainee. We remind your Excellency’s Government that under international law, detainees may only be temporarily denied access to a lawyer for *exceptional circumstances*, which are prescribed by law and limited to occasions when it is indispensable to the case to maintain security and good order. Judicial authorities must make this determination, and individuals should not be deprived of access to counsel for more than 48 hours after the time of their arrest or detention.<sup>33</sup> Denying a detainee access to counsel should be used sparingly and in extreme situations only, reflecting the importance of upholding individual rights to a fair trial recognized by the international community. We recall paragraph 7 of resolution A/HRC/RES/42/18 which affirms, in the context of counter-terrorism, the need to ensure “access to independent and adequate legal representation”.

It is worth emphasizing that when detainees do have access to counsel, the access must be meaningful. We have received credible reports that detainees are consistently disallowed from consulting with their counsel in private before an interrogation nor are they allowed to consult with them during the questioning. On several occasions, we have been informed that lawyers have been denied access to the room in which their client is being interrogated and clients have been transferred to the SSSP building in order to keep lawyers from being present for their client’s questioning. This would be in direct contravention of the State Council’s decision of 9 September 2017 and to the obligations of Egypt under international human rights law.<sup>34</sup>

Lastly, we express concern with information gathering techniques that detainees have reported. Even if the right to counsel may be derogated in exceptional circumstances, international standards prohibit the use of coercive interrogation techniques. This includes the absolute prohibition on torture or other forms of cruel, inhuman and degrading treatment or punishment, and prohibiting the use of misleading

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<sup>33</sup> Basic Principles on the Role of Lawyers, principle 7; *see also* GAOR, A/53/40, para. 7(4).

<sup>34</sup> Basic Principles on the Role of Lawyers, principle 8; Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court, (A/HRC/30/37), principle 9, guideline 8.

questions, untrue promises, and lies to extract confessions.<sup>35</sup> Furthermore, international human rights law requires lawyers to be present during questioning, especially when children are being questioned. Children may not be questioned under any circumstances without a lawyer present, as stipulated by General Comment 24 on the Convention on the Rights of the Child (CRC/C/GC/24). Detainees also need adequate opportunities, time, and facilities to be visited by, and communicate with, their lawyers without delay, interception, or censorship. The meetings between lawyers and clients must also be confidential. Under international human rights law, defendants must also have the ability to defend themselves. This requires giving them access to case files providing the exact content of the charges against them. As the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has previously stated, “giving access to case files or providing the exact content of the charges only during the first session in trial to lawyers defending terrorist suspects before military or emergency courts renders illusory the right of the accused to an adequate defence.”<sup>36</sup> In addition to coercive interrogation techniques, we also express concern at the ability of the Prosecution to monitor conversations, examine financial records, order buildings closed, and censor websites when investigating terrorism cases. Because of the invasive nature of these techniques, they should only be used in limited circumstances to ensure that the rights to privacy and family life are upheld as required under article 17 ICCPR, also expressed in article 12 UDHR.

#### *Freedom of Assembly, Expression, and Opinion*

We also respectfully refer to Egypt’s obligations in regard to the protection of freedoms of peaceful assembly, opinion, and expression. Article 19 of the ICCPR, to which the Arab Republic of Egypt is a state party, protects the right to freedom of opinion and expression. The freedom of opinion in article 19 (1) is absolute and the freedom of expression in article 19 (2) is subject to limitation only in accordance with paragraph 3 of the provision. Any restriction to the rights under articles 19 (2) and 21 must pursue a legitimate aim, in accordance with a law that is sufficiently clear, and conform to the requirements of necessity and proportionality. Attacks against individuals, such as through arbitrary detention, torture and ill treatment, for the exercise of expression is incompatible with the Covenant, see Human Rights Committee, General Comment no 34 para 23. The right to peaceful assembly is similarly enshrined in article 21 of the Covenant.

The mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has identified multiple allegations of arrests for activities that are legitimate exercises of the freedoms of peaceful assembly and expression. For example, there have been reports that in the wake of the September 2019 protests, the Egyptian authorities launched a wave of mass arrests

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<sup>35</sup> UN Committee against Torture, Concluding Observations: USA, UN Doc. CAT/C/USA/CO/2 (2006), para. 24.

