

**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 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 situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers**

REFERENCE:  
AL EGY 13/2020

2 October 2020

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; 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 situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 40/16, 42/22, 44/5, 43/4, 43/16 and 44/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Egypt's Terrorism Circuit Courts and allegations of their incompatibility with international due process guarantees, as well as alleged violations of fundamental rights of many individuals, including human rights defenders, who have been tried, or are still waiting to be tried, before these courts. We are particularly concerned by the case of the human rights defender Mr. Bahey El-Din Hassan, recently convicted in absentia by the Terrorism Circuit Court to 15 years imprisonment in apparent reprisals for his cooperation with the United Nations on Human Rights issues.

We have previously raised concerns, in communication EGY 4/2020, about Egypt's counter-terrorism legislation, specifically in relation to the broad and conflated definition of terrorism contained within it and its application to a wide range of actors and activities. We consider that this legislation is inconsistent with international human rights law and standards and is contrary to the Government treaty obligations. The legislation further raises concerns that the said legislation has contributed to the restriction and criminalization of opinions critical of the Government. We welcome the acknowledgment of receipt from your Excellency dated 8 April 2020 and look forward to a comprehensive response to our analysis.

We have also expressed our views about the detentions and other alleged violations committed against civil society actors under the guise of national security or terrorism concerns in EGY 10/2020, as well as in previous communications (EGY 14/2017, EGY 10/2019, EGY 11/2019, EGY 12/2019, EGY 13/2019, EGY 14/2019, EGY 1/2020, EGY 6/2020, EGY 10/2014, EGY 10/2015). We note with deep concern that at least eight of the human rights defenders whose cases have recently been brought to the attention of your Excellency's Government in EGY 10/2020, are being, or have been tried, by Terrorism Circuit Courts.

Mr. Bahey El-Din Hassan has been the subject of four previous communications - EGY 16/2017, EGY 11/2016, EGY 6/2016 and EGY 10/2015. Mr. Hassan has allegedly been targeted by national authorities for his cooperation with United Nations mechanisms and for meetings with United Nations representatives (A/HRC/39/41, annex II, para. 19 and A/HRC/42/30, annex II, para. 50). Reportedly, other staff members of CIHRS and their families have also been harassed or targeted.

According to the information received:

*Allegations regarding the functioning of the Terrorism Circuit Courts*

In December 2013, through Decree 10412/2013, the Egyptian Court of Appeals created the Terrorism Circuit Courts (TCCs). Initially, the TCCs were assigned the task of adjudicating cases related to the sections on terrorism and violence of the Penal Code. In practice, subsequent expansions of Egypt's counter-terrorism legislation<sup>1</sup> and the broad definition of "terrorism" used in this body of legislation, have contributed to widening the TCCs' jurisdiction *ratione materiae*. It is alleged that the TCCs have been increasingly used to target and prosecute non-violent individuals, such as lawyers, journalists, human rights defenders, and other members of Egyptian civil society.

Trials before TCCs raise a wide range of substantive and procedural concerns, including an alleged lack of judicial independence, alleged practices of arbitrary and/or prolonged pre-trial detention and a seemingly systematic non-observance of fair trial safeguards, such as the right to have a prompt access to a lawyer of one's choice and the right to communicate with him/her in full confidentiality.

Unlike proceedings before other Egyptian tribunals, TCCs' hearings do not take place in the premises of the Ministry of Justice, but in those of the Ministry of Interior, such as the Police Academy and the Police Institute. Consequently, TCCs usually deny access to the proceedings to the general public and the media, adducing reasons of public order or national security.

Furthermore, while judges in Egypt are typically assigned to a circuit for a maximum of three years, the panel of judges on the TCCs remains largely unchanged since their establishment. On some occasions, TCCs judges have been accused of a lack of impartiality and have allegedly expressed personal opinions on cases before them.<sup>2</sup>

It has also been reported that these judges tend to make disproportionate use of pre-trial detention, regardless of the conditions set out in article 134 of the

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<sup>1</sup> See for instance the 2014 amendments to the Penal Code and the 2015 Counter-Terrorism law, as well as the Terrorist Entities Law (Law 8 of 2015) and the Anti-Terrorism Law, (Law 94 of 2015), amended by the Parliament's Legislative Committee on 10 February 2020; The Right to Public Meetings, Processions and Peaceful Demonstrations Law No. 107/2013, amended on 27 April 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, ratified on 19 August 2019 and whose eighth article repealed the Association Law.

