

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL EGY 5/2023
(Please use this reference in your reply)

8 November 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 52/9 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 continued targeting of Al Jazeera journalists, including the re-listing of nine Al Jazeera journalists onto a new terrorism watchlist created by the Egyptian authorities, following the expiry of previous listings issued in 2021 and 2017 in which they were included.**

We refer to the previous communications [EGY 3/2023](#), [EGY 4/2020](#) and [EGY 13/2020](#) concerning respectively Egypt's Anti-Terrorism Law and Terrorism Circuit Courts. We acknowledge receipt of the detailed replies provided by your Excellency's Government in relation to EGY 4/2020, though we regret that no response has been provided to EGY 3/2023 and EGY 13/2020. We draw to the attention of your Excellency's Government to the previous communication EGY 4/2020 concerning the amendments of the Anti-Terrorism Law, Terrorist Entities Law, Association Law, Protest Law and associated decrees and their incompatibility with international human rights standards. While acknowledging the detailed reply provided, we reiterate our concerns in relation to the use of extensive periods of pre-trial detention, misuse of listing procedures and broad and vague terms in the Anti-Terrorism Law, and continued non-compliance with international standards on fair trial and due process.

According to the information received:

On 29 April 2023, the Cairo Criminal Court, 12th Circuit South, announced its decision no. 1 of 2023 to re-list 81 individuals, including nine Egyptian journalists and presenters affiliated with Al Jazeera on a new terrorism watchlist for a period of five years. The resulting legal implications, as contained in article 7 of the Terrorist Entities Law, include a travel ban, asset freeze and passport cancellation. This decision was registered as listing decision no. 5 of 2023 Supreme State Security, renewing decisions from case no. 590 of 2021 and case 760 of 2017, which had expired. On 12 July 2023, the Official Gazette published the decision of the Cairo Criminal Court.

The Al Jazeera journalists affected by this re-listing are: news editor Mr. **Anas Zaki Abdelhalim Khalil**; deputy news editor Mr. **Ahmed Abdelrahman Ahmed Hussein**; senior news producer Mr. **Mohamed Othman Maher Mohamed Akl**; producer Mr. **Abdelrahman Mohmoud Abdelzاهر Hussein**; senior presenter Mr. **Ayman Mohamed Shafik Mohamed Azzam**;

producer **Mr. Amr Mahmoud Ahmed Salama Elkazaz**; specialist **Mr. AbouBakr Hamdi Kamal Mashali**; senior producer **Mr. Samhy Mostafa Ahmed Abdelalim**, and; presenter **Mr. Salem Adel Salem Almahroukey**.

The renewal of this decision which appears to amount to a misuse of counter-terrorism legislation appears to be part of a wider crackdown on the operations of Al Jazeera and media freedoms in Egypt in parallel with ongoing limitations on civil society actors, and civic space generally. Al Jazeera's website was banned in Egypt in 2017 on charges of supporting terrorism and spreading false news, a claim the network denies.

According to information received, two Al Jazeera journalists, **Mr. Bahaaeldin Ibrahim Nemaalla Elsayed** and **Mr. Rabie Mohamed Abdelwahed Elshikh**, were arrested when they went to Egypt on separate holidays to visit family, and were charged with membership of a terrorist group and spreading false news, respectively.

Mr. Bahaaeldin Ibrahim Nemaalla Elsayed was arrested from the Borg El Arab Airport in Alexandria on his way back to Qatar in February 2020 and is currently detained in section one of Badr City Prison. According to reports received, authorities have allegedly used electric shocks on Mr. Bahaaeldin Ibrahim Nemaalla Elsayed, and kept him blindfolded for 75 days. Since his arrest, prosecutors have renewed Mr. Bahaaeldin Ibrahim Nemaalla Elsayed's pretrial detention every 45 days.

Mr. Rabie Mohamed Abdelwahed Elshikh was arrested upon his arrival to Cairo International Airport in August 2021 and is currently detained in Tora prison. His arrest is believed to be in direct retaliation for an audio recording in which he invited an Egyptian columnist to speak in a live interview about the Ethiopian dam crisis.

While we do not want to prejudge the accuracy of these allegations, we express concern at both the re-listing of the nine Al Jazeera journalists and presenters on a new terrorism watchlist, renewing previous decisions taken in 2021 and 2017, and the arrest and detention of Al Jazeera journalists, Mr. Bahaaeldin Ibrahim Nemaalla Elsayed and Mr. Rabie Mohamed Abdelwahed Elshikh, which represents a violation of their right to freedom of expression in the course of their journalistic work. We reiterate our concerns about the deteriorating space for media workers in Egypt and the chilling effect of such listings on freedom of expression and access to information in the country. We express our most profound concerns that these cases are not isolated but appear to be part of a systematic pattern of misuse of counter-terrorism and national security measures, which undermine individuals' fundamental rights and the rule of law in Egypt. In line with our previous communications EGY 3/2023 and EGY 4/2022, we again reiterate our concerns regarding the vagueness of the counterterrorism and national security legislation in Egypt, which is being misused to target, inter alia, human rights defenders and journalists. We therefore urge your Excellency's Government to amend the Anti-Terrorism Laws and associated decrees in line with international human rights standards.