<sup>36</sup> UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report, UN Doc. A/63/223 (2008), para. 27; Report of mission to Egypt, UN Doc. A/HRC/13/37/Add.2 (2009), paras 36-37.

against protestors, opposition politicians, lawyers, journalists, and bystanders. Reports suggest that at least 3,715 individuals are currently being prosecuted by the SSSP in relation to the September protests as “aiding a terrorist group in achieving its goals,” “disseminating false information,” “misusing social media,” and for “participation in an unauthorized protest.” We have not received information suggesting that any of those detained in relation to the September 2019 protests have been informed that they were being investigated for any crime recognised under international law. Civil societies and NGOs who have interviewed detainees reported that detainees were told they were being investigated for “participating in an unauthorized protest,” questioned about their political history, and had their internet presence and social media use examined. This is one example amongst many reported incidents in Egypt in which limitations to the rights to freedom of association and assembly clearly went beyond the scope necessary to counter-terrorism and could be used to limit the rights of citizens to protest, as well as the right of political parties and human rights defenders.<sup>37</sup>

While articles guaranteeing the freedom of expression, assembly, and association, which were incorporated into the 2014 Egyptian Constitution, are commendable,<sup>38</sup> we are concerned with subsequent legislation and practice that impinge upon these rights. Many of these restrictions have been issued by presidential decree in the absence of parliamentary consideration. In addition to reported misuse of the Anti-Terrorism Law, Terrorist Entities Law, Association Law, Protest Law, and NGO Law against human rights defenders, the Government has issued laws limiting internet access<sup>39</sup> and restricting the media.<sup>40</sup> The Anti-Cyber and Information Technology Crimes Law (no.175 2018), which authorized mass surveillance of communications in Egypt by national security entities, is particularly concerning.

Based on information provided to the mandate holders, these laws have resulted in the arrests, enforced disappearances and arbitrary detention of ordinary citizens, human rights defenders, journalists, bloggers, political activities, photojournalists, film crew members, lawyers, researchers, and students. Where individuals are not arrested, many have nonetheless faced smear campaigns from government-controlled media and/or suffer harassment and intimidation at the hands of NSA officers. This includes the imposition of travel bans, asset freezing, prolonged judicial investigations, arbitrary/prolonged detention, unfair trials, harsh sentences, torture, enforced disappearances, solitary confinement, medical negligence and the risk of death in custody. In this context, it is worth underlining that expression through electronic means are critical for civil society to exercise their freedom of opinion and expression. Restricting such platforms, including through the blocking, filtering or removing content online, will often affect civil society, journalists, human rights defenders and others

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<sup>37</sup> See, e.g., A/59/401; E/CN.4/2006/95.

<sup>38</sup> Articles 65, 73, 75 and 93 in particular guarantee the freedoms of expression, assembly and association, and stating that international human rights agreements, covenants, and conventions ratified by Egypt shall have the force of law after publication in accordance with the prescribed conditions.

<sup>39</sup> E.g. Law no. 92/2014

<sup>40</sup> E.g. Law no. 70/2017

disproportionally.<sup>41</sup> Restrictions on political speech and on media diversity are particularly serious. As highlighted by the Human Rights Committee, “the free communication of information and ideas about public and political issues between citizens (...) is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint”.<sup>42</sup>

We have indicated elsewhere that counter-terrorism laws across the globe that criminalize freedom of thought and expression implicate serious concerns of legality.<sup>43</sup> The application of such provisions has been targeted at, inter alia, the legitimate activities of political opposition, critics, dissidents, civil society, human rights defenders, lawyers, religious clerics, bloggers, artists, musicians and others.<sup>44</sup> Under the UN Declaration on Human Rights Defenders article 6(b) and (c), everyone has the individual and collective right to freely publish, impart or disseminate views, information and knowledge on all human rights and fundamental freedoms. Similarly, all have the right 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. Under article 12 (1) and (2) of the Declaration, everyone has the right to participate in peaceful activities against violations of human rights and fundamental freedoms, and the state should take all necessary measure to ensure the protection by the competent authorities 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 human rights.

