

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL EGY 1/2022
(Please use this reference in your reply)

17 March 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health 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, 42/22, 43/4, 41/12, 42/16 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **violations of due process and fair trial standards in the sentencing of human rights lawyer, Mohamed El-Baquer by Egypt's Emergency State Security Misdemeanours Court in December 2021; the continued inclusion of his name on the terrorist watch list despite lack of evidence; his continued pre-trial detention in connection with another case; and the threat of a long term prison sentence.**

Mr. **Mohamed El-Baquer** is a lawyer and human rights defender who has actively used social and other media outlets to publish and write about human rights issues, including on cases of enforced disappearances and torture allegedly involving the National Security Agency. Following his arrest in September 2019, he was detained arbitrarily for an extended period. He was also placed on Egypt's domestic terrorist entities and terrorist list (hereinafter "terrorism watch list") under Case No. 1781/2019.

We previously raised our human rights concerns with your Excellency's Government about the arrest and detention of Mr. El-Baquer and the inclusion of his name on Egypt's terrorism watch list in communications EGY 11/2019, EGY 10/2020 and EGY 8/2021. We regret that no reply has been received to any of these communications.

The case of Mr. El-Baquer was also included in the 2020 report of the Secretary-general (A/HRC/45/36, Annex I paras. 45-46) on cooperation with the UN on allegations that he had been targeted in relation to his engagement with the Universal Periodic Review of Egypt.

According to the information received:

On 16 October 2021, Mr. El-Baquer was referred to the Emergency State Security Court (ESSC) by the Supreme State Security Prosecution under a new case without the knowledge of his lawyers who were prevented from presenting their defence, and who were not allowed to access his case file.

Mr. El-Baquer was accused under case No. 1228/2021 of “spreading false news undermining national security” and “using social media to commit publishing offenses.” These charges were among four accusations brought against him under an earlier case in 2019, case No. 1356/2019, which included accusations of “belonging to a terrorist group”, and “funding a terrorist group”, both of which remain in place and for which Mr. El-Baquer is held in pre-trial detention.

Although the state of emergency in Egypt was lifted on 26 October 2021, the ESSC remains in place for cases referred to it beforehand. Emergency Court verdicts are not subject to appeal and can only be commuted or overturned by the President of the republic.

On 11 November 2021, the ESSC rescheduled Mr. El-Baquer’s trial to 20 December 2021. His lawyers were not allowed to meet him or to have access to his case file, in violation of due process.

On 23 November 2021, the Court of Cassation rejected Mr. El-Baquer’s appeal to remove his name from the terrorism watch list issued a year earlier under Case No. 1781/2019, despite a lack of evidence or verdict justifying its decision.

On 20 December 2021, the ESSC Misdemeanor Court in New Cairo sentenced Mr. El-Baquer to four years in prison in case 1228/2021.

In addition to his four-year sentence, Mr. El-Baquer continues to be held in pre-trial detention under Case No. 1356/2019 and, if tried and convicted by a Supreme State Security Court, he could face long-term imprisonment.

Without prejudging the accuracy of the information received, we express serious concern regarding the allegations that Mr. El-Baquer was denied the right to due process and fair trial throughout his arbitrary detention and trial, his continued arbitrary detention, and the continued inclusion of his name on the terrorism watch list without apparent evidence, in what appears to be a misuse of this listing procedure against human rights defenders. We express further concerns regarding the reported lack of adequate sanitary conditions and adequate medical care to Mr. El-Baquer, as well as the alleged lack of regular access to and contact with his family and legal representatives.

In line with our previous communication EGY 4/2020, we reiterate our concerns 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. As to Mr. El-Baquer's alleged lack of due process, fair trial, and regular access and contact with his legal representatives, we remind your Excellency’s Government that in its General

Comment 32 (2007) on article 14, the Human Rights Committee stressed that the right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law. (CCPR/C/GC/32, para 2). Article 14 of the ICCPR, ratified by Egypt, provides *inter alia* for the principle of equality before competent, independent, and impartial courts and tribunals, the presumption of innocence, provision of adequate time and facilities for the preparation of the defense, and the right of accused persons to communicate with counsel of their own choosing (UA IRN 5/2020). The guarantees of a fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights (CCPR/C/GC/32, para 6). We further recall your Excellency's Government that paragraph 7 of resolution A/HRC/RES/42/18 affirms, in the context of counterterrorism, the need to ensure "access to independent and adequate legal representation". And where the detainee has access to counsels, such access must be meaningful (EGY 4/2020).

Furthermore, in the same terms expressed in EGY 8/2021, we reiterate our regret on the upholding of Mr. El-Baqer's inclusion in the terrorism watch list by the Court of Cassation. Once again, we expressed our serious concerns at the lack of adequate safeguards to prevent misuse and no clear means to guarantee the rights of those subject to national-level listing processes. Placement of individuals or groups on a terrorism watchlist should be necessary and proportionate and therefore only in response to an actual, distinct, and measurable terrorism act or demonstrated threats of an act of terrorism. Only through an adequately constructed definition of terrorist acts can the necessity and proportionality elements for listing be met to ensure that the Government's listing is in response to an actual, distinct, and measurable threat as defined by law.

