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CIHRS



Freedom of association in Egypt

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Freedom of Association in Egypt

Egyptian NGO Law

I- Overview of freedom of association in Egypt

1. The Egyptian government accepted a number of UPR recommendations on establishing guarantees for freedom of association, reforming Law 84/2002 on NGOs, and developing simple, swift and non-discriminatory procedures for the establishment of NGOs not subject to the discretion of administrative authorities and in compliance with human rights standards. Egypt also pledged to consider amendments to Articles 11, 17, and 42 of Law 84/2002 to ensure that NGO activities and those of human rights defenders are not curbed or their fundraising capacities obstructed, in addition to a revision of this law in order to reduce the power of the administrative authorities and allow NGOs greater independence.
2. In the four years since its first UPR in 2010, Egypt has witnessed tremendous political changes due to the uprising of January 25, 2011. The ruling authorities that have been in power during this period can be divided into four main parties: that of former President Hosni Mubarak, that of the Supreme Council of the Armed Forces (SCAF), that of the Muslim Brotherhood under the leadership of President Mohamed Morsi, and that of the current army-backed transitional government. All such authorities however have been united in suppressing and violating the right to freedom of association, including through proposed legislation, judicial proceedings, and practical measures contradicting Egypt's commitments under international conventions and Egypt's first UPR.
3. The stance of Egypt's successive governments towards civil society has remained the same as under former President Hosni Mubarak: NGOs are seen as subordinate to the government and must operate according to government directives and be subject to government supervision. Independent NGOs, and particularly human rights organizations, continue to be viewed with hostility. The past four years have witnessed harassment and false accusations leveled against human rights organizations in the media, including accusations of treason, espionage, and implementation of foreign "agendas" to destabilize the country. The headquarters of several NGOs have been raided and some of their staff put on trial.
4. Although both the 2012 and 2014 constitutions provided for the establishment of NGOs by notification and prohibited their dissolution by executive decree, articles related to the establishment and dissolution of organizations have not been amended. Rather, the successive governments over the last four years have introduced more than five draft bills on associations, none of which have complied with international standards on the right to freedom of association. Most of these draft bills were even more repressive than the current law.

Although civil society organizations have participated in numerous meetings with the government regarding legislation to regulate associations since the 2011 uprising, none of their proposals have been adopted.

5. Four years after Egypt's first UPR, when the Egyptian government accepted most UPR recommendations concerning the freedom of association and establishment of non-governmental organizations, Egyptian civil society still suffers from persistent violations and the state of freedom of association has deteriorated.

II- The legislative framework on freedom of association in Egypt

A. NGO law no. 84 of 2002

6. Law84/2002 still regulates NGOs. It is highly restrictive and falls far short of international standards and best practices regarding the right to freedom of association. The main problems with this law are as follows:
 - i. The law makes registration mandatory for associations or any other entities acting as associations, obliging them either to submit the documents required by the law or face dissolution (article 4 of the preamble). If an organization fails to register its directors may be punished by imprisonment for no more than 6 months and a fine of up to 2,000 Egyptian pounds or both(article 76II-a). These provisions are incompatible with the conclusions of the report of the Special Rapporteur on the right to freedom of peaceful assembly and the right to freedom of association, in which he state that "the right to freedom of association protects unregistered associations on an equal footing."
 - ii. The law grants the administrative authorities broad powers to refuse to register associations based on vague criteria. In order to be legally recognized, an association must obtain the approval of the administrative authority; if 60 days pass from the date on which the application for registration is submitted without a response, the association will also be considered to have registered(article 6). In practice, the security apparatus will review the association's application during this time, and if the security apparatus objects to the association's activities or founders, the administrative body may refuse its registration by citing vague reasons, such as that the association "threatens national unity", "violates public order and ethics", "incites discrimination among citizens", or "engages in political or trade union activity" (which is restricted to political parties or trade unions)(article 11).
 - iii. The law restricts the right of associations to join or be affiliated with organizations or networks outside Egypt, stipulating that to do so the association must secure the approval of the administrative authority; it will be considered to have received approval if 60 days pass without receipt of a written objection (article 16). The law imposes a penalty of imprisonment for up to three months and a fine of up to1,000 pounds for violations of this

provision(article 76/III/b). Thus, the law limits associations' ability to acquire ECOSOC consultative status with the UN, for instance.