We express our serious concerns, as highlighted in EGY 8/2021, 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. Due process must be stringently observed, including the disclosure of relevant evidence and the opportunity to effectively challenge the allegations. 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 substantiated, and when maintained over time subject to stringent and ongoing review.

We estimate that this situation appears to violate the right to liberty and security of person, which includes the right not to be subject to arbitrary arrest or detention and to fair proceedings before an independent and impartial tribunal, the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as well as the rights to freedom of expression and freedom of association guaranteed under articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982. Any limitation on the right to freedom of expression must meet the criteria established by international human rights standards, such as article 4 and 19(3). Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We further note with concern that the above allegations appear to be part of a sustained crackdown on Al Jazeera journalists and media freedoms in Egypt. We recall that news producer for Al Jazeera Arabic, Mr. Mahmoud Hussein, was arrested in 2016 (see [AL EGY 1/2018](#)) and subsequently released in 2021. Mr. Hussein was accused of "incitement against state institutions and broadcasting false news with the aim of spreading chaos" on behalf of Al Jazeera, which the authorities consider a mouthpiece of the Muslim Brotherhood.

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 designation of Al Jazeera journalists Mr. Anas Zaki Abdelhalim Khalil, Mr. Ahmed Abdelrahman Ahmed Hussein, Mr. Mohamed Othman

Maher Mohamed Akl, Mr. Abdelrahman Mohmoud Abdelzaher Hussein, Mr. Ayman Mohamed Shafik Mohamed Azzam, Mr. Amr Mahmoud Ahmed Salama Elkazaz, Mr. AbouBakr Hamdi Kamal Mashali, Mr. Samhy Mostafa Ahmed Abdelalim and Mr. Salem Adel Salem Almahroukey on the new terrorism watchlist as well as the process required and undertaken to support such a determination. Please indicate how these measures are compatible with Egypt's international human rights obligations and how the principles of legality, necessity and proportionality, and due process, were respected in this decision.

3. Please provide information about the charges brought against Mr. Bahaaeldin Ibrahim Nemaalla Elsayed and Mr. Rabie Mohamed Abdelwahed Elshikh, as well as the factual and legal basis for their continued pre-trial detention and explain how such measure is compatible with Egypt's human rights obligations under the ICCPR.
4. Kindly provide additional information on how the counter-terrorism measures adopted comply 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) and the model definition of terrorism provided by the mandate of the Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism.
5. Please provide information on the safeguards provided by your Excellency's Government to ensure the fair trial and due process rights of Mr. Bahaaeldin Ibrahim Nemaalla Elsayed and Mr. Rabie Mohamed Abdelwahed Elshikh, including the right to access to a lawyer, the right not to be compelled to confess guilt or to testify against themselves, the right to communicate with the outside world (i.e., family and lawyer) and the right to be brought promptly before a judge after their arrest.
6. Please provide detailed information on any inquiry or investigation, judicial or otherwise that may have been undertaken, in connection with the allegations that Bahaaeldin Ibrahim Nemaalla Elsayed was subjected to torture or other ill-treatment; and on the conclusions of such inquiries. If no inquiry took place, please explain how this is compatible with the Convention against Torture, ratified by Egypt on 25 June 1986.
7. Please provide information on the existing and foreseen measures to guarantee the rights to the freedom of expression and opinion in Egypt. Please explain how such measures are consistent with the obligations engaged by your Excellency's Government, particularly with regard to the International Covenant on Civil and Political Rights (ICCPR).
8. Please provide information about measures taken to ensure that journalists and media outlets in Egypt can carry out their professional activities in line with international human rights standards and in a safe and enabling environment without fear of harassment, criminalisation,

or acts of intimidation of any kind.

9. Please indicate what measures have been taken to ensure that 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.

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.

Irene Khan

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

Ben Saul

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 your Excellency's Government to articles 9, 14, 19 and 22 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, which guarantees the rights to freedom of opinion and expression, and freedom of association.

We would furthermore like to refer to article 9 of the ICCPR, which provides that no one shall be subjected to arbitrary arrest or detention or deprived of their liberty except on such grounds and in accordance with such procedure as are established by law. In this regard, we wish to emphasize that in accordance with the jurisprudence of the Working Group on Arbitrary Detention, a detention is arbitrary when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty such as when a person is kept in detention despite a release order having been issued or after the completion of his or her sentence. States parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention. Further, we wish to remind the Government of Your Excellency that according to the jurisprudence of the Working Group on Arbitrary Detention and general comment no. 35, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is arbitrary.