We are issuing this appeal in order to safeguard the rights of [...] Mr. El-Baqer from irreparable harm and without prejudicing any eventual legal determination.

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 as to the legal and factual basis for the continued and renewed detention of Mr. Mohamed El-Baqer under Case No. 1356/2019, and provide information about the compatibility of these measures with Egypt's obligations under international human rights law.
3. Please provide information on how the authorities have ensured Mr. El-Baqer's right to due process, including meaningful access to legal assistance.

4. Please provide information as to the legal and factual basis for the “listing” of Mr. El-Baquer on the terrorism watch list, as well as the process required and undertaken to support such a determination and how these measures are compatible with Egypt’s international human rights obligations.
5. Please provide information as to the legal and factual basis for the charge of “spreading false news undermining national security”.
6. Please provide detailed information on any inquiry or investigation, judicial or otherwise that may have been undertaken, in connection with the allegations that Mr. El-Baquer was subjected to torture or other ill-treatment in Tora prison; and on the conclusions of such inquiries. If no inquiry took place, please explain how this is compatible with Egypt’s obligations under the Convention against Torture, ratified by Egypt on 25 June 1986.
7. Please provide information on the current health status of Mr. El Baquer and the measures provided to ensure access to adequate and appropriate medication and health care, including hospitalization as required.
8. Please indicate what measures have been taken to ensure that human rights defenders, lawyers, journalists, and other civil society actors have been able to carry out their legitimate work in a safe and enabling environment in Egypt without fear of threats or acts of intimidation or harassment of any sort.

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.

We would like to inform your Excellency’s Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to 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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to articles 7, 9, 10, 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982, which guarantee that no one should be subjected to torture, cruel, inhuman or degrading treatment or punishment, everyone has the right to liberty and security of person, to a trial within a reasonable time, to challenge the legality of the detention before the courts, to be released subject to guarantees to appear for trial, to a fair and public trial before an independent and impartial tribunal without undue delay and with legal assistance of their choosing, and that everyone shall be granted these rights free of discrimination. Articles 19 and 21 guarantee that everyone has the rights to freedom of opinion and expression and to freedom of peaceful assembly, respectively.

With respect to the charges related to the “dissemination of false news” and “misuse of social media or use of media to commit a punishable offense”, we would like to highlight that any restrictions on the right to freedom of expression must be compatible with article 19 of the ICCPR. The Human Rights Committee has highlighted that the protection afforded to article 19 is particularly strong with respect to expressions on political and human rights issues (see General Comment no. 34 paras. 2 and 3 and 20). Any restriction, to be compatible with the Covenant, must be provided by law, pursue one of the exhaustively enumerated aims in paragraph 3 of article 19, and be necessary and proportionate. In addition, we recall that the arrest or detention as punishment for the legitimate exercise of the rights to freedom of opinion, expression, assembly, and association is arbitrary (CCPR/C/GC/35, para 17). We also refer your Excellency's Government to the report of the Special Rapporteur on freedom of opinion and expression on disinformation (A/HRC/47/25), in which she expressed concerns that “Laws and policies are often being made with sub-optimal knowledge of online harm, without adequate data, research or public consultations. States have resorted to disproportionate measures such as Internet shutdowns and vague and overly broad laws to criminalize, block, censor and chill online speech and shrink civic space. These measures are not only incompatible with international human rights law but also contribute to amplifying misperceptions, fostering fear and entrenching public mistrust of institutions”.

As the Human Rights Committee has affirmed, a norm to be characterised as “law” must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution” (General Comment no. 34 para. 25). This precludes the criminalisation of conduct on the basis of vague and ambiguous language. As highlighted by the Special Rapporteur on the right to freedom of expression in her report A/HRC/47/25, the criminalisation of “false” expressions is incompatible with the Covenant. The same would apply to other vaguely formulated provisions, such as the “misuse of social media”.

The necessity and proportionality requirement entails that the restriction “must be appropriate to achieve their protective function; they must be the least intrusive

instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected. The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law” (*Id.* para. 34). With respect to the criminalisation of defamation, the Human Rights Committee has unequivocally held that “the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.” (*id.* para. 47).

We would also like to highlight that article 14 of the Covenant requires that anyone facing criminal charges shall be granted adequate time and facilities for the preparation of his defence, to communicate with counsel of his own choosing, to be tried without undue delay and not to be compelled to testify against himself or to confess guilt.