While recognizing that the right to express and access information and ideas is subject to limitations as prescribed by the ICCPR, these restrictions must meet the standards of *legality*.<sup>45</sup> Restrictions must be publicly provided by laws which meets standards of clarity and precision and are interpreted by independent judicial authorities. Restrictions must also meet standards of *necessity and proportionality*, meaning that they ought to be the least intrusive measure necessary amongst those which might achieve their protective function, and do not imperil the essence of the right. Finally, restrictions must comply with the standard of *legitimacy*, meaning that they must pursue an enumerated legitimate interest recognised by the Covenant, namely the protection of rights or reputations of others, national security or public order, or public health or morals. While national security is recognized as a legitimate aim, it must be limited in its application to those situations in which the interest of the whole nation is at stake.<sup>46</sup> States should “demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight.”<sup>47</sup>

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<sup>41</sup> A/HRC/40/52, para. 26.

<sup>42</sup> Human Rights Committee, General Comment no 34 para 20.

<sup>43</sup> OL AUS 5/2019; OL OTH 46/2018.

<sup>44</sup> A/HRC/37/52, para. 47.

<sup>45</sup> UDHR, article 11(2).

<sup>46</sup> A/71/373.

<sup>47</sup> A/71/373.

We are concerned that restrictions on the right to freedom of expression related to the application of the Anti-Terrorism Law, Terrorist Entities Law, Protest Law, Association Law, and NGO Law, as well as related laws limiting and regulating internet content and access and others censoring media output, which in its effects restricts the rights of human rights defenders and those voicing dissent, constitutes a disproportionate interference, and is thus incompatible with the ICCPR.<sup>48</sup> We encourage your Excellency's Government to adhere to its international human rights obligations when promulgating new laws and decrees, amending and discussing current laws and regulations, and when executing the law and prosecuting individuals found in violation of national policies and regulations. We also recommend to take steps to narrow the application of these laws to limit the current deleterious effects on human rights defenders and those in opposition to state practices.

### *Arbitrary Detention*

In June 2013, the Supreme Constitutional Court repealed article 3(1) of Egypt's state of emergency law. The Court stated that the former law, which allowed individuals to be arrested or detained and their person and residences searched without a reasoned judicial order, "disregarded citizens' personal rights and infringed the sanctity of their homes." While we applaud the efforts of the Egyptian Government to protect personal rights and the security of individuals' homes, we express concern at reports that the number of arbitrary detentions has drastically increased since 2013.<sup>49</sup> In particular, the mandate holders have received credible reports of a significant increase in the number of political and human rights defenders being detained arbitrarily. This is in violation of international standards on the freedom of opinion and expression.<sup>50</sup>

The mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has received numerous reports of the use of the Anti-Terrorism Laws, Protest Law, Assembly Law, and NGO Law to detain ordinary citizens, human rights defenders and civil society members. These reports also claim that Egyptian authorities search houses and arrest individuals without warrants, despite the court ruling of 2013. According to these reports, individuals spend protracted amounts of time in pre-trial detention without any judicial recourse. Harming national security or public order, which are legitimate reasons for pre-trial detention,<sup>51</sup> are used as "a shortcut" for pre-trial detention, and prosecutors allegedly often do not produce any evidence establishing guilt to hold the individuals in pre-trial detention. Regrettably, it appears that, Egyptian authorities appear to use pre-trial detention as a

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<sup>48</sup> Specifically, articles 7, 8, 14 & 19.

<sup>49</sup> See, for example, U.N. Working Group on Arbitrary Detention, Opinions No. 6/2016, No. 7/2016, No. 41/2016, No. 42/2016, No. 54/2016, No. 60/2016, No. 30/2017, No. 78/2017, No. 83/2017, No. 26/2018, No. 27/2018, No. 47/2018, No. 63/2018, No. 82/2018, No. 87/2018, No. 21/2019 and No. 29/2019.

<sup>50</sup> CCPR/C/GC/34, para. 23.

<sup>51</sup> The *Criminal Procedure Code of the Arab Republic of Egypt*, Law No. 150 of 1950 as amended, Art. 134 explicitly lists five circumstances in which an individual may be detained in pre-trial detention including cases of national security and public order.

form of punishment and retaliation. The Special Rapporteur has credible information that detainees are held for an average of 345 days in pre-trial detention, although some individuals have been held for 1263 days or longer. We express deep concern at reports that individuals are detained for the over the maximum 150 days allowed without any judicial oversight or genuine opportunity to appeal.<sup>52</sup>