We would also like to refer to paragraphs 32, 33 and 34 of general comment no. 35 according to which any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power without exceptions. It is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. Accordingly, a public prosecutor cannot be considered as an officer exercising judicial power under paragraph 3. Furthermore, while the exact meaning of "promptly" may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances. Longer detention in the custody of law enforcement officials without judicial control unnecessarily increases the risk of ill treatment. Laws in most States parties fix precise time limits, sometimes shorter than 48 hours, and those limits should also not be exceeded. [...] Any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.

In addition, the Committee stated that the individual deprived of liberty must be brought to appear physically before the judge or other officer authorized by law to exercise judicial power. The physical presence of detainees at the hearing gives the opportunity for inquiry into the treatment that they received in custody and facilitates immediate transfer to a remand detention centre if continued detention is ordered. It thus serves as a safeguard for the right to security of person and the prohibition against torture and cruel, inhuman or degrading treatment. In the hearing that ensues, and in subsequent hearings at which the judge assesses the legality or necessity of the

detention, the individual is entitled to legal assistance, which should in principle be by counsel of choice.

We also wish to bring to the attention of your Excellency's Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent, and impartial tribunal established by law. Further, article 14(3) of the ICCPR guarantees the right of any individual charged with a criminal offence to have adequate time and facilities for the preparation of their defence, to communicate with counsel of their own choosing, to be tried without undue delay, to defend themselves through legal assistance of their own choosing, and not to be compelled to testify against themselves or to confess guilt.

In its general comment no. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism'. Further, the Human Rights Committee made clear that "It is not compatible with article 19 paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information". Article 19 requires the States to guarantee the right to freedom of expression (Id.). It is the States' duty to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (paragraph 23).

Attacks on journalism are fundamentally at odds with protection of freedom of expression and access to information. Governments have a responsibility not only to respect journalism but also to ensure that journalists and their sources have protection through strong laws, prosecutions of perpetrators and ample security where necessary (A/HRC/71/373 para. 35). With respect to charges related to the spreading of false news, 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 this connection, the Human Rights Committee in general comment 34 has held that "under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. (...) All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted (...)." 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.

Furthermore, we bring your Excellency's Government attention to the "principle of legal certainty" under international law 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. This principle recognizes that ill-defined and/or overly broad laws are susceptible to arbitrary application and abuse. 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. As the General Assembly noted in the United Nations Global Counter-Terrorism Strategy (resolution 60/288), effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing. We recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice. As explained by the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in his report (E/CN.4/2006/98, para 37), the model definition includes acts that have the following cumulative characteristics:

- a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages, and
- b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organisation to do or to abstain from doing any act, and
- c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.

In his report focussing on the opportunities and challenges facing the rights to freedom of peaceful assembly and of association in the digital age, the Special Rapporteur on the rights to the freedom of peaceful assembly and of association reminds States that "the Human Rights Council has emphasized that States have the obligation to respect and fully protect these rights online as well as offline" [A/HRC/RES/38/7]. The report also states that "the General Assembly has also called upon all States to 'ensure that the same rights that individuals have offline, including the rights to freedom of expression, of peaceful assembly and of association, are also fully protected online, in accordance with human rights law [A/RES/73/173]'" (A/HRC/41/41, para. 10).

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment

or punishment, as an international norm of jus cogens, and as reflected, inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156. We underline that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

Finally, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in her 2023 report to the General Assembly (A/78/520, paragraph 30) has noted that “CSOs face cross-cutting challenges in the use of sanctions and listing related to terrorism, including through domestic implementation of UN counter-terrorism targeted sanctions and the use of domestic listing regimes untethered to international regimes that create broad opportunities for misuse under the guise of countering terrorism. Domestic level misuse is often tied to the cover provided by the sustained global focus on the obligation of States to address terrorism including through UN Security Council resolutions. The Special Rapporteur has previously noted how abusive designations have been made easier by the broadened criteria introduced in Security Council resolution 1617 (2005) under the targeted terrorism sanction regime (A/73/361, para. 19; A/65/258, see in particular paras 53-58; A/67/396; A/HRC/34/61, paras 17-20.). Multiple submissions to the [Global Study](https://www.ohchr.org/en/special-procedures/sr-terrorism/global-study-impact-counter-terrorism-measures-civil-society-and-civic-space) on the impact of counter-terrorism measures on civil society and civic space (<https://www.ohchr.org/en/special-procedures/sr-terrorism/global-study-impact-counter-terrorism-measures-civil-society-and-civic-space>) emphasized the negative use of sanctions and listings.