

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights defenders**

Ref.: AL EGY 6/2023  
(Please use this reference in your reply)

7 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 Working Group on Arbitrary Detention, pursuant to Human Rights Council resolutions 52/9 and 51/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the arrest, detention and charges brought against prominent publisher and human rights activist Mr. Hisham Kassem.**

Mr. Kassem is a former award-winning publisher of Al-Masry Al-Youm (The Egyptian Today), known for being the first independent daily newspaper, and the founder of the now-defunct Cairo Times magazine. He also serves as the chairperson of the board of trustees of al-Tayar al-Hurr (The Liberal Free Current), a liberal group recently established in opposition to the current President Abdel Fatah Al-Sisi. Mr. Kassem is the former head of the Egyptian Organisation for Human Rights, one of the leading human rights organisations during the presidency of Mr. Hosni Mubarak. Mr. Kassem is well-known for his work exposing alleged corruption and denouncing alleged human rights violations in Egypt, as well as his criticism of President Al-Sisi and how the Government addresses the country's economic crisis.

According to the information received:

On 19 August 2023, the South Cairo Prosecutor summoned Mr. Kassem to provide his testimony in case no. 5007 of 2023, without giving him any further details.

Reportedly, on 20 August 2023, Mr. Kassem presented himself at the prosecutor's office where he was informed that former Minister for Labour Kamal Abu Eita had accused him of "libel and slander". It is alleged he was subsequently arrested by authorities and brought to a police station in al-Sayeeda Zeinab, Cairo, where he was detained. The charges are related to a post Mr. Kassem shared on X, formerly Twitter, in which he criticised the former minister and member of the Presidential Pardon Committee and accused him of corruption. Later that day, the prosecutor granted Mr. Kassem bail for 5,000 Egyptian pounds (approx. 162 USD) but the human rights activist refused to pay, alleging his arrest was politically motivated and arbitrary. Mr. Kassem was then reportedly released without paying bail and published posts on his X and Facebook in which he said "I am more honourable than Abdel Fatah El-Sisi, and all of his men and his regime."

On 21 August 2023, Mr. Kassem was questioned by prosecutors in another case, no. 5284 of 2023, in relation to complaints by three policemen in the police station in al-Sayeda Zeinab where he was allegedly detained on 20 August. Reportedly, the charges of “verbally assaulting police officers” and “intentionally disturbing others and misusing social media” are reportedly related to his social media post explaining his decision not to pay bail after his time in detention on 20 August. It is alleged that Mr. Kassem was then transferred to the Tenth of Ramadan prison to await trial.

On 22 August 2023, Mr. Kassem’s lawyers were informed that he had been referred to trial by the Cairo Economic Misdemeanours Court on charges of slander, libel, “insulting a public official” and “intentionally disturbing the authorities”. From 22 August to 12 September, the human rights activist went on hunger strike which is reported to have had a detrimental impact on his health. Prior to his first trial hearing on 2 September 2023, he was allegedly not permitted to contact his family or lawyers.

It is reported that on 2 September 2023, the Cairo Economic Court adjourned Mr. Kassem’s hearing until 9 September, during which time the human rights activist remained in pre-trial detention in Tenth of Ramadan prison.

Mr. Kassem’s trial was postponed until 16 September 2023, when the Cairo Court reportedly found him guilty of slander, defamation and verbally assaulting a police officer and sentenced him to six months in prison, a fine of 20,000 Egyptian pounds (approx. 647 USD) and a fine of 10,000 Egyptian pounds (approx. 325 USD) of civil compensation to the former Minister of Labour. On 7 October 2023, the sentence was upheld by the Court of Appeals in appeal case, no. 760 of 2023. Reportedly, Mr. Kassem is currently imprisoned in Tenth of Ramadan prison.

The authorities banned diplomats and media from attending trial hearings, denying Mr. Kassem’s right to a public trial. During the first degree and appeal court proceedings, Mr. Kassem’s defence team was allegedly not given fair opportunity to defend their client. Both convictions were issued without granting their requests to access the case file in order to defend the charges against Mr. Kassem. With regard to the defamation charges, the court allegedly refused to allow Mr. Kassem’s defence team to provide evidence to support the veracity of their client’s remarks against the former minister. Regarding the verbal assault charges, both the Public Prosecution and the Cairo Economic Court allegedly rejected the defence team’s request to transcribe and include the recordings of the police department’s surveillance cameras at the time of the alleged insult or hear any witnesses.

