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Freedom of Expression in Egypt and Tunisia

The Cairo Institute for Human Rights Studies (CIHRS) draws attention to key challenges in legislation concerning the right to freedom of expression in Tunisia and Egypt. In particular, this submission is focused on violations of the right to freedom of expression due to improper laws on defamation, insult, blasphemy, or other overly broad and vague content-based penalizations. While this submission focuses on this particular component of freedom of expression, it should also be noted here that there are numerous other legislative provisions in Tunisia and Egypt that violate freedom of expression, including relative to the press and access to information, which must be addressed as well.

In both Egypt and Tunisia, the old regimes left behind a wide array of repressive laws that on their face violate the right to freedom of expression and have historically been used to silence any voices of which the authorities disapproved. While there was an initial hope following the uprisings in these two countries that these laws would be quickly replaced by new legislation aimed at upholding human rights, the political forces that came to power have instead taken up these old tools to attack their critics. The principle problems encountered in the legislation related to freedom of expression in these two countries are:

1. Laws penalizing criticism of the authorities

International standards require that no special protection be provided for public officials – rather, the higher the rank of the public official, the more legitimate criticism of him/her becomes, for with greater public responsibility comes greater need for public scrutiny. Thus, insofar as they bring law suits in their individual capacities, holders of public office should be required to meet a higher standard to win defamation suits than that required generally. Defamation actions by government bodies should be disallowed. In contradiction to these standards, both Tunisia and Egypt have a multitude of laws on the books penalizing any negative statement made about the authorities. This is found, for instance, in articles 125 and 128 of Tunisia's penal code, which punish those who insult public officials in connection with the exercise of their functions or suggest that a public official has committed illegal acts without establishing the veracity of such claims. Article 179 of Egypt's penal code is another clear example of a clause violating the right to freedom of expression, as it explicitly penalizes those who insult the president.

2. Laws penalizing insults to religion

The defense of religion as an abstract concept is not a legitimate basis for restricting expression. Defamation penalties should only be applied relative to speech directly

targeting individuals, not speech concerning systems of belief or political viewpoints more broadly. To restrict speech in this way does not protect a legitimate interest (in contrast to prohibitions of hate speech, discussed below). Moreover, in practice, legislation penalizing insulting religion is applied in favor of the viewpoint of the religious majority and against those holding minority positions. This is even more clearly the case when the legislation itself penalizes only those who insult a “permitted” religion, as with article 48 of Tunisia’s press code. Article 176 of Egypt’s penal code is even more blatant, penalizing only insults to Islam.

3. Laws penalizing speech that undermines certain state interests

While territorial integrity and the military and diplomatic situation of a country may be legitimate state concerns more broadly, a clause which forbids undermining these areas as such, without further specification, is impermissibly vague and likely to be used to target legitimate political criticisms – as with article 61bis of Tunisia’s penal code. Any specified legislation in this area would have to meet the tests of necessity and proportionality.

4. Laws penalizing the expression of opinions

Expressions of opinion, including insults not containing statements of fact, should never invoke defamation liability, as the ability to express oneself in this manner is fundamental to the right to freedom of expression. In contrast, numerous articles in Tunisia’s law, such as article 54 of the press code and article 57 of decree law 115 of 2011 (issued by the interim government on 2 November 2011), specifically define and punish insults. Numerous articles in Egyptian law, such as articles 308 and 308bis of the penal code, similarly punish insults.

5. The use of overly broad and vague provisions

Overly broad and vague language in laws targeting speech based on its content violates the right to freedom of expression, as legislation on the topic should prioritize the protection of this right by limiting the grounds for restricting it as much as possible. Broad and vague provisions can easily be used to target protected speech and to grant the authorities the discretion to penalize anyone they find personally offensive or who criticizes or disagrees with their ideology or initiatives. This is the case with numerous articles of legislation in both Tunisia and Egypt – particularly troubling are article 49 of Tunisia’s press code, article 54 of decree 115 of 2011, and articles 80(d), 102(bis) and 188 of Egypt’s penal code, all of which punish the spreading of false news, the undermining of public order, and the like.

6. Laws penalizing speech based on offenses to public decency

Public morality is recognized by international law as grounds for limiting expression. However, any limitation imposed on this basis must not be overly broad or vague and must be necessary and proportionate relative to the harm which may be incurred. As such, a clause which penalizes offenses to public decency (article 226 of Tunisia’s penal code) or speech that goes against public morals (article 178 of Egypt’s penal code), without further defining the situations to which clause applies, infringes the

right to freedom of expression, as it may be easily misused to restrict legitimate speech (and even if the clause were precisely defined, it would still have to meet the tests of necessity and proportionality and be targeted at a legitimate interest).

7. The imposition of criminal penalties

Criminal penalties are inappropriate in cases of defamation, as they will inevitably deter individuals from exercising their legitimate right to free expression, including in areas of protected speech. As such, references to defamation (or insult, slander, and the like) should be removed entirely from the penal code, and penal sanctions for defamation should be removed from all other relevant articles (the deployment of such sanctions should be limited to the penal code in any case). As already seen, this is not the case in either Tunisia or Egypt – rather, in both countries criminal punishments are the primary means through which defamation law is enforced.

In addition, the manner in which laws in both countries apply remedies should be revisited, with remedies applied to redress the harm done to plaintiffs, and non-pecuniary remedies favored. The law should provide an upper limit to defamation damages that is not excessive. Defendants should also have a remedy where plaintiffs bring cases with a view to exerting a chilling effect on freedom of expression.

8. Improper language relative to penalization of incitement to crime, violence, discrimination, or hatred

Article 20 of the ICCPR requires that states prohibit the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Such penalization must comply with the rules otherwise applicable to restrictions on freedom of expression, meaning that the restrictions imposed must be clearly and narrowly defined, the least intrusive measure available, not overly broad, and proportionate. Such penalizations must only apply where there is both an intent to promote hatred and the creation of an imminent risk of discrimination, hostility or violence against persons belonging to a particular group. Laws in these areas in both Tunisia and Egypt are in need of reform and review in order to comply with the above standards.

Given the clear contradiction between these laws and international legal standards concerning the right to freedom of expression, CIHRS urges that their use be ceased immediately and the articles concerned repealed. In addition to the problems noted above, defamation law itself is insufficiently developed in these countries, as many defenses and exceptions necessary to preserve the appropriate balance with free expression are not provided for. Freedom of expression is a fundamental right which is necessary to the advance and exercise of other rights, including the right to participation in the political life of one's country. The people of Tunisia and Egypt fought hard to overthrow the former repressive regimes which relied on laws falling into the categories mentioned above to stifle dissent; as such, it is particularly unfortunate that these laws remain on the books and continue to be employed by the current authorities to silence criticism and undermine freedom of expression.