

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 promotion and protection of human rights and fundamental freedoms while countering terrorism

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(Please use this reference in your reply)

21 March 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/16, 43/4, 41/12 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **pending charges against Mr. Patrick Zaki; and a travel ban against, and the continued freeze of assets as well as pending charges against Mr. Gasser Abdel Razek, Mr. Karim Ennarah, and Mr. Mohamed Bashir; as well as a travel ban against and a freeze of assets of Mr. Hossam Bahgat, founder of the Egyptian Initiative for Personal Rights (EIPR).**

Mr. **Patrick Zaki** is a human rights defender and a researcher on human rights and gender for the Egyptian Initiative for Personal Rights (EIPR) and has been involved in several national campaigns against violations of civil and political rights. He has also advocated for women's rights, the rights of detainees, as well as the rights of vulnerable groups in the country, including sexual and Christian minorities. Mr. Zaki is an Egyptian national, but until the time of his arrest and detention on 7 February 2020, he had been resident in Italy, where he is a postgraduate student at Bologna University studying Gender and Women's Studies.

Mr. **Gasser Abdel Razek** is a human rights defender, a co-owner and the former Executive Director of the Egyptian Initiative for Personal Rights (EIPR).

Mr. **Karim Ennarah**, is a human rights defender and research advisor in the EIPR.

Mr. **Mohamed Bashir** is a human rights defender and the administrative manager of EIPR.

Mr. **Hossam Bahgat** is a human rights defender and the founder of EIPR and its executive director. He has been awarded the Allison des Forges Award for Extraordinary Activism (2010) and the George Alexander Law Prize for his human rights work (2014).

We also would like to bring to your attention the continued investigation of the EIPR in Case no. 173/2011 on foreign funding of civil society organisations.

Mr. Zaki has been the subject of four previous communications, EGY 19/2020, EGY 6/2020, EGY 10/2020 and EGY 15/2020, sent on 24 December 2020, and 31 March, 29 July and 25 November 2020, respectively. We regret that responses to these communications have not been received, apart from a letter in response to EGY 6/2020 requesting an extension due to Covid.

Messrs. Abdel Razek, Ennarah and Bashir were the subject of a previous communication, EGY 15/2020 on 25 November 2020 and for which no response has been received.

Mr. Bahgat was the subject of three previous communications, EGY 15/2020 on the ongoing criminalization, travel ban and freeze of assets; EGY 6/2016 in connection to a criminal case against him (and other human rights organisations) regarding foreign funding received by Egyptian human rights organizations; and EGY 16/2015 concerning his arrest and detention for exercising his right to freedom of expression and opinion as a result of his work as a journalist and human rights defender. We regret that responses to these communications were not received.

According to the information received:

The case of Mr. Patrick Zaki

At a hearing on 7 December 2021, the Emergency State Security Misdemeanors Court (ESSC) decided to release Mr. Zaki and postponed his case related to the “spreading of false news inside Egypt and abroad” and the “misuse of social media” to 2 February 2022. These charges were conveyed to him in late August 2021; they form part of initial charges against him and are punishable by up to five years in prison. Mr. Zaki was released on 8 December 2021 and remains free pending trial.

The charges are connected to an article he published in July 2019 on Daraj, a news website, about the Coptic Christian community of Egypt entitled “Displacement, Killing and Restriction: A Week’s Diary of Egypt’s Copts”.

The State of Emergency in Egypt was ended on 26 October 2021 however the ESSC remains in place for cases referred beforehand. Emergency Court verdicts are not subject to appeal and can only be commuted or overturned by the president of the republic.

Mr. Zaki was asked to attend the 2 February 2022 hearing, in violation of the Egyptian Code of Criminal Procedures that allows defendants in misdemeanor cases to be represented by a lawyer instead of attending themselves. In addition, representatives from the Italian, German and US embassies were not allowed to attend the hearing. The case was further postponed to 6 April 2022.

During the 2 February 2022 court hearing, his lawyers presented requests to be considered ahead of a hearing. These requests had been made at the start of Mr. Zaki’s trial but had so far not been considered. They include the presentation of video proof of Mr. Zaki’s arrest at Cairo airport and not at a checkpoint in Mansoura, as stated in a police report; obtaining the testimonies of two investigating officers; hearing the testimony of an individual named in

Mr. Zaki's article and a copy of a court case on family inheritance law for the Christian community that would prove the veracity of the article for which he was charged.

Mr. Zaki had been arrested on 7 February 2020 by the National Security Investigations (NSI) of Egypt whilst travelling through immigration security in Cairo airport, after arriving from Bologna.