Human Rights Council Special Procedures have repeatedly expressed grave concern that detained human rights defenders have been subjected to prolonged detention “arising from their peaceful and legitimate defence of human rights.”<sup>53</sup> They have also criticized the Egyptian Government’s low tolerance towards dissent, which is often suppressed under the pretext of countering terrorism.<sup>54</sup> The mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism addressed four joint communications on arbitrary detention of human rights defenders to the Government of Egypt in 2019 alone.<sup>55</sup> The Working Group on Arbitrary Detention (WGAD) has issued decisions on the arbitrary detention of individuals by Egyptian authorities, particularly related to detention for exercising the right to free expression, in contravention of the UDHR and the ICCPR.<sup>56</sup> It has criticized Egypt’s overly broad and vague laws regarding pre-trial detention, and expressed concern about the pattern of arbitrary detention, torture, and enforced disappearance perpetrated by the Egyptian Ministry of Interior’s Homeland Security Agency. Despite these repeated communications by U.N. experts over arbitrary detention of individuals, human rights defenders and activists, the Egyptian Government has not changed its laws or practice.

### *Enforced Disappearances*

In addition to ICCPR articles 9, 10, 11, 12, and 14, we would further like to draw your attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance. Most notably, article 2 states that no State shall practice, permit or tolerate enforced disappearance, and article 7 that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. Furthermore, the Declaration establishes that any person deprived of liberty shall be held in an officially recognized place of detention (article 10.1) and that an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention (article 10.3). The Declaration also stipulates that swift and thorough investigations should be undertaken whenever there are reasonable grounds to believe that an enforced disappearance has been committed even if there has been no formal complaint; and that

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<sup>52</sup> Noting that between December 2018 and September 2019, the SSSP did not accept any requests to appeal detention orders by the SSSP or judges.

<sup>53</sup> OHCHR, Egypt UN Experts Condemn Systematic Targeting of Human Rights Defenders <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=23658&LangID=E>

<sup>54</sup> *Id.*

<sup>55</sup> EGY 11/2019, EGY 10/2019, EGY 7/2019, EGY 5/2019.

<sup>56</sup> *See, e.g.*, U.N. Working Group on Arbitrary Detention, Opinion No. 83/2017 concerning Mahmoud Hussein Gomaa Ali (Egypt), WGAD, 21 Oct. 2016, p. 11, [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session80/A\\_HRC\\_WGAD\\_2017\\_83.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session80/A_HRC_WGAD_2017_83.pdf).

steps should be taken to ensure that all involved in the investigation of enforced disappearances, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal (article 13.1 and 13.3). Any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is to be appropriately punished (article 13.5).

We are concerned with the practice and apparent codification of enforced disappearances. Reports state that most individuals arrested pursuant to the laws that are the subject of this communication, are being held incommunicado at NSA buildings in Greater Cairo or in NSA so-called “fridges,” over which the judiciary has no access. Despite complaints filed before the Public Prosecutor’s Office and the Ministry of the Interior, family, friends and lawyers consistently report that they are only informed of the whereabouts of the person arrested when the individual is transferred to the SSSP building. Reports have also been received regarding the fact that relatives have faced obstacles in registering formal complaints with police stations about cases of enforced disappearances as in some instances police stations have claimed jurisdictional restrictions on matters related to NSA operations. Between August 2015 and June 2019, the Egyptian Commission for Rights and Freedoms has documented 1719 cases of enforced disappearances. 287 of those individuals alerted officials to the fact that they had been forcibly disappeared, but it is reported that, none of these 287 complaints were investigated by the SSSP.<sup>57</sup> The last annual report of the UN Working Group on enforced and involuntary disappearances (WGEID)<sup>58</sup> recorded that by May 2019, the mechanism had transmitted to the Government of Egypt 363 alleged cases of enforced disappearance of which 298 remained outstanding cases. In the same report the WGEID noted a trend of disappearances from police stations during the process of releasing inmates following court orders for such release. In this respect, article 11 of the Declaration requires that all persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured. Furthermore, it has also been alleged that the SSSP systematically fails to address falsification of arrest dates by police officers, the NSA in particular.<sup>59</sup>

The Anti-Terrorism Law has effectively codified enforced disappearances by allowing individuals to be arrested and held incommunicado for up to 28 days with no communication to the individual’s family, friends, or lawyer.<sup>60</sup> Enforced disappearances are prohibited under article 54 of the Egyptian Constitution and article 36 of the Code of Criminal Procedure. Both require security forces to present detainees before a prosecutor promptly following an arrest and for the detainees to be granted prompt access to lawyers. The Anti-Terrorism Law provision permitting incommunicado detention of

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<sup>57</sup> <https://www.amnesty.org/download/Documents/MDE1213992019ENGLISH.pdf>

<sup>58</sup> [A/HRC/42/40](#), p.10 and para 71-74

<sup>59</sup> The Special Rapporteur received reports that indicating official arrest dates usually are noted as the day before SSSP questioning. Family members can document that the enforced disappearance happened earlier through telegram receipts.

