

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL EGY 11/2016

5 October 2016

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; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 25/2, 24/5 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **on the re-opening of the so-called "foreign funding case", an investigation into the funding of local and foreign groups, and restrictions imposed on the activities of five human rights defenders and three human rights non-governmental organizations, through the application of the NGO law and freezing of their assets, in ways that are incompatible with Egypt's international human rights obligations.**

The persons affected include Gamal Eid, Founder and Executive Director of the Arabic Network for Human Rights Information (ANHRI); Bahey El-Din Hassan, Founder and Director of the Cairo Institute for Human Rights Studies (CIHRS); Hossam Baghat, investigative journalist and Founder of the Egyptian Initiative for Personal Rights (EIPR); Mostafa Al-Hassan, Director of the Hisham Mubarak Law Center (HMLC); and Abdel Hafez Tayel, Director of the Egyptian Center for the Right to Education (ECRE).

The asset freeze was also applied to three NGOs – the Cairo Institute for Human Rights Studies, the Hisham Mubarak Law Center and the Egyptian Center for the Right to Education.

We have previously expressed concern about the restrictions on civil society in connection with the so-called Case No. 173 and the 84/2002 NGO Law in joint communications sent on 17 November 2011 (see A/HRC/19/44, case no. EGY 12/2011); 12 February 2013 (see A/HRC/23/51, case no. EGY 4/2013); 20 March 2013 (see A/HRC/24/21, case no. EGY 5/2013); 20 June 2013 (see A/HRC/25/74, case no. EGY 9/2013); 29 August 2014 (see A/HRC/28/85, case no. EGY 11/2014); 12 June 2015 (case no. EGY 10/2015); 23 February 2016 (case no. EGY 3/2016), 24 March 2016 (case no. EGY 4/2016); and 4 May 2016 (EGY 6/2016).

We acknowledge receipt of the replies of your Excellency's Government dated 17 and 25 January 2012; 19 May 2013; 22 January and 8 November 2014; and 18 August 2015, but in light of the new information received we remain concerned about the situation.

According to the information received:

On the re-opening of Case No. 173(2011):

In July 2011, an investigation into the funding of local and foreign groups began, a process called Case No. 173 (2011) or the “Foreign Funding Case”. In 2011, Egyptian authorities raided 17 NGOs working on human rights issues. In June 2013 a Cairo criminal court sentenced 43 foreign and Egyptian employees of five international organizations to between one and five years in prison, on charges of operating unlawfully in the country and receiving foreign funding without permission.

The case remained suspended until March 2016 when it was re-opened. With the reopening of Case No. 173(2011) thirty-seven Egyptian organizations are allegedly being investigated for, having illegally received foreign funding.

As a result of the re-opening of the Foreign Funding Case, judges have issued a series of travel bans and asset freeze requests over the past six months, affecting numerous NGOs and human rights defenders. Human rights defenders have been summoned and questioned in relation to accusations of forming illegal organizations and receiving illegal funding used to harm national security. Since an amendment to Egypt’s penal code in 2014, these charges can carry a penalty of up to 25 years of imprisonment and a fine of the approximate equivalent of USD 56,300.

On 17 September 2016, the Cairo Criminal Court issued a decision freezing the assets of 5 human rights defenders and three NGOs named in the “Case 173 on foreign funding” case.

The order places the frozen assets under government custodianship, meaning that the organizations and individuals can no longer make independent decisions about the seized money.

The persons affected include Gamal Eid, Founder and Executive Director of the Arabic Network for Human Rights Information (ANHRI); Bahey El-Din Hassan, Founder and Director of the Cairo Institute for Human Rights Studies (CIHRS); Hossam Baghat, investigative journalist and Founder of the Egyptian Initiative for Personal Rights (EIPR); Mostafa Al-Hassan, Director of the Hisham Mubarak Law Center (HMLC); and Abdel Hafez Tayel, Director of the Egyptian Center for the Right to Education (ECRE).

The asset freeze was also applied to three NGOs – the Cairo Institute for Human Rights Studies, the Hisham Mubarak Law Center and the Egyptian Center for the Right to Education.

The status of two other NGOs, the Egyptian Initiative for Personal Rights (EIPR) and the Arabic Network for Human Rights Information (ANHRI), remains unclear.