<sup>2</sup> See, for example A/HRC/WGAD/2018/87.

Code of Criminal Procedure.<sup>3</sup> Despite the fact that article 134 states that pre-trial detention should constitute an exceptional legal measure that should only be used under specific conditions, it has been reported that automatic pre-trial detention has become the practice in the TCCs system. For instance, it has been reported that during six hearings that covered 89 different cases from January to March 2020, one TCC only released 29 out of 594 defendants.

Furthermore, with regard to the duration of pre-trial detention, in the case of TCCs, pre-trial detention can be prolonged every 45 days (rather than 15 days as set out in article 142 of the Criminal Code of Procedure) and there seems to be no upper limit to the time that an individual may be held in pre-trial detention. This situation may lead to cases where individuals are not tried without undue delay.

It is further reported that when a defendant is released following the review of the case by an appeal court, it appears that the defendant can still be charged with identical or similar offences in a new and separate case. This second new procedure is irrespective of the appeal decision and the time that a defendant may have already spent in pre-trial detention.<sup>4</sup> This has contributed to defendants being held in pre-trial detention for several months, even years in some instances, and raises concerns about violations of the principle of *non bis idem*.

In addition, as TCCs judges often consider cases with hundreds of defendants during a single hearing, they rarely address the situation of defendants individually. Instead, blanket verdicts have reportedly been imposed *en masse* on groups of defendants, without differentiating between them and their alleged crimes and without assessment of individual responsibility.<sup>5</sup> Many of these mass trials are allegedly completed in an extremely short time-frame making full review of evidence and individual adjudication virtually impossible. For instance, in May 2020, the Cairo and Giza TCCs reportedly renewed the detention of groups of 485, 745, and 414 defendants involved in over 100 cases over the course of three days. Consequently, TCCs hearings have been described as essentially routinized detention order renewals where defendants are “numbers”, rather than processes where individual cases or evidence presented by defence lawyers are fully and properly evaluated.

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<sup>3</sup> Article 134 provides that pre-trial detention constitutes an exceptional measure that should only be used under specific conditions, such as when 1) there is a risk of flight, 2) the suspect was caught in the act of committing the offense, 3) If there is a fear that the legal process may be impeded or harmed or 4) if the case implicates security and the public order 5) if the crime is a felony or misdemeanour that is punishable with a prison sentence and the accused does not have a known residence in Egypt. Furthermore, although article 142 of the Code of Criminal Procedure permits 15 days of detention without charge (which can be extended by two additional 15-day periods) and article 143 of the Egyptian Code of Criminal Procedure states that suspects may be held in pre-trial detention for one-third of the maximum penalty for the crime allegedly committed, in the case of TCCs, pre-trial detention can be prolonged every 45 days (rather than 15) and there seems to be no upper limit to the time that an individual may be held in pre-trial detention.

<sup>4</sup> See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25323&LangID=E>.

<sup>5</sup> See, for example, A/HRC/WGAD/2019/42, A/HRC/WGAD/2018/87; see also <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23517&LangID=E>.

Furthermore, there appears to be a considerable degree of inconsistency in how the TCCs operate, so while in some trials defendants or their legal representatives may be provided with an opportunity to speak and outline their requests, in others they are allegedly denied any such opportunities in an arbitrary fashion. Some reports have highlighted that some judges do not convene hearings or meet with lawyers and leave sessions without informing defence lawyers about their decisions, forcing them to ascertain them informally from court employees or at a later date through prosecution employees. Other trials have taken place *in absentia* without the attendance of the accused. For instance, when on 4, 5, and 6 May 2020, the Cairo and Giza TCCs reportedly renewed the detention of roughly 1644 defendants in over 100 cases, no defendants were allegedly present during these trials.

In general, the operative rules of procedure of the TCCs court seem to substantially disadvantage defendants and their legal representatives, in violation of the principle of equality of arms. In this regard, we have been informed that lawyers are often deprived of adequate opportunities, time and facilities to defend their clients. In particular, it has been alleged that defence lawyers are systematically denied the opportunity to have access to the investigation reports or case files. In light of these restrictive parameters, a considerable number of defence lawyers have requested substitution from their assignments due to their concerns about a system where some feel that their participation is little more than “cosmetic”. However, it is alleged that many lawyers have been subjected to disciplinary proceedings after having expressed complaints or concerns about these working conditions. For instance, one third of the lawyers who had participated in walk-outs between January 2019 and March 2020 were subsequently referred to disciplinary actions.

