



CONCERNS: LAW ON ASSOCIATIONS

Index: MDE 12/025/2013

29 May 2013

Amnesty International presents the following analysis and recommendations on the draft law on associations, based on Egypt's international human rights obligations, in particular stemming from the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Some amendments have been introduced to earlier drafts commented on by Amnesty International. However, the organization is concerned that draft law, in its current form as prepared by the Ministry of Local Development, amended after discussions in the Shura Council and dated 30 April, continues to retain provisions inconsistent with Egypt's international obligations in relation to freedom of association and freedom of expression.¹ If passed, the legislation would give the authorities wide powers that could be used to violate these rights in practice.

In particular, these provisions may, in practice, allow the authorities to restrict or suppress human rights research and advocacy, in contravention of international standards on human rights defenders.² If the authorities pass the law in its current form, it would send a message to Egyptians as well as to the international community that little has changed since the Mubarak-era, when independent human rights NGOs were viewed with suspicion by the authorities due to their work exposing and addressing human rights violations.

INTERNATIONAL LAW AND STANDARDS

Freedom of association and freedom of expression are protected by a number of international treaties to which Egypt is a state party. Egypt ratified the ICCPR in 1982. Article 22(1) of the ICCPR states that "Everyone shall have the right to freedom of association with others", and Article 19(2) provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Similar provisions are found in the African Charter on Human and Peoples' Rights, which Egypt ratified in 1984. Article 9 of the Charter states that "Every individual shall have the right to receive information," and "every individual shall have the right to express and disseminate his opinions within the law." Article 10 further provides that "Every individual shall have the right to free association provided that he abides by the law."

The scope for Egypt to restrict the rights to freedom of expression and association is limited by international law. This document will explain in more detail below how specific provisions of the draft law are inconsistent with the limited nature of these lawful restrictions.

In debating the draft of the new law, Amnesty International also urges the Egyptian authorities to respect key international standards on human rights defenders, including the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and

Protect Universally Recognized Human Rights and Fundamental Freedoms (commonly known as the Declaration on human rights defenders). Article 5 of the Declaration states that everyone has the right to form, join and participate in non-governmental organizations, associations or groups, as well as to communicate with non-governmental or intergovernmental organizations. Article 13 further notes that “Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means”. In 2009 the UN Special Rapporteur on the situation of human rights defenders submitted a report to the General Assembly on the right to freedom of association, which included a number of specific findings and recommendations with respect to national legislation affecting NGOs.³ Some of these conclusions are highlighted below, but the entire report is potentially relevant to the proposed law in Egypt.

The United Nations Human Rights Committee has specifically commented on the ways in which legislation regulating associations in Egypt has violated the right to freedom of association. In 2002 the Committee called on Egypt to “review its legislation and practice in order to enable non-governmental organizations to discharge their functions without impediments which are inconsistent with the provisions of article 22 of the Covenant, such as prior authorization, funding controls and administrative dissolution.”⁴ The strict regulations on NGOs in Egypt under the current legislation have also been criticized by a number of UN treaty bodies over the last decade, including by the Committee on the Rights of the Child (2011);⁵ the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (2007);⁶ and the Committee against Torture (2002).⁷ The new Law on Associations is an important opportunity for the Egyptian authorities to address these concerns and ensure that Egypt upholds its international human rights obligations.

Finally, Amnesty International has also urged the Egyptian authorities to consider the most recent international standards on protecting human rights defenders, adopted unanimously on 21 March 2013 by the UN Human Rights Council and co-sponsored by Egypt.⁸ The resolution calls on: “States to create a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity” (Article 2). It went on to specify that related legislation must be in line with international law, and condemned: “...the imposition of any limitations on the work and activities of human rights defenders enforced in contravention of international human rights law” (Article 3).

REGISTRATION

Amnesty International is concerned that under the proposed draft, the authorities continue to retain powers to reject the registration of organizations. While exact procedures to submit registration requests are to be laid out in yet-to-be published implementing regulations, Egyptian organizations must still submit notifications of their establishment, providing by certified letter four copies of their statutes and other documents to be entered into the official register of organizations by the Ministry of Insurance and Social Affairs (MISA, Articles 4-6).

Under Article 7, the MISA then has 30 days to consider whether an organization’s activities would breach the prohibited activities listed in Article 10 (those with “military character” or working for profit). If the Ministry rules that the organization would be in breach of the law, it must notify the founders in writing to tell them to rectify the violation. If the founders do not take action within 15 days, the Ministry may then refer the situation to an administrative court. If the Ministry does not object within 30 days, the organization is considered to have been registered. Amnesty International is concerned that the right of the MISA to object to the organization’s activities within 30 days effectively subjects the organization to a form of prior authorization which is inconsistent with international standards.

