

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL EGY 6/2022
(Please use this reference in your reply)

9 August 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 Enforced or Involuntary Disappearances 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, 45/3 and 49/10.

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 arrest and sentencing of Mr. **Moaaz Al-Sharqawy** by Egypt's Emergency State Security Court in May 2022; as well as his enforced disappearance, torture and ill-treatment in 2018; and the continued inclusion of his name in the terrorist watch list despite lack of evidence.

Mr. **Al-Sharqawy** is a student rights' defender, and he was elected vice-president of Tanta University's student union in 2015. He focused on defending student rights to freedom of expression and assembly on campus, supporting students detained in relation to political cases, and he campaigned for fair university regulations.

According to the information received:

In 2016, as part of a campaign to draft new university regulations, Mr. Al-Sharqawy met with Tanta University executives, Egyptian members of Parliament and the Minister for Higher Education. The student's proposal was subsequently submitted to the Egyptian cabinet. Mr. Al-Sharqawy resigned from the student union in 2017 after the government decided to cancel student elections and disregarded the student's proposals.

In February 2018, the Attorney General included Mr. Al-Sharqawy's name in a list of 16 people accused of allegiance to a political party headed by a former Muslim Brotherhood's member, and of recruiting students to engage them in armed terrorist activity.

Regarding Mr. Al-Sharqawy's enforced disappearance and torture

On 19 September 2018, Mr. Al-Sharqawy was arrested at a checkpoint and his mobile phone was confiscated. He was handcuffed and blindfolded and taken to the National Security premises of his hometown, Tanta, where he remained for twenty days in circumstances that would appear to constitute an enforced disappearance, without any contact with the outside world. The investigating officer insulted him, beat him, tied his legs to a metal chair and electrocuted him several times. He was questioned about his activism as a student union

leader and his participation in student demonstrations, and was forced to stand naked in front of an air-conditioner and threatened with death. He was subjected to torture and ill-treatment every two days during the 20 days he was held in the Tanta National Security premises where he was also questioned by more officers, including the head of National Security in Tanta.

After 20 days, Mr. Al-Sharqawy was moved to the Central Security Camp in Tanta, where he remained for another four days with no communication with the outside world.

Regarding Mr. Al-Sharqawy's detention

On 13 October 2018, Mr. Al-Sharqawy was brought before the State Security Prosecution, and was interrogated for eight hours, in the absence of his lawyer. The prosecutor questioned him about his political affiliations and threatened to send him back to the National Security premises if he did not confess. Mr. Al-Sharqawy complained to the prosecutor about the fact that he had been held incommunicado and about the torture he had been subjected to, but the prosecutor did not consider nor investigate the allegations made by Mr. Al-Sharqawy.

At the end of the interrogation, the prosecution charged Mr. Al-Sharqawy with joining a terrorist group, under Case No. 440/2018. Mr. Al-Sharqawy was moved to Tora Investigation Prison, in pre-trial detention, during which he had contact with his lawyer for the first time. His lawyer asked the prosecutor to refer Mr. Al-Sharqawy to a forensic medicine expert for a medical examination to prove he had been tortured, but this was not granted.

On 29 May 2019, a court ordered the release of Mr. Al-Sharqawy pending trial and with precautionary measures. However, the prosecution appealed the decision, and Mr. Al-Sharqawy's detention was extended for 45 days, renewable.

On 4 March 2020, the criminal court of Cairo ordered Mr. Al-Sharqawy's release pending investigations and under precautionary measures.

On 9 March 2020, Mr. Al-Sharqawy was released and returned to his home. Following his release, Mr. Al-Sharqawy sought medical treatment and was diagnosed with post-traumatic stress disorder.

On 25 August 2021, Mr. Al-Sharqawy was referred to the Emergency State Security Court (ESSC) under the same case, which was re-registered as Case No. 1059/2021. The charge is that of joining the Muslim Brotherhood with knowledge of its aims, and that he was recruited as to the group as one of the young students. The Muslim Brotherhood is listed as a terrorist entity based on Law No. 8 of 2015.¹

According to Egypt's Penal Code No. 86 (85/1937, amended 15 August 2021)², any person using violence or force or threats in order to spread terror, disrupt

¹ Arabic: <https://manshurat.org/node/6579> and, Eng: <https://timep.org/wp-content/uploads/2019/04/Terrorist-Entities-Law-Brief.pdf>

² Arabic: <https://manshurat.org/node/14677>

the functions of government or act against the Constitution is considered a terrorist whether acting individually or as part of a group. The maximum sentence for joining a terrorist group is the death penalty.