In addition, we have received reports of numerous defendants not having access to a defence lawyer, neither during the preliminary interrogations nor during the trial itself. Furthermore, in some cases, defendants have been held in soundproof glass cages during trial hearings, equipped with speakers under the direct control of the presiding judge. These cages allow the judges to cut the accused off from speaking out and being heard, or even hearing what is happening outside the cage. On at least one occasion, one defendant was placed in a cage made up of several layers of opaque glass, which reportedly made it impossible for attendants to see the accused clearly and for the defendant to perceive what was happening around her. In other instances, where the glass cage was not used, defendants were held in a metal cage throughout the trial. Although on 11 June 2015, the Minister of Justice had reportedly issued a decree abolishing the use of metal cages in all misdemeanor and contravention cases, this decree was not published in the Official Gazette and sources have reported that in practice defendants continue to be held in metal cages in many TCCs cases related to non-violent crimes.

*Allegations on the impact of the TCCs framework on human rights defenders and civil society*

As mentioned previously, the described framework has reportedly been used to arrest, indefinitely held in pre-trial detention, and/or convict journalists, lawyers, human rights defenders, activists, artists and other individuals exercising their right to freedom of expression and of peaceful assembly.

a) *The case of Mr. Bahey El-Din Hassan*

Mr. Babeh El-Din Hassan is a prominent human rights defender and lawyer, as well as the founder and director of the Cairo Institute for Human Rights Studies (CIHRS). CIHRS promotes human rights and democracy. To do so, it conducts human rights advocacy at the national, regional and international levels to fight restrictions on the exercise of the fundamental rights to freedom of expression, association, assembly and peaceful protest.

On 25 August 2020, the Fifth TCC in Cairo sentenced Mr. Hassan *in absentia* to 15 years imprisonment under article 34 of the 2018 cybercrimes law, stating that “[w]hoever committed any crime stipulated in this law to disturb the public order or expose the safety and security of society to danger or harming the national security or economic statue or preventing or obstructing the work of public authorities or interrupting the application of the constitution, laws, and regulations or impairing the national unity and social peace shall be punished with rigorous imprisonment.”<sup>6</sup>

Allegedly, the file against Mr. Hassan included his Twitter activity, and in particular, a photograph of him speaking at a CIHRS’ side event held during the Human Rights Council session of June 2018, which focused on the question of torture in Egypt. In this connection, it appears that the prosecution of Mr. Hassan would also be a reprisal for his cooperation and sharing of information with the United Nations on human rights issues.

On 19 September 2019, Mr. Hassan had also been sentenced *in absentia* by the Cairo Felony Court Circuit 30, to three years imprisonment and a fine of approximately 1250 USD in relation to a tweet posted on his personal Twitter account in March 2018, exposing the inaction of the Egyptian office of the prosecutor regarding human rights abuses.

The two verdicts are independent, and Mr. Hassan would face in total 18 years in prison.

In September 2016, Mr. Hassan allegedly had his personal assets and those of his family frozen in the course of the criminal case No. 173/2011, and he was reportedly also banned from travelling.

b) *Other cases of human rights defenders tried before TCCs*

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<sup>6</sup> Mr. Hassan was charged with “founding a social media account to insult the judicial authority and disseminating false news that undermine public security”, “disseminating false news inside and outside Egypt that could undermine public security and public benefit” and “insulting the judiciary” under Egypt’s penal code on crimes against state security and the 2018 cybercrime law.

At least eight other human rights defenders whose cases have previously been raised by United Nations Special Procedures have reportedly had their pre-trial detention extended during TCCs mass detention renewal hearings, some of which took place in the absence of lawyers. These include:

- Ms. Solafa Magdy, a human rights defender and freelance journalist, who, as part of her journalistic work, had raised awareness, often on social media, about imprisoned human rights defenders in Egypt and other alleged human rights violations. She was detained on 26 November 2019 for “membership of a terrorist group” and “spreading false news”. Her pre-trial detention has reportedly been ordered and renewed by TCCs since 27 November 2019.
- Mr. Hossam El-Sayad, a journalist and a human rights defender, married to Ms. Magdy, worked with her in advocating for the release of imprisoned human rights defenders and other prisoners of conscience. He was charged with “membership of a terrorist organisation” for his role in the March 2019 anti-Government protests, and has also reportedly been in pre-trial detention ordered by TCCs since November 2019.<sup>7</sup>
- Ms. Eman Al-Helw, a human rights defender focused on issues of equality and anti-discrimination, including in the film industry in Egypt, was arrested and detained on 28 February 2019, and subsequently charged for terrorism-related offences. Since 4 May 2020, Ms. Al-Helw’s pre-trial detentions have reportedly been renewed in absentia by TCCs.<sup>8</sup>