<sup>60</sup> Anti-Terrorism Law, art. 40-41.



individuals for at least 28 days violates both Egyptian Constitutional and criminal law, and also increases the risk that international standards, including the non-derogable right to be free from torture, are infringed. We reiterate that when a State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights under international human rights law.<sup>61</sup> This includes not only the duty to cease any practice of enforced disappearance, but also the obligation to investigate any complaints regarding the practice of enforced disappearances or torture.

Based on reports of enforced disappearances of children, we also draw your attention to the heightened duty of care owed to children under article 6, 37 and 38 CRC.<sup>62</sup>

#### *Effects of Terrorism Laws and State of Emergency in North Sinai*

We respectfully recall a State's obligation to recognize everyone's right to housing, food, and an adequate standard of living under article 25 UDHR, article 11 ICESCR, and article 27 CRC. Furthermore, the Committee on Economic, Social, and Cultural Rights has stated that States are obliged to ensure everyone has access to minimum essential rights including the right to adequate food and the highest attainable standard of health.<sup>63</sup> We also draw the attention of your Excellency's Government to its obligations under article 2, 11, 13 ICESCR regarding the effects of state action combatting terrorism. In this regard, the Office of the United Nations High Commissioner for Human Rights has noted the deleterious effects that can result from the diversion of resources normally allocated to social and economic programmes and sectors such as education, health, water, and sanitation in favour of security and counter-terrorism programming.<sup>64</sup> Here, we underscore the importance of addressing the negative effects of counter-terrorism on the enjoyment of these fundamental economic and social rights.

Reports received by our mandates suggest that basic economic and social rights including the right to food, water, education and housing have been violated in North Sinai. We have received credible information regarding extensive property damage,<sup>65</sup> a food crisis, and the blockage of internet, communication networks and electricity. These reports also state that schooling has been suspended and/or delayed throughout North Sinai. We recall States' obligation to recognize the right to education and to encourage and intensify fundamental education as far as possible under articles 13 and 14 ICESCR and article 26 UDHR. Under articles 28 and 27 CRC, States should take steps to achieving the right to education progressively by making education accessible and encouraging its development. Given the centrality of social and economic rights

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<sup>61</sup> AL EGY 3/2018.

<sup>62</sup> See also Manual on Human Rights Reporting (1997).

<sup>63</sup> Committee on Economic, Social and Cultural Rights, general comments No. 12 (1999) & 14 (2000); A/HRC/12/22

<sup>64</sup> OHCHR, Human Rights, Terrorism, and Counter-Terrorism, Fact Sheet no. 32

<sup>65</sup> One report noted that 3215 motorcycles, 1794 vehicles, and 524 SUVs had been burned and that 235 stores, 790 trenches/shelters, 1485 homes, and 1783 dens had been destroyed in connection with the fight against terrorism.

protection to the advancement of security, it is of utmost importance that these rights be consistently protected at the national level.

### *Concluding Remarks*

**We caution that the Anti-Terrorism Law, Terrorist Entities Law, Association Law, Protest Law and associated decrees, regulations and legislation in their current form do not conform with either Egypt's international human rights law obligations or best practices in relation to counter-terrorism law and practice. We therefore recommend that these laws and associated provisions, which may lead to practices that violate the rights to freedoms of expression, association, peaceful assembly, and opinion, the rights to be free from arbitrary detention and enforced disappearance, and the right to education, among others, should be reviewed in order to bring them in line with international human rights standards.** Furthermore, all persons subjected to charges of terrorism or measures according to the Anti-Terrorism Law, Association Law, or Protest Law should be granted due judicial process, which includes access to legal representation and fair and impartial judicial remedies. Fair trial also requires the ability to appeal pre-trial detention and judicial oversight of pre-trial detention. We note that compliance with all human rights represents a best practice as an indispensable part of a successful medium- and long-term strategy to combat terrorism.