iv. The law allows for governmental control of NGO activities by providing for excessive control of their sources of funding both from within Egypt and abroad, requiring prior approval by the administrative authorities or the Minister of Social Solidarity (MoSS) in the case of foreign funding. The law fails to specify on what grounds the authorities may refuse to allow receipt of funds (article 17). It imposes a penalty of imprisonment for up to six months and a fine of up to 2,000 pounds plus the amount received or receipt of unapproved funds from abroad (Article 76/II/c). Approval of associations' funding depends upon the position of the security apparatus towards the association in question and the activity to be funded; this was seen for example in the case of an association which requested approval for funding to monitor the 2010 parliamentary elections, but was denied until mid-2011.

v. The law blatantly interferes in the privacy of associations and seeks to keep them under tight administrative surveillance and control, including by restricting the freedom of associations to form boards of directors, set dates of board meetings, and determine the quorum needed to convene meetings and validate board decisions. The law also authorizes the competent minister to dissolve boards of directors and grants the administrative authorities the right to veto candidates for board membership and to object to board decisions.

vi. The law provides for highly complicated procedures to register foreign organizations in Egypt, rendering the process nearly impossible. Some international organizations in Egypt have been trying to register since 2008, yet the administrative authorities have neither rejected nor approved their requests. Applications of foreign organizations to register may also be denied without reasons being specified. The administrative authorities have frequently changed the documentation required for international organizations to register, which forces such organizations to repeat the same procedure indefinitely. The authorities do not comply with the time limits stated in the law for responding to applications for registration.

viii. The law grants the relevant minister the right to dissolve associations for highly vague reasons, such as for "undermining public order or ethics" or the association's "inability to fulfill its objectives". The association may also be dissolved for receiving funding from abroad without obtaining prior approval or for participating with foreign organizations or networks without the consent of the administrative authority (article 42), in violation of the right to freedom of association.

ix. The law imposes penalties of imprisonment for violations of some of its provisions, such as failure to properly register, affiliation with foreign networks or bodies without government approval, receipt of funds without approval, or spending funds for purposes other than those for which the association was established (article 76). This serves to intimidate those partaking in the work of

civil society. Not only should there be no criminal penalties included in a law on associations, but also some of the penalized actions are based on limitations which conflict with the right to freedom of association as such.

B: Penal Code, Law 58/1937

7. The Egyptian penal code criminalizes some acts which fall within the scope of associations' legitimate activities. It is under this code, for instance, that 43 staff members of international organizations operating in Egypt were sentenced to up to five years in prison.

The penal code punishes the founders and/or directors of international associations, or branches thereof, operating in Egypt without obtaining prior authorization by imprisonment for up to six months and a fine of 500 pounds or both (article 98c). The association may be dissolved and its funds, property, and official papers confiscated (article 98e). Anyone affiliated to the association or having been involved in its activities in any form may be subject to imprisonment for up to three months (article 98c).

8. Under the penal code, founders of associations whose purpose is "to call for suspending the constitution or the law or harming national unity or social peace" may be sentenced to imprisonment (Article 86bis); such provisions are unacceptably vague. The same article also imposes a five-year prison sentence on those who join such associations or possess some of the data belonging thereto. The imposition of such penalties does not require that the association be involved in violence to fulfill such purposes.

III- Attempts by Successive Governments to Pass Further Repressive Legislation

9. Successive governments over the last four years have attempted to pass legislation even more restrictive than the law in force. A government official stated to the Shura Council in March 2013 that the government began to review the associations law after the 2011 uprising because it does not sufficiently restrict foreign funding.
10. According to data released by the UN Special Procedures and the Office of the High Commissioner for Human Rights, none of the draft laws introduced in the past four years have conformed to international standards on freedom of association. Rather, their aim has been to tighten control over the establishment of associations and to restrict foreign funding and the establishment of foreign organizations by requiring the approval of the security apparatus. (*See, e.g., the draft presented by former President Morsi in May 2013*).
11. Most legislation proposed during this period used the term "notification" in referring to the process of registration or receipt of foreign funds, giving the impression that the bills complied with international standards. However, the procedures described as "notification" in reality required prior approval. For instance, some bills established a period of time that should pass after

"notification" without objection from the authorities before the organization would be considered to have registered.

12. In August 2013, the MoSS established a committee to draft a bill on associations comprising representatives of human rights organizations, including CIHRS. The result was a draft law with many positive aspects. However, in February 2014, that committee was informed that the version of the bill that was referred to the cabinet included amendments that were not discussed in the committee's meetings, particularly regarding the subjects of foreign funding and international organizations. This issue raises concerns that the cabinet may introduce other amendments to render the bill even more repressive.