He was formally accused of incitement to commit violence and terrorism-related crimes and of publishing rumors and false news that aim to disturb social peace and sow chaos under Egyptian Counter terrorism law; of managing a social media account that aims to undermine the social order and public safety under Egyptian Anti Cybercrime Law; of calling for the overthrow of the state under the Egyptian Penal Code, and for incitement to protest without permission from the relevant authorities with the aim of undermining state authority under the Egyptian Protest Law. No credible evidence was presented.

During his 22 months in pre-trial detention, Mr. Zaki was held in Tora prison, where he had limited access to his lawyers and family members. His interactions with his lawyers were limited to a few minutes' contact when leaving his remand renewal hearings and one member of his family was permitted a monthly 20-minute visit.

The case of Mr. Mohamed Bashir

Mr. Mohamed Bashir was arrested on 15 November 2020 shortly after midnight from his home by Egyptian security forces and taken to the State Security sector, where he was held for twelve hours without being afforded legal assistance, and was questioned about a meeting held on 3 November 2020 at EIPR. The meeting focused on the situation of human rights worldwide and in Egypt and was attended by 13 foreign ambassadors and diplomats.

He was later questioned at the Supreme State Security Prosecution about the work of EIPR, its recent publications and its work in legal aid. On the same day, he was ordered into pre-trial detention and transferred to Tora investigation prison under Case 855/2020.

Mr. Bashir was formally accused under Egyptian Counterterrorism law of joining a terrorist organization with knowledge of its purpose, and committing a crime involving funding of terrorism. He was also charged under Egyptian Anti-Cybercrime Law for using a personal account on the Internet to spread false information that undermines public security, and under the Penal Code for broadcasting false news and statements that undermine public security and harm the national interest. No credible evidence was presented

The case of Messrs. Karim Ennarah and Gasser Abdel Razek

Mr. Abdel-Razek and Mr. Ennarah were arrested and detained separately between 17 and 19 November 2020. They were questioned by the Supreme State Security Prosecution and were charged in Case number 855/2020 under

Egyptian Counterterrorism law for “joining a terrorist organisation with knowledge of its purpose”. They were also charged under Egyptian Anti-Cybercrime Law for using a personal account on the Internet to spread false information that undermines public security, and under the Penal Code for broadcasting false news and statements that undermine public security and harm the national interest. It is reported that no credible evidence was presented.

Similar to the case of Mr. Bashir, the arrests of Messrs Ennarah and Abdel Razek came after the visit of 13 foreign ambassadors and diplomats to the EIPR headquarters and for which they were interrogated, in addition to questions about their work at EIPR.

Messrs. Bashir, Ennarah and Abdel Razek were released on 3 December 2020 following calls by a number of Egyptian members of Parliament as well as United Nations independent experts, celebrities and NGOs. The charges against them have not been dropped. No date has been set so far for a resumption of the case.

Although released, Messrs. Bashir, Ennarah and Abdel Razek continue to face restrictions and precautionary measures. They are banned from travel and their assets are frozen, which limits their right to freedom of movement and other rights related to accessing funds and holding a bank account.

They have presented an appeal to have their asset freeze and travel ban lifted, which they are entitled to by law, but the Supreme State Security Prosecution has so far not responded and a date has not been set for a hearing into the matter. They are therefore deprived of the opportunity to seek legal remedy despite having the right to challenge precautionary measures every three months.

The case of Mr. Hossam Bahgat and the EIPR

The EIPR was one of scores of civil society organisations (CSOs) that were placed under investigation in Case no. 173/2011 regarding foreign funding received by Egyptian human rights organizations, and its assets were frozen. As its founder and director, Mr. Bahgat was placed on a list of persons banned from travel and subject to an assets freeze.

In a separate case, Mr. Bahgat was accused on 2 November 2021 of insulting a public institution, spreading false news with malicious intent and misusing social media. The charges were connected to a tweet he posted in December 2020 criticizing the former head of the National Election Authority for alleged corruption. On 29 November 2021, Mr. Bahgat was sentenced to a fine of LE 10,000 (€ 561) for insulting the elections authority.

On 17 September 2016, the Cairo Criminal Court confirmed the order to freeze the personal funds and family assets of Mr. Bahgat, accused of illegally receiving foreign funds in Case number 173/2011.

On 18 July 2020 the criminal court rejected the request to cancel the travel ban imposed on him.

On 30 August 2021, Case 173/2011 was dropped against most of the CSOs by the Cairo Court of Appeal investigative judge, and the names of human rights defenders were removed from the list of travel bans and assets freeze. The case against the EIPR was not dropped.