These individuals only represent a small fraction of the number of human rights defenders and members of Egyptian civil society who have reportedly been prosecuted before TCCs and affected by the arbitrary application of the definitions of terrorism contained in Egypt’s counter-terrorism laws and related laws, such as cybercrime law Nr. 175/2018, allegedly leading to arbitrary arrests and detentions.

We note with concern that despite the accelerating COVID-19 pandemic, the operative procedure of the TCCs does not appear to have changed in light of the particular risks posed by the virus to persons in detention, notably to the elderly and defendants with pre-existing health conditions. On the contrary, it is alleged that during the first half of 2020, TCCs renewed the pre-trial detention of at least 8311 defendants and only issued decisions to release approximately 122 of them, or approximately 1.5% of the total number of defendants.

Without prejudging the accuracy of the above allegations, we are deeply concerned by allegations of what appears to be a systemic disregard for fair trial and

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<sup>7</sup> Both Ms. Magdy and Mr. El-Sayad were the subjects of communications by the Special Procedures (EGY 1/2020 and EGY 10/2020).

<sup>8</sup> Her arrest, detention, and charges were the subject of communications by the Special Procedures (EGY 14/2019 and EGY 10/2020).

due process guarantees in the TCCs, and alleged numerous violations of fundamental human rights and freedoms entailed therein.

We are particularly troubled by allegations of the TCCs framework and its most concerning practices, including the seemingly systematic imposition of pre-trial detention; mass trials conducted in humiliating conditions, sometimes without the participation of defence lawyers or even defendants; restrictions on the ability of lawyers to carry out their functions effectively; and a general lack of transparency, in cases of individuals who had carried out legitimate human rights related activities. In this regard, we are deeply concerned by the recent sentence condemning Mr. Hassan to 15 years of imprisonment, in connection to his human rights work and advocacy. In this connection, further serious concern is expressed that he would seem to be the subject of reprisals for this cooperation with United Nations on human rights. His conviction may be aimed at discouraging him, the NGO he is heading and other human rights and civil society actors in Egypt, from engaging with UN bodies and mechanisms.

We are also concerned that this is indicative of a broader pattern of terrorism and national security legislation and mechanisms being used as tools to punish and ultimately silence legitimate criticism or expression under the pretext of national security concerns. In this regard, we remind your Excellency's Government that arbitrary detention and the denial of the right to a fair trial are explicitly prohibited under the International Covenant on Civil and Political Rights (ICCPR) ratified by Egypt on 14 January 1982, while the freedoms of opinion, expression, and peaceful assembly are enshrined within it.

Various UN human rights mechanisms have highlighted that the establishment and functioning of special courts may pose significant challenges with regard to the full and effective realization of the fair trial rights and guarantees set out in the ICCPR and other international and regional human rights instruments.<sup>9</sup> Although specialized courts are not prohibited under international law, they are nevertheless required to comply with international fair trial guarantees, even during a state of emergency.<sup>10</sup> We note that specialized courts, particularly counter-terrorism courts, should not be used as a human rights denying substitute for regular courts.

We are deeply concerned that the *modus operandi* of the TCCs directly infringes upon these international fair trial standards. For instance, the principle of equality of arms, or the principle that any person charged with an offence must have an equal opportunity to defend himself with that of the prosecution, as enshrined in article 14 (3) of the ICCPR, is seemingly disregarded by a system where the opportunity to communicate freely and regularly with one's lawyers or even the possibility to participate in one's own trial are not guaranteed. Similarly, the right to defend oneself in person or through counsel of one's own choosing (article 14 (3) (d) of the ICCPR); the right to have adequate time and facilities for one's defence, and the right to communicate with one's counsel (article 14 (3) (b) of the ICCPR) and; the right not to be tried and sentenced twice for the same offence (prohibition of double jeopardy, or principle of *ne bis in idem*) (article 14 (7) of the ICCPR), all seem to

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<sup>9</sup> Including the Human Rights Council (A/HRC/RES/19/31) the Special Rapporteur on the Independence of Judges and Lawyers (A/68/285), and Human Rights Committee General Comment No. 32 (2007).