Without wishing to prejudge the accuracy of the above-mentioned allegations, we are concerned that the ongoing imprisonment and criminalisation of Mr. Kassem appears to be as a result of his political activity and the expression of his opinion about the current government in Egypt. We are concerned at the apparent abuse of slander provisions to deter and silence critics, political opponents, journalists, civil society organisations and human rights activists and other individuals wishing to express themselves critically about public affairs. We express further concern that the above allegations seem to follow a pattern of repression of dissent, characterised by, inter alia, the arrest, detention and legal proceedings against political, democratic and

human rights activists and journalists who are outspoken and critical of the Government.

Furthermore, we are concerned that Mr. Kassem's right to a fair trial and due process may have been violated during the above-detailed court hearings. Prior to his first trial, it is alleged that Mr. Kassem was denied his right to contact his lawyers. We are further concerned that Mr. Kassem's defence team appear to have been denied access to necessary information they required in order to represent and defend their client in court. Mr. Kassem was reportedly also denied his right to a public trial since authorities prevented diplomats and media from attending the trial hearings. In the context of upcoming elections, we are concerned that Mr. Kassem, who is an opponent of the Al-Sisi government, will be prevented from running in the elections. This raises concerns about the inclusivity and plurality of the election process, which is essential to the democratic system.

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 factual and legal grounds justifying the arrest, detention and charges against Mr. Kassem and how these measures are compatible with international human rights law and standards. Please clarify the safeguards that were granted to Mr. Kassem from the outset of his arrest and throughout judicial proceedings to ensure his trial is fair and in respect of due process standards, in particular his prompt and confidential access to lawyers, contact with the family, and medical examination by an independent expert.
3. Please provide detailed information on the steps that have been taken to ensure that Mr. Kassem's detention conditions meet the international human rights standards enunciated in the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), including the provision of adequate medical care where necessary, and the ability to meet with family members, and lawyers when necessary.
4. Please provide information on the existing and foreseen measures to address our previous concerns regarding the enjoyment of the rights to freedom of opinion and expression and to freedom of peaceful assembly.

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.

Further, 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 the case 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 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.

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

Matthew Gillett  
Vice-Chair on Communications of the Working Group on Arbitrary Detention

## **Annex**

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

In connection with above alleged facts and concerns, we remind your Excellency's Government about its obligations under article 19 of the ICCPR, which guarantees the right to freedom of opinion, and the right to freedom of expression, subject to the strict limitations of article 19 paragraph 3. The right to freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, which not only applies to information that is favourable, but also to information that may shock or offend. Any restriction to the rights under article 19(2) must pursue a legitimate aim, in accordance with a law that is sufficiently clear, and conform to the requirements of necessity and proportionality. As established by the Human Rights Committee in its general comment 34, any State party seeking to invoke a legitimate ground for restriction of freedom of expression on the basis of a perceived threat to national security or public order, must demonstrate in specific and individualised fashion the precise nature of the threat and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat (CCPR/C/GC/34, para 35). As mentioned above, and repeatedly underlined in previous communications, we further emphasise that attacks against individuals, such as through arbitrary detention and criminalisation, for the exercise of freedom of expression is incompatible with the Covenant.

In its general comment 34, the Human Rights Committee also describes how freedom of expression applies to both public and political issues. It states that "a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society" and that "the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion." It also states that "all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition" and that "in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties." (CCPR/C/GC/34, para 13 and 38).

We would furthermore like to refer your Excellency's Government to article 9 of the UDHR and 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. As interpreted by the Human Rights Committee in general comment no. 35 (CCPR/C/GC/35), the notion of "arbitrariness" is not to be equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity, and proportionality (paragraph 12). According to the same general comment (paragraph 17) and the jurisprudence of the Working Group on

Arbitrary Detention, 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 and freedom of association, is arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings.

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. As emphasised by the Human Rights Committee in general comment no. 32 (CCPR/C/GC/32), all trials in criminal matters must in principle be conducted orally and publicly (paragraph 28). (Id.). Article 14(3) of the ICCPR also 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. We would also like to refer your Excellency's Government to articles 3 and 10 of the Universal Declaration of Human Rights which respectively state that "everyone has the right to life, liberty and security of person", "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

We also draw your Excellency's attention to article 25 of the ICCPR, which states that every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) to have access, on general terms of equality, to public service in his country. In this regard, in General Comment 34, the Human Rights Committee expressed concern about laws on matters such as disrespect for authority and the protection of the honour of public officials. It further urged States parties to "consider the decriminalization of defamation, and in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."

Finally, we would like to refer to articles 4, 5, 6 and 7 of the African Charter on Human and Peoples' Rights (African Charter), ratified by Egypt on 20 March 1984, which guarantee respectively that every human being shall be entitled to respect for his life and the integrity of his person, all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited, shall have the right to liberty and to the security of his person and shall have the right to have his cause heard.