Other human rights organizations currently under investigation include, the Arab Center for the Independence of the Judiciary and the Legal Profession (ACIJLP), the Land for Human Rights (LCHR), the Egyptian Democratic Academy (EDA), the Egyptian Center for Economic and Social Rights (ECESR), Nazra for Feminist Studies, the Arab Penal Reform Organization, the Egyptian Association for Community Participation Enhancement (ACPE), and the Andalus Institute for Tolerance and Anti-Violence Studies.

On the draft NGO law:

The re-opening of Case No. 173 (2011) takes place in the context of another development that will further shrink the space for NGOs and civil society in Egypt.

On 8 September 2016, the Cabinet approved a new draft NGO law which retains restrictive provisions already existing in the current NGO Law (Law No. 84/2002). The draft legislation gives the Ministry of Social Solidarity authority to approve or reject the licensing of NGOs. The draft law also limits NGO work to “development and social objectives”, and imposes a high minimum capital necessary to set up an NGO. Other new elements that are introduced by the draft law include the establishment of a specific tax for foreign funding; the banning of activists who have received prison sentence from forming their own NGOs; and requiring the NGOs to conduct work that meet social needs.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern at the growing restrictions imposed on civil society in Egypt and the targeting of human rights defenders and organizations. We express particular concern as these NGOs and defenders appear to be targeted for their peaceful human rights activities as well as the legitimate exercise of their rights to freedom of expression and freedom of association. Serious concern is expressed at the impact of the abovementioned allegations which severely restrain civil society space, intimidating and silencing organizations and human rights defenders operating in Egypt. We are also concerned about the draft NGO bill which would aggravate the already constraining legislative framework and raise further questions about compatibility of the Egyptian legislation with its international human rights obligations.

In connection with the above alleged facts and concerns, please refer to the **Reference to international human rights law annex** attached to this letter which cites international human rights instruments and standards relevant to the situation.

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 therefore 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 concerning the total number of NGOs and individuals currently being investigated or prosecuted for the receipt of foreign funding in connection with Case No. 173, as well as the total number of NGOs and individuals investigated or prosecuted under articles 78, 98(c)(1) and 98(d) of the Egyptian Penal Code for receiving money from abroad for alleged illegal purposes and under article 76(2)(a) of the 84/2002 NGO Law.
3. Please provide detailed information concerning the legal grounds for the investigations into the abovementioned organizations, indicating how these measures are compatible with international human rights norms and standards.
4. Please provide information concerning the legal grounds for asset freezing orders issued against human rights defenders, indicating how this measure is compatible with international human rights norms and standards.
5. Please provide detailed information on the measures taken to bring NGO laws as well as other NGO related laws, into conformity with Egypt's obligations under international human rights law.
6. Please kindly indicate what measures have been taken to ensure that human rights defenders and associations in Egypt are able to carry out their legitimate work in a safe and enabling environment without fear of retaliation, intimidation or harassment of any sort.

We would appreciate receiving a response to the above questions. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release

will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection to the above alleged facts and concerns, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights, ratified by Egypt on 14 January 1982, in particular to articles 19 and 22 which guarantee the rights to freedom of opinion and expression and the right to freedom of association respectively. Any restrictions to these rights must comply with the provisions of the ICCPR, can only be imposed on legitimate grounds, and must conform to the strict tests of necessity and proportionality.

We would also like to refer your Excellency's Government to Human Rights Council Resolution 24/5, in which the Council "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law".

In this context, we recall that Special Rapporteur on the rights to freedom of peaceful assembly and of association has underlined that the right to freedom of association equally protects associations that are not registered (A/HRC/20/27, para. 56).

We would also like to bring to the attention of your Excellency's Government 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 Recognize 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.

Furthermore, we refer to article 5(b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups; and article 6, which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, as well as the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance on these rights. We also underline article 13 of the Declaration, which provides for the right to solicit, receive and utilize resources for the purpose of peacefully promoting and protecting human rights and fundamental freedoms.

Finally, with regard to the proposed NGO bill, we would also like to refer your Excellency's Government to Human Rights Council resolution 22/6, which indicates that domestic law should create a safe and enabling environment for the work of human rights defenders (PPs 10-13).