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 28 May 2022, the ESSC, without his presence but in the presence of his lawyer, sentenced Mr. Al-Sharqawy to 10 years imprisonment and five more years under police surveillance post-conviction. Mr. Al-Sharqawy voluntarily did not attend, and as his lawyer was present in court, the verdict was enforceable, and upon ratification, Mr. Al-Sharqawy is to be arrested.

Regarding the inclusion of Mr. Al-Sharqawy's in the terrorist watchlist

On 1 February 2019, a court accepted the appeal of Mr. Al-Sharqawy's lawyer against the decision to include his name in the national terrorist watchlist and referred it to another circuit.

On 12 January 2021, a court decided to include him again in the national terrorist watchlist.

On 26 February 2022, the Court of Cassation upheld the ruling.

Without prejudging the accuracy of the information received, we express serious concern regarding the allegations that Mr. Al-Sharqawy was denied a fair trial in his sentencing by Egypt's Emergency State Court and subjected to enforced disappearance for a period of 24 days, during which he was subjected to torture. We wish to recall that, under international law, a deprivation of liberty (including in the form of incommunicado detention), followed by the failure or refusal to acknowledge a deprivation of liberty by State agents or the concealment of the fate and whereabouts of the person, are constitutive elements of an enforced disappearance, regardless of the duration of the deprivation of liberty or concealment concerned.

We express concern regarding the use of Egypt's Emergency State Court to prosecute Mr. Al-Sharqawy. Echoing the observations of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, we remind Your Excellency's Government that States must ensure that emergency measures are in compliance with the incompatibility of permanent emergency powers with the human rights treaty obligations of the State and that it remains under an absolute obligation for the State to protect non-derogable rights (A/HRC/35/37, paras. 74-78). We recall that in a previous communication (OL EGY 4/2020), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism expressed concern about the compatibility of state of emergency with international law obligations as it grants the President the power to refer civilians to State Security Emergency Courts and it does not provide for any judicial appeal process of its decisions.

We are also concerned that Mr. Al-Sharqawy's name was included on the terrorism watchlist without apparent evidence or a firm legal basis, in what appears to

be a misuse of this listing procedure as a form of reprisal against human rights defenders. In the same terms expressed in previous communications (EGY 8/2021, AL EGY 1/2022), we reiterate our profound concern on the maintenance of Mr. Al-Sharqawy's inclusion in the national terrorism watch list by the Court of Cassation. Once again, we express our serious concerns at the lack of adequate safeguards to prevent misuse and the absence of means to guarantee the rights of those subject to national-level listing processes. The lack of such safeguards is incompatible with both the human rights and counter-terrorism obligations of the State, including as mandated by the Security Council and the Global Counter-Terrorism Strategy (A/RES/75/291). Targeted sanctions resulting in the freezing of assets, the imposition of travel bans, and other restrictions may also have severe consequences and limit the capacity of the affected individuals and their families to enjoy economic and social rights. Placing individuals or groups on a terrorism watchlist should be evidence-based and demonstrate a connection to an actual, distinct, and measurable act of terrorism or a demonstrated threat of an act of terrorism. While we acknowledge the details provided in your Excellency's Government's reply to EGY 4/2020, we express serious concern at the compliance of listing procedures with international human rights norms and principles and urge domestic revision to ensure such processes comply with international law.³

Regarding the allegations of torture, we respectfully remind your Excellency's Government that under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Egypt acceded in 1986, requiring State parties to conduct a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, and on the basis of any claim lodged by an individual who alleges they have been subjected to torture. We further recall that steps shall be taken to ensure that the complainant and witnesses are protected against ill-treatment or intimidation, which could result from filing a complaint or submitting evidence (AL EGY 12/2021).

In line with our previous communications (EGY 4/2020, EGY 1/2022) we also reiterate our concerns about the vagueness of the counter-terrorism 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 underscore to 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, human rights defenders, journalists, or other persons on political, religious or other unjustified grounds. The use of generic and highly broad emergency or counter-terrorism measures to limit the freedom of association has a profound and detrimental effect on rights of association, assembly and expression (A/HRC/40/52). Counter-terrorism, should not be used unjustifiably or arbitrarily to restrict the right to freedom of opinion and expression and does not negatively affect civil society.

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.

³ See para 94. Government's reply to EGY 4/2020.