<sup>10</sup> General comment No. 32 (2007) Human Rights Committee, para. 22.

regularly contravened in the TCCs system. The use of glass or metal cages during trials, where defendants are sometimes “muted” and cut off from the proceedings at the discretion of the presiding judge, impair the defendant’s right to be present at one’s trial (article 14 (3) (d) of the ICCPR) and implicitly undermine the fundamental right of individuals to be presumed innocent until proven guilty (article 14 (2) of the ICCPR and article 11 (1) of the Universal Declaration of Human Rights (UDHR)).

With regard to the systematic imposition of pre-trial detention by TCC judges, we recall that under international law, detention pending trial is a preventive measure aimed at averting further harm or obstruction of justice, rather than a punishment, and must not last any longer than is necessary (see article 9 (3) of the Covenant). Pre-trial detention should not be arbitrarily exercised. In addition, this exceptional measure is accompanied by a set of rights that must be respected. Detainees have the right to be informed promptly of the reasons for their arrest and detention, the right to be brought before a judge promptly after their arrest or detention,<sup>11</sup> the right to be assisted by a lawyer of their choice, the right to communicate with the outside world and, in particular, to have prompt access to their family, lawyer, physician, and other relevant third parties.<sup>12</sup> We recall that communication with the outside world and judicial oversight over detention are essential safeguards against potential human rights violations that may be committed while in detention, such as torture and ill-treatment. If confirmed, the misuse of the TCCs to arbitrarily, punitively, or indiscriminately impose and renew pre-trial detention would be in direct contravention with Egypt’s obligations under international human rights law. We further note, in the context of the COVID-19 pandemic in particular, that prolonged pre-trial detention should be urgently reviewed and avoided.<sup>13</sup> We are particularly concerned that human rights defenders and civil society actors who have been charged with terrorism are being detained during this pandemic as a form of *de facto* punishment, gravely endangering their right to life and the right to be free from torture, inhuman and degrading treatment. We also wish to stress that mass trials proceedings do not meet international standards for a fair trial set out in article 14 of the ICCPR, given that it is seemingly impossible to conduct a specified legal assessment of defendants, as well as uphold the principle of presumption of innocence during an accelerated mass verdict. We also recall that detention following a trial which fails fair trials guarantees may be considered as arbitrary.<sup>14</sup>

While cognizant of the serious security challenges that Egypt faces, and of the duty of the State to ensure the safety and security of its citizens, we are of the view that the practices undertaken by the TCCs are neither necessary nor proportionate. We recall that the Human Rights Committee, in relation to counter-terrorism policies, has underlined the particular importance of developing and maintaining effective, fair, humane, transparent and accountable criminal justice systems which provide access to a fair and public hearing and access to an independent and adequate legal

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<sup>11</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. 30 ICCPR, art. 9(4); CRC art. 37(d); Principle 32 of the UN Body of Principles.

<sup>12</sup> ICCPR, articles 9, 14 and United Nations Body of Principles for the Protection of All Persons under Any Form of Detention, article 16.

<sup>13</sup> United Nations Special Procedures and Covid-19 Working Document covering information as of 28 April 2020, [https://www.ohchr.org/Documents/HRBodies/SP/COVID19\\_and\\_SP\\_28\\_April\\_2020.pdf](https://www.ohchr.org/Documents/HRBodies/SP/COVID19_and_SP_28_April_2020.pdf).

<sup>14</sup> See A/HRC/36/38.



representation in accordance with obligations under international law.<sup>15</sup> We consequently recommend that the TCCs—as well as other counter-terrorism mechanisms or laws that may lead to practices that violate the rights to freedom of expression, freedom of association, freedom of peaceful assembly, and the right to freedom from arbitrary detention—be reviewed in order to ensure their compatibility with Egypt’s international legal obligations. In this regard, we remind that the duty to respect the rights of the ICCPR under its article 2 (1) entails the obligation to take legislative measures necessary to comply with the State’s obligations under the Covenant.<sup>16</sup> We stand ready to provide technical assistance to this end.

We conclude by stressing that compliance with international human rights law is an indispensable part of a successful medium- and long-term strategy to combat terrorism. A thorough review and reform of the TCCs system, and the broader counter-terrorism legal framework it is a product and engine of, would not only revitalize civic space and improve the enjoyment of human rights in Egypt but would strengthen the effectiveness of Your Excellency’s Government’s counter-terrorism strategy itself, by redirecting it towards the achievement of its stated objective.