We would like to remind your Excellency’s Government that listing processes, insofar as they result in a serious deprivation of liberty and infringe upon several fundamental human rights, are also subject to international human rights law standards on principles of legality; necessity, proportionality, and non-discrimination; and fair trial guarantees and due process of law.

As noted above, vaguely and broadly worded provisions, which cannot qualify as *lex certa*, violate due process of law which is undergirded by the principle of legality in article 11(2) of the UDHR and article 14 of the ICCPR, which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence.¹ Moreover, on the issues of necessity, proportionality, and non-discrimination, we refer your Excellency’s Government to the above referenced article 9 of the ICCPR, noting the failure to examine the necessity as it relates to these rights and listing, as required by article 9(3) of the ICCPR. In addition, the deprivation of other protected rights infringed upon due to listing must also be examined in the frame of a necessity, proportionality and non-discrimination lens in line with the Convention.

We would further like to highlight that many of the above-referenced rights from the ICCPR are also guaranteed under the African Charter on Human and Peoples Rights, including in articles 6, 7, 9 and 11, which protect the rights to liberty and security of person, due process and fair trial, freedom of expression and freedom of assembly.

With respect to the apparent use of counter-terrorism and extremism as justifications for the detention and investigation of the above-mentioned individuals, we would like to stress that counter-terrorism legislation with penal sanctions should not be misused against individuals exercising their rights to freedom of expression and freedom of peaceful assembly and of association. These rights are protected under the ICCPR and the ACHPR, and non-violent exercise of these rights is not a criminal offence.

We further wish to remind your Excellency's Government of its obligations under article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Egypt on 12 January 1982. In light of article 12, which guarantees the right of all people to the highest attainable standard of physical and mental health,

¹ UA G/SO 218/2Terrorism.

States have the obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health services (see Committee on Economic, Social and Cultural Rights, General Comment 14, para 34).

We would also like to draw the attention of your Excellency's Government to the United Nations Standard Minimum Rules for the Treatment of Prisoners, otherwise known as the Nelson Mandela Rules, adopted by General Assembly resolution 70/175 on 8 January 2016. We would like to make reference, in particular, to Rule 27(1), which provides that all prisons shall ensure prompt access to medical attention in urgent cases the basic principles contained in rules 1-5, and those concerning contact with the outside world as laid out in rules 58-63.

Similarly, the information received would appear to indicate contraventions of several of the principles of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 on 9 December 1988. In this regard, we would like to specifically cite articles 1, 15, 16(1), 18, 19, 37 and 38 concerning the dignity of detained persons, their communication with the outside world, notification of persons connected with detainees of their arrest and/or transfer, access to legal counsel, the right to visits and the right to trial within a reasonable time. In addition, the information received would also appear to contravene several principles of the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba on 27 August to 7 September 1990, specifically principles 16, 17, and 18 concerning the ability of lawyers to perform their professional functions without intimidation, hindrance, harassment, or improper interference, safeguarding of lawyers, and non-conflation of lawyers with clients or client's causes.

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 also wish to refer to articles 5(a), 6(c), 9 and 12, which state that everyone has the right, individually and in association with others, to meet or assemble peacefully for the purpose of promoting and protecting human rights; to study, discuss, form or hold opinions on the observance of all human rights and fundamental freedoms and to draw public attention to these matters; to benefit from an effective remedy and be protected in the event of the violation of these rights; and to participate in peaceful activities against violations of human rights and fundamental freedoms.

Regarding 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 their obligations under international law. Moreover, in regard to the procedures and international standards for listing and de-listing individuals and organizations, the mandate holders draw attention to the existing practices in use by the United Nations, Member States and recommended by the Financial Action Task Force (FATF) specific to the listing and de-listing of individuals that span Guidelines of the Counter-Terrorism Committee related to evidentiary standards, transparency, oversight, and procedural process, as well as those recommendations provided by the FATF in the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation.

We wish also 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.

We also recall that paragraphs 74 to 78 of A/HRC/37/52 reminds States to ensure that emergency measures are in compliance with the prohibition of permanent emergency powers and that in such contact it remains under an absolute obligation to the State to protect non-derogable rights. We would also like to refer to paragraphs 36 and 75(a) to (i) of the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/40/52) recalling the need to ensure that invocation of national security, including counter-terrorism, is not used unjustifiably or arbitrarily to restrict the right to freedom of opinion and expression and does not negatively affect civil society.

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 (A/70/371, para. 46 (c)). 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. This principle recognizes and seeks to prevent ill-defined and/or overly broad laws that are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental 20 freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations (A/73/361, para. 34). 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.² 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.³ To minimize the risks of counter-terrorism legislation being misused, criminal offences must be in "precise and unambiguous language that narrowly defines the

² Human Rights Committee, General Comment 34, para.25; E/CN.4/2006/98, para.46.

³ E/CN.4/2002/18, Annex, para.4(b).

punishable offence.”⁴

⁴ E/CN.4/2006/98, para. 37.