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 detailed information on any inquiry or investigation, judicial or otherwise that may have been undertaken in connection with the allegations that Mr. Al-Sharqawy was subjected to enforced disappearance for over 24 days, and to torture or ill-treatment while he was held incommunicado at the Tanta National Security premises, and on the conclusions of such inquiries. If no inquiry took place, please explain how this is compatible with international law and, in particular, with the Convention against Torture that Egypt acceded to on 25 June 1986.
3. Please provide information on the measures taken to assure the compilation and maintenance of updated official records and registers of persons deprived of their liberty, and to make them promptly available, upon request, to judicial and other competent authorities and to any persons with a legitimate interest in this information, including relatives of the persons deprived of their liberty and their legal representatives;
4. Please provide information on the measures taken to determine the protection needs of detainees, including the state of health and other basic services and any other measures to prevent serious and irreparable damage to their life and personal integrity, and that they have access to medications and other relevant medical treatment;
5. Please provide detailed information on the terrorism-related charges against Mr Al-Sharqawy and his sentence of 10 years imprisonment and five years of police surveillance. Please explain how this sentence complies with the principles of legality, necessity, proportionality and non-discrimination.
6. Please provide information as to the legal and factual basis for the “listing” of Mr. Al-Sharqawy on the terrorism watchlist, 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, including how they comply with the principles of proportionality and non-discrimination.
7. Please indicate what measures have been taken to ensure that Mr. Al-Sharqawy is able to carry out his legitimate work and activities as human rights defender 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.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable harm to the life and physical integrity of Mr. Al-Sharqawy, 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

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

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, 16, 19, 21 and 22, to be read alone and in conjunction with article 2.3 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982, as well as articles 3, 5, 9 and 19 of the Universal Declaration of Human Rights (UDHR), 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 of the ICCPR guarantee that everyone has the rights to freedom of opinion and expression and to freedom of peaceful assembly, respectively.

With regard to article 9 of the Covenant, we would also like to remind your Excellency's Government that incommunicado detention that prevents prompt presentation before a judge inherently violates paragraph 3. In addition, incommunicado detention may also violate other rights under the Covenant, including articles 6, 7, 10 and 14 (CCPR/C/GC/35, para 35). Furthermore, article 9(3) of the Covenant requires that detention pending trial shall be the exception, not the rule, and it should be based on the individual circumstances of the case and subject to judicial oversight.

The information received would also 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.

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 African Charter on Human and Peoples' Rights (ACHPR), and non-violent exercise of these rights is not a criminal offence.

Furthermore, the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearance sets forth States' obligations to prevent and eradicate this practice. In particular, articles 2 and 3 state that no State shall practice, permit or tolerate enforced disappearances and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. We are further drawing your Excellency's Government's attention to the absolute and non-derogable

prohibition of enforced disappearances (articles 2 and 7) which has attained the status of *jus cogens*. Moreover articles 9-13 of the Declaration spell out the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to ensure that all involved in the investigation are protected against ill-treatment, intimidation or reprisal. Article 14 further establishes that States should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance. The Declaration also stipulates that the persons responsible for these acts shall be tried only by ordinary courts and not by other special tribunal, notably military courts (article 16); not benefit from any amnesty law (article 18); and the victims or family relatives have the right to obtain redress, including adequate compensation (article 19).

We would also like to refer to the study on enforced disappearances in retaliation against those working on the promotion and protection of economic, social and cultural rights of the Working Group on Enforced or Involuntary Disappearances, which noted that due to the collective character of certain economic, social and cultural rights, enforced disappearances of human rights activists violate their economic, social and cultural rights, the rights of others engaged in related activities, and of the larger community of people who relied on the disappeared person to represent and fight for their rights (A/HRC/30/38/Add.5 paras. 34-40).

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). 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.⁴ 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.⁵ This principle recognizes and seeks to prevent that ill-defined and/or overly broad laws are open to arbitrary application and abuse. 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.⁶ The UN Security Council's definition of terrorist acts requires intentionality to cause death or serious bodily harm and the act must be committed with the purpose to provoke a state of terror.⁷ As there is no universal and comprehensive definition of terrorism, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stressed that the definition of terrorism and terrorist activity must be confined to acts

⁴ A/70/371, para. 46(c).

⁵ UA G/SO 218/2 Terrorism.

⁶ Human Rights Committee, General Comment 34, para. 25; E/CN.4/2006/98, para. 46.

⁷ UNSCR 1566 (2004) para. 3.

that are ‘genuinely’ terrorist in nature in accordance with UNSCR 1566 and the model definition of terrorism developed by this mandate and recommended as best practice.⁸

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 would also wish to refer your Excellency’s Government to articles 2 and 16 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Egypt acceded to on 25 June 1986, and which stipulates that no exceptional circumstances, including internal political instability or any other public emergency, may be invoked as a justification for torture, and that each State Party shall undertake to prevent other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official. We would also like to refer to the Government’s obligations under article 12, to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 15 to exclude torture tainted statements from judicial proceedings.

Finally, 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.

⁸ A/HRC/16/51, para. 28.