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 your observations 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 further information of how the definitions of terrorism and related acts employed by the TCC are construed so as to guarantee that measures taken pursuant to them do not unduly interfere Egypt’s international obligations under the Conventions it has ratified, including the ICCPR, while complying with the principles of legality, necessity, proportionality and non-discrimination.
3. Please explain how the TCCs system and anti-terrorism legal framework more broadly ensure that the accused’s right to counsel and right to a fair trial under article 14 of the ICCPR are respected in practice.
4. Please explain how the systematic imposition of pre-trial detention, particularly in cases of mass trials, is consistent with the human rights obligations engaged by Your Excellency’s Government. Please also provide further information about the physical conditions in which pre-

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<sup>15</sup> Human Rights Committee, General Comment No. 32, CCPR/C/GC/32. *See also*, WGAD Opinions No. 41/2017; No. 42/2018; No. 43/2018; On fair trial rights see e.g. WGAD Opinions, Nos. 2/2020; 29/2020; 41/2017; 38/2017; 43/2018; 84/2018; 53/2019.

<sup>16</sup> General Comment no. 31 para. 6.

trial detentions are carried out, on the safeguards prescribed to guarantee the respect of the detainees' fundamental human rights, and on the appeals recourses available to them.

5. Please indicate the measures that your Excellency's Government has put in place to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and do not suffer, or are threatened with, prosecution or disciplinary proceedings for any action taken in accordance with recognized professional duties, standards and ethics.
6. Please indicate what specific legal and administrative measures have been taken to ensure that human rights defenders, journalists, as well as members of religious or others minorities in Egypt will be able to carry out their legitimate work and activities, including through the exercise of their right to freedom of opinion and expression, and their rights to freedom of association, in a safe and enabling environment without fear of being designated a "terrorist".
7. 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.
8. Please provide information on the basis for the accusations against and pre-trial detention of Ms. Magda, Mr. El-Sayad, Ms. Al-Helw and the conviction of Mr. Hassan and explain how their trials and detentions are compatible with articles 9, 14, 19 and 22 of the ICCPR.
9. Please provide information in detail on how mass trials can be compatible with articles 9 and 14 of the ICCPR.
10. Regarding reported acts of intimidation and reprisals for cooperation with the UN in the field of human rights, please indicate what measures have been taken to ensure that Mr. Hassan and human rights defenders in general are able to carry out their legitimate work, including documenting and reporting on human rights violations in Egypt to the UN human rights bodies and mechanisms, including independent experts of the Human Rights Council, in a safe and enabling environment without fear of intimidation or reprisals of any kind.

In light of the allegations of reprisals for cooperation with the United Nations on human rights, we reserve the right to share this communication – and any response received from your Excellency's Government - with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official appointed by

the Secretary general to as senior official to lead the efforts within the United Nations system to address intimidation and reprisals against those cooperating with the UN on human rights.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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 cases 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 re-occurrence 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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s 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

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we respectfully call your Excellency's Government's attention to the relevant provisions enshrined in the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Civil and Political Rights (ICCPR) that the Arab Republic of Egypt (Egypt) signed on 4 August 1967 and ratified on 14 January 1982. More specifically, we consider the international human rights standards applicable under article 9 of the ICCPR and article 9 of the UDHR, which guarantee that individuals will not be subjected to arbitrary arrest or detention; articles 19, 21 and 22 of the ICCPR and articles 19 and 20 of UDHR, which guarantee the universally-recognized rights to freedom of opinion and expression and freedom of peaceful assembly and association; and article 14(2) of the ICCPR and article 11(1) of the UDHR, by which any undue delay in pre-trial detention is inconsistent with international legal standards on the presumption of innocence. We also consider article 2 of the ICCPR, whereby the State is under a duty to adopt laws that give domestic legal effect to the rights and adopts laws as necessary to ensure that the domestic legal system is in compliance with the Covenant. Egypt also signed the African Charter on Human and People's Rights on 16 November 1981 and ratified it on 20 March 1984, which prohibits, in article 6, arbitrary arrest and detention and enshrines, in its article 7(1-4) the right to be tried within a reasonable time by an impartial court or tribunal.