While cognizant of the many security challenges that Egypt faces and of the duty of the State to ensure the safety and security of its people, including through preventive approaches, **we are of the view and are gravely concerned that the Anti-Terrorism Law, Protest Law, Association Law and related measures are neither necessary nor proportionate.** We are aware of the security situation that Egypt faces, particularly in North Sinai, but are deeply concerned that the **approaches taken by the Government violate fundamental rights, particularly regarding the silencing effect the laws have on citizens' rights to freedom of expression, and on the peaceful and legitimate activities of human rights defenders and political opposition.** The Anti-Terrorism legislation, Protest Law, Association Law, and NGO Law have disproportionately affected civil societies, NGOs, journalists, bloggers and others who speak out against the current political regime and practices.

We recall the fundamental importance of ensuring that every restriction imposed on rights are fully compatible with international human rights law. We call upon the authorities to recognize, both in law and practice, freedom of expression, freedom of association, freedom of assembly, and freedom of opinion as an individual right, subject only to those restrictions that are permitted under international human rights law.

We are concerned at the results of the state of emergency and terrorist-related laws, particularly in North Sinai where social, economic, and political rights have been deeply affected by state practice. The effects on economic and social rights seems particularly grievous. Despite Egypt's legal obligations and commitments, multiple laws, decrees and policies, in particular those concerning national security and terrorism, have

violated the fundamental freedoms of civilians in North Sinai and human rights defenders throughout the country.

Therefore, **we encourage a process of independent review of the relevant laws.** This would offer the Government an important opportunity to ensure that the definition of terrorism contained in national laws is appropriately narrow and tailored, and that use of counterterrorism law and practice is in conformity with international human rights standards, especially those binding on Egypt, and strictly contained to those specifically violent acts that constitute terrorism under international law. **We offer technical assistance to this purpose and affirm our goal to engage positively with your Government. In adopting such an approach, Egypt would present a model of good practice for other States, using its strong legal culture as a means to amend, review and tighten legal definitions to show the responsiveness of its legal system.**

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 information, in detail, 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 international human rights law.
3. Please provide further information of how the definition of terrorism in Egypt's Anti-Terrorism legislation is construed so as to guarantee that measures taken pursuant to it do not unduly interfere with human rights guaranteed by the Egyptian Constitution and Egypt's international obligations under the Conventions it has ratified, while complying with the principles of legality, necessity, proportionality and non-discrimination.
4. Please provide further information about the proposed amendments to the 2015 Anti-Terror and Terrorist Entities Laws, and the steps being taken to ensure that the updated legislation is more compatible and closely aligned with Egypt's international human rights obligations than its previous iteration.
5. Please provide information on how the NGO Law's application to situations involving harm to "national security, public order, and public morals" is construed to guarantee that measures taken pursuant to it do not unduly interfere with human rights while complying with the principle of

legality. Please provide information that details how the NGO Law complies with Egypt's obligation to respect and protect the right to association and freedom of expression in line with international human rights standards, in particular with articles 18, 19 and 20 UDHR; articles 18, 19 and 22 ICCPR.

6. Please provide further information of how the language of the Protest Law is compatible with the Constitution and human rights obligations of Egypt.
7. Please provide more detailed information concerning power extended to law enforcement agencies and the prosecution, the judicial role in independent oversight, and safeguards to ensure that surveillance is conducted only as provided for by law, using only measures which are necessary and proportionate in a democratic society.
8. Please provide more detailed information on investigations into allegations of enforced disappearances, arbitrary detention and torture by the NSA and SSSP committed under the Anti-Terrorism Law and other laws. Kindly provide detailed information on measures in place to guarantee the effective implementation of the existing legal framework protecting against enforced disappearances, as well as information on any recent measures taken to enable the lodging of complaints regarding cases of enforced disappearances, the conduct of effective independent investigations into such cases and the results of any related judicial processes.
9. Please provide information on the appeals process and judicial oversight of pre-trial detention.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Given the previous correspondence addressed to the Government of Egypt on these and related subjects, the importance of the matters raised in this renewed communication, and the far-reaching adverse consequences that these laws and practices have on the legitimate exercise of their rights and freedoms by the citizens of the country, we may publicly express our concerns in the near future. Any public expression of concern in this regard will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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

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

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

Luciano Hazan  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst  
Special Rapporteur on the situation of human rights defenders