Without wishing to prejudge the accuracy of the information received, we express serious concern as to the criminalisation of legitimate human rights activities undertaken by Mr. Zaki and by Messrs, Abdel Razek, Ennarah and Bashir, which have been equated to involvement in terrorism, publishing rumours and false news, and incitement with no credible evidence provided. We reiterate our concern about the vagueness of the counterterrorism and national security legislation in Egypt. We note with concern that this legislation is being misused to target, inter alia, human rights defenders critical to the Government. We respectfully remind your Excellency's Government that 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 do not comply with international treaty obligations (EGY 4/2020).

We also express our concern at the continued restrictive measures imposed on Messrs. Abdel Razek, Ennarah, and Bashir without allowing them the opportunity to exercise their right in challenging the precautionary measures as well as the continued asset freeze and travel ban imposed on Mr. Bahgat in relation to his position with the EIPR. We are concerned that the EIPR remains under investigation in Case no 173/2011 while the case has been dismissed for most other organisations implicated in it. . We remind your Excellency's Government that in EGY 4/2020, the Experts noted that the current targeted sanctions regime raised several serious challenges, mainly related to the lack of transparency and due process in listing and de-listing procedures. Targeted sanctions resulting in the freezing of assets, the imposition of travel bans, and other restrictions may also have severe consequences for the affected individuals and their families to enjoy economic and social rights. We recall that any restriction that may limit freedom of movement on the basis of public order should be strictly necessary and proportionate, factually motivated, and when cumulatively sustained, subject to stringent and ongoing review.

We also wish to reiterate our concern regarding the misuse of national security legislation to criminalise human rights defenders, journalists and civil society actors in the country for the chilling effect it has already had and will continue to have on civil society more broadly. We further reiterate our concern regarding the repeated and continued use of this legislation to shrink civic space in Egypt, as previously communicated to your Excellency's Government by Special Rapporteurs. We recall the States' obligation to take all necessary measures to ensure that the rights of human rights defenders are not impinged upon under the guise of national security in retaliation for their lawyering, reporting, and other human rights-related activities. We also draw the Government's attention to paragraphs 75(a) to (i) of the 2018 report of the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism (A/HRC/40/52) on the impact of terrorism measures on civic spaces and human rights defenders. Any restriction on expression or information that a government seeks to justify on grounds of national security and counterterrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34).

Moreover, we express serious concerns regarding restrictions to the rights to freedom of expression and of association, including through the criminalisation of information deemed false, the use of social media and calls for protest, in contradiction with the provisions of international human rights law. We recall that legitimate expression of opinions or thought must not be criminalized. In the resolution A/HRC/7/36, the Human Rights Council has stressed the need to ensure that national security is not used to unjustifiably or arbitrarily restrict the right to freedom of opinion and expression. Measures aimed to regulate the existence and work of civil societies and human rights defenders must comply with the requirements of proportionality, necessity, and non-discrimination.

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 information on the legal basis for the accusations against Mohamed Bashir, Karim Ennarah, Gasser Abdel-Razek, and Patrick Zaki.
3. Please provide further information on the basis for maintaining the travel ban and freeze of assets of Bashir, Ennarah, Abdel-Razek, and Bahgat, and other human rights defenders affected by the same measures in his case. Please also indicate how these measures are necessary and proportionate.
4. Please provide information on why charges related to terrorist acts, raising funds for terrorist acts, conspiracy, membership of a terrorist organisation have been levied against four of the named human rights defenders and indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).

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

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Irene Khan
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

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we 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 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. 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.

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.

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.

With respect to charges related to the spreading of false information, we refer to the report of the Special Rapporteur on freedom of opinion and expression on disinformation (A/HRC/47/25). In this report, the Special Rapporteur notably highlighted that the right to freedom of expression applies "to all kinds of information and ideas, including those that may shock, offend or disturb", and "irrespective of the truth or falsehood of the content" (See also Human Rights Committee, general comment No. 34 (2011), paras. 47 and 49).

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 UN Declaration on Human Rights Defenders, in particular 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.¹

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.² 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.³ 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.⁴ 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.⁵ 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.⁶ 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".⁷

¹ A/HRC/RES/22/6, para. 10; See also E/CN.4/2006/98, para. 47

² A/70/371, para. 46(c).

³ UA G/SO 218/2 Terrorism.

⁴ A/73/361, para. 34.

⁵ Human Rights Committee, General Comment 34, para. 25; E/CN.4/2006/98, para. 46.

⁶ E/CN.4/2002/18, Annex, para. 4(b).
E/CN.4/2006/98, para. 37.