#### *Right to a fair trial and deprivation of liberty*

We would like to refer your Excellency's Government to the right liberty and security of person, the rights of the defense and to a fair trial set forth in articles 9, 10 and 11 of the UDHR and articles 9, 10 and 14 of the ICCPR.

In addition, we would like to remind that pursuant to article 9(3) of the Covenant that pre-trial detention is an exceptional measure and must be assessed on an individual basis. The rationale in paragraph 3 of article 9 also indicates that alternative measures including house arrest, judicial monitoring, release on bail shall not be regarded as compulsory vis-à-vis a pretrial detention but rather optional. The consideration of alternative non-custodial measures allows it to be ascertained whether the principles of necessity and proportionality have been met (see A/HRC/19/57, para. 54). The current public health emergency puts an additional onus of consideration upon the authorities, as they must explain the necessity and proportionality of the measure in the circumstances of the pandemic. The Working Group recalls in particular that automatic pre-trial detention of persons is incompatible with international law. The circumstances of each instance of pre-trial detention should be assessed; at all stages of proceedings, non-custodial measures should be taken whenever possible, and particularly during public health emergencies (Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies, para. 14).

Article 9 (4) of the Covenant provides that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and

order his release if the detention is not lawful”. In this respect, “[t]he right to bring proceedings applies in principle from the moment of arrest and any substantial waiting period before a detainee can bring a first challenge to detention is impermissible. In general, the detainee has the right to appear in person before the court, especially where such presence would serve the inquiry into the lawfulness of detention or where questions regarding ill-treatment of the detainee arise. The court must have the power to order the detainee brought before it, regardless of whether the detainee has asked to appear” (CCPR/C/GC/35, para. 42) . Moreover, “[t]o facilitate effective review, detainees should be afforded prompt and regular access to counsel. Detainees should be informed, in a language they understand, of their right to take proceedings for a decision on the lawfulness of their detention” (Ibid, para. 46).

We also wish to stress that the mass trial procedure can hardly meet the standard for a fair trial, given that it would make it impossible to conduct a specified legal assessment of individuals in accordance with the standards of the international human rights, as well as the presumption of innocence guaranteed by articles 10 and 11 (1) of the Universal Declaration of Human Rights, and article 14 of the Covenant.

#### *Independence of the judiciary*

We also wish to remind your Excellency’s Government of its obligations under article 14 of the ICCPR, which provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” In General Comment No. 32 (2007), the Human Rights Committee stressed that the requirement of independence of a tribunal is “an absolute right that is not subject to any exception.” The requirement of independence “refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature”. The Human Rights Committee clearly stated that “[a] situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal” (paragraph 19).

The principle of the independence of the judiciary has also been enshrined in a large number of United Nations legal instruments, including the Basic Principles on the Independence of the Judiciary. The Principles provide, inter alia, that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); that judges shall decide matters before them impartially without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision (principle 4).

#### *Right to counsel*

We respectfully recall Egypt’s obligations with regard to the right to counsel under article 14 of the ICCPR. Article 14 (3) of the ICCPR lists, among the procedural

guarantees available to persons charged with a criminal offence, the right to have adequate time and facilities to communicate freely with counsel of choice and to effectively prepare their defense (article 14 (3)(b) and (d)). In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14(3)(b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. S/he should also be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter”.<sup>17</sup> Lawyers should also be able to advise and to represent persons charged with a criminal offence “in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter.”<sup>18</sup> In that context, in her 2015 thematic report the UN Special Rapporteur on the Independence of Judges and Lawyers called on governments “to refrain from criminally convicting or disbaring lawyers for the purposes of silencing them, preventing them from criticizing public policies or obstructing them in their legal representation of specific clients”.<sup>19</sup>

The right of access to counsel is also protected by UN principles and guidelines, namely the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>20</sup> the UN Basic Principles on the Role of Lawyers,<sup>21</sup> and the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.<sup>22</sup> The right of access to counsel in the context of counter-terrorism must be reasserted.<sup>23</sup>

The Basic Principles on the Role of Lawyers require Governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper

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<sup>17</sup> CCPR/C/GC/32, para. 34.

<sup>18</sup> Report of the United Nations Secretary General on the protection of human rights and fundamental freedoms while countering terrorism. Para 73 (a)

<sup>19</sup> A/HRC/26/32, para 68

<sup>20</sup> Adopted by GA Res. 43/173 (Dec. 9, 1988).

<sup>21</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (Aug. 27–Sep. 7, 1990).