IV- State Practices against NGOs

A. Raiding NGO offices

13. The past four years have seen fierce attacks on non-governmental organizations, including raids on the offices of eight Egyptian and foreign NGOs by police and military forces.

- i. In February 2011, the Hisham Mubarak Center for Law was raided by military police; computers and legal documents were confiscated.

- ii. In December 2011, police and army forces and members of the public prosecution raided and shut down the offices of six international and Egyptian organizations and confiscated equipment and documents. The organizations were the General Budget Human Rights Observatory, the Arab Center for the Independence of the Judiciary and the Legal Profession, Freedom House, the National Democratic Institute, the International Republican Institute, and the Konrad Adenauer Foundation. Two of these organizations later resumed operations. At the time of these raids, two of these organizations, the International Republican Institute and the National Democratic Institute, had been authorized by the government to monitor the 2011 People's Assembly elections.

- iii. In December 2013, police forces raided the Egyptian Center for Economic and Social Rights and arrested and beat six employees and confiscated their personal computers. They were then interrogated about the organization's sources of funding. Days before, the center had submitted a report about Egypt to the United Nations Committee on Economic, Social and Cultural Rights.

B. Violations against Human Rights Organizations and Defenders

14. Since July 2011, an unprecedented defamation campaign has targeted human rights NGOs. Human rights defenders have been interrogated; some have been criminally tried and have received suspended sentences of between one and two years and five years in prison for others.

15. In July 2011, the cabinet established a fact-finding mission to look into the foreign funding of CSOs. This step was accompanied by a systematic media campaign against CSOs, in which they were accused of high treason, conspiring with foreign countries, and implementing the “agendas” of their funders.
16. Multiple members of SCAF stated that several social movements and youth organizations were seeking to foment strife and create rifts between the Egyptian populace and the army by calling for academic freedom, media reforms, and reforming the judiciary.
17. The attack on NGOs escalated when an order was issued to reveal confidential information about the accounts of a number of human rights organizations and activists, including of CIHRS and its director.
18. The two judges appointed by the Ministry of Justice to investigate the foreign funding case were former members of the Supreme State Security Court. The investigations were marred by many violations, including publicization of the investigations, the systematic leaking of information about the investigations to the media, and a press conference by the judges, all of which appeared designed to discredit the organizations in question and rights organizations more broadly. This conduct demonstrated a lack of judicial independence and compromised the right to a fair trial.
19. Based on these investigations the case was referred to the Cairo Criminal Court, and 43 individuals were charged with establishing, managing and working with unauthorized branches of international organizations operating in Egypt. A travel ban was imposed on these defendants.
20. After the first hearing, the judge hearing the case decided to step down, stating that he felt “embarrassed”, explaining thereafter that he had been pressured to implement certain directives in a blatant interference of the executive in the case. The Supreme Judicial Council reopened internal investigations on the judge claims.
21. In March 2013, a prominent government official stated before the Shura Council that investigations into the foreign funding case would be resumed and would involve Egyptian organizations.
22. In June 2013, the Cairo Criminal Court sentenced the defendants to suspended sentences of between one and two years and five years in prison for others.
23. Following July 3, 2013, the government has used its campaign against the Muslim Brotherhood to mobilize public opinion against CSOs in general, particularly human rights organizations, referring to them as an arm of the international Muslim Brotherhood movement and as a tool used by Europe and the United States used to attempt to reinstate the Muslim Brotherhood.

V- Conclusion

24. Egyptian civil society organizations play an important role in revealing human rights violations and raising human rights awareness. Their role in doing so helped build towards the mass demonstrations of January 25, 2011, and June 30, 2013, in which the people demanded freedom, social justice, and human dignity. As a result of NGOs' work to reveal violations, however, successive governments have adopted a hostile stance towards such groups. None of the numerous governments which have assumed power since Egypt's first UPR in 2010 have displayed any political will to respect the right to freedom of association, or indeed to work towards a transition to democracy and respect human rights in general. Rather, this period has witnessed ongoing efforts to restrict the public sphere, with attempts to silence opposition voices leading to serious and often lethal violations. All of the successive governments over the past four years have had the opportunity to bolster the role of civil society and allow NGOs further independence through legislative reform, and human rights organizations submitted many constructive proposals for such reform, including two draft associations laws which were fully consistent with international standards. Unfortunately, however, successive governments have instead sought to use their legislative powers to support restrictive draft laws falling far short of international standards and to entrench the repressive control of the security apparatus over civil society.