<sup>22</sup> Adopted by G.A. Res. 67/187 (Dec. 20, 2012).

<sup>23</sup> See CTITF Working Group on Protecting Human Rights while Countering Terrorism, Basic Human Rights Reference Guide: Detention in the Context of Countering Terrorism, United Nations Counter-Terrorism Implementation Task Force (Oct. 2014) (“All persons deprived of liberty have the right to prompt and effective access to legal counsel.”); CTITF Working Group on Protecting Human Rights while Countering Terrorism, Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism, United Nations Counter-Terrorism Implementation Task Force (Oct. 2014) (“All persons have the right to representation by competent and independent legal counsel of their choosing, or to self-representation. The right to representation by legal counsel applies to all stages of a criminal process, including the pre-trial phase. Any restrictions on the right to communicate privately and confidentially with legal counsel must be for legitimate purposes, must be proportional, and may never undermine the overall right to a fair hearing.”); A/HRC/10/21, para. 54 (g) (“[T]he persons accused of having engaged in terrorist activities shall have a right to enjoy the necessary guarantees of a fair trial, access to legal counsel and representation.”); United Nations Office on Drugs and Crime, Handbook on Criminal Justice Responses to Terrorism, Criminal Justice Handbook Series (2009) (“The arrested/detained person must have access to legal counsel and must be able to communicate with counsel in full confidentiality”).

interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics (principle 16). The former UN Special Rapporteur on the Independence of Judges and Lawyers called on Governments “to refrain from criminally convicting or disbaring lawyers for the purposes of silencing them, preventing them from criticizing public policies or obstructing them in their legal representation of specific clients”.<sup>24</sup>

### *Definition of Terrorism*

In regard to the definition of terrorism employed by the Terrorism Circuit Courts, we respectfully remind your Excellency’s Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (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>25</sup>

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>26</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 consequence of committing such an offence.<sup>27</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

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<sup>24</sup> [A/HRC/26/32](#), para. 68.

<sup>25</sup> [A/HRC/RES/22/6](#), para. 10; See also [E/CN.4/2006/98](#), para. 47.

<sup>26</sup> [A/70/371](#), para. 46(c).

<sup>27</sup> [UA G/SO 218/2 Terrorism](#).

highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations.<sup>28</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>29</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>30</sup> To minimize the risks of counter-terrorism legislation being misused, criminal offences must be in “precise and unambiguous language that narrowly defines the punishable offence”.<sup>31</sup>

### *Freedom of opinion and expression*

We would also like to appeal to your Excellency’s Government to take all measures to guarantee the right to freedom of opinion and expression, as provided in article 19 of the ICCPR. Freedom of expression entails that “everyone shall have the right to hold opinions without interference” as well as that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” This right includes not only the exchange of information that is favorable, but also that which may shock or offend.

Article 19(2) of the ICCPR furthermore guarantees an expansive right to “seek, receive and impart information and ideas of all kinds”, one which must be protected and respected regardless of frontiers or type of media. Enjoyment of the right to freedom of expression is intimately related to the exercise of other rights and foundational to the effective functioning of democratic institutions, and accordingly the duties it entails include the promotion of media diversity and independence, and the protection of access to information.

### *Human rights defenders*

We would 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.

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<sup>28</sup> A/73/361, para. 34.

<sup>29</sup> Human Rights Committee, General Comment 34, para. 25; E/CN.4/2006/98, para. 46.

<sup>30</sup> E/CN.4/2002/18, Annex, para. 4(b).

<sup>31</sup> E/CN.4/2006/98, para. 37.



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 9, paragraph 1, which provides for the right to benefit from an effective remedy and to be protected in the event of the violation of those rights;
- 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.

*Cooperation with the UN, its representatives and mechanism in the field of human rights*

Regarding allegations that some violations could be an act of intimidation and reprisals against those who cooperate with the UN in the field of human rights, we would like to refer to Human Rights Council resolutions 12/2, 24/24, 36/21, and 42/28 reaffirming the right of everyone, individually or in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights.

In these resolutions, the Human Rights Council urges States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies in order to promote a safe and enabling environment for engagement with the United Nations on human rights, and to effectively protect those who cooperate with the United Nations. The Council also urges States to ensure accountability for reprisals by providing access to remedies for victims, and preventing any recurrence. It calls on States to combat impunity by conducting prompt, impartial and independent investigations, pursuing accountability, and publicly condemning all such acts.