The UN Special Rapporteur on the situation of human rights defenders has said that “it should be permissible for individuals to join together to engage in lawful activities without having to register as legal entities”, and that registration should only be required if the individuals in question wish to take advantage of separate corporate legal personality for the association.⁹

Amnesty International notes that the UN Special Rapporteur on the rights to freedom of peaceful assembly and association has stated that states should implement a notification – rather than prior authorization – procedure under which “associations are automatically granted legal personality as soon as the authorities are notified by the founders.”¹⁰

FUNDING

Amnesty International is concerned that the draft law gives the authorities the power to arbitrarily block access by human rights organizations in Egypt to funding sources from outside Egypt. Article 13 states that any organization formed under this law has the right to receive funds and donations from Egyptian sources and foreign nationals residing in Egypt. However, foreign funding from international organizations permitted to work in Egypt is subject to approval from a newly created Co-ordinating Committee, whose composition and mandate are outlined in Article 53.

Under the draft law, the Co-ordinating Committee would have the power to object to any organization’s notification of foreign funding by international organizations registered in Egypt within 30 days (Article 13). The law does not specify the legal basis that should guide the Co-ordinating Committee’s decision, but specifies that the Committee must provide a letter specifying the reasons for the decision. Should the organization fail to respond within 15 days, the Co-ordinating Committee must then resort to the courts, which would rule on the objection within 15 days.

The law also requires that international organizations with no branches in Egypt submit requests to the Co-ordinating Committee in order to fund Egyptian organizations, outlining the proposed programmes, activities and projects (Article 63). The Co-ordinating Committee can refuse within 60 days, providing a written justification. The exact legal basis of the rejection which ought to guide the Co-ordinating Committee is not specified in the draft law, short of a reference to the “Constitution and the law”.

While the draft law notes the right of the international organizations to appeal decisions, it fails to specify the time-frame in which the courts must issue a ruling. Amnesty International is concerned that these requirements may deter potential donors from funding Egyptian organizations and severely delay access to funds. The law also omits mention of the right of Egyptian organizations to seek funding from agencies abroad – other than international organizations; potentially severely limiting the available sources of funding for Egyptian human rights organizations.

The proposed draft law also gives the MISA the power to block the ability of organizations to collect donations nationally through television campaigns, mailings or other “charity parties”. Article 14 states that the Ministry may object to such activities within 15 days of being notified by organizations. Should the Ministry object and the organization not respond, an administrative court would then rule on the objection within 15 days.

In practice, in the past, the Egyptian authorities have used restrictive provisions on foreign funding to stifle Egyptian human rights organizations, as well as international organizations. Article 17 of Law 84 of 2002 states that no association shall have the right to obtain money from abroad, or to send money abroad, unless authorized by the Minister of Insurance and Social Affairs. The implementing regulations of Law 84 of 2002 clarify that funds from external sources must be approved by the Minister. If the funding is not approved within 60 days, the association must hold the funds in reserve while waiting for approval (Article 58).¹¹

These kinds of controls are currently subject to strict enforcement. Under Law 84 of 2002, the Ministry of Social Solidarity (renamed the MISA) may move to dissolve an NGO if it is found to have obtained funds from a foreign party without permission (Article 42).¹² Law 84 of 2002 specifically penalizes the act of receiving foreign funding without the approval of the Ministry. The law sets down a penalty of up to six months in prison and a fine (Article 76(2)).

Egyptian human rights organizations registered under Law 84 of 2002 have faced the constant threat of dissolution and prosecution. They have also faced restrictions to their work. For instance, in March 2013, the Egyptian Organization for Human Rights told Amnesty International that in the past two years, the Minister consistently blocked its ability to access foreign funding and therefore carry-out its planned work.

The UN Special Rapporteur on the situation of human rights defenders has said: “Governments must allow access by NGOs to foreign funding, and such access may only be restricted in the interest of transparency, and in compliance with generally applicable foreign exchange and customs laws. Restrictions on foreign funding may limit the independence and effectiveness of NGOs. States should therefore review existing laws in order to facilitate access to funding... States should not require prior governmental authorization to apply for or receive funding from abroad.”¹³

The UN Special Rapporteur on the rights to freedom of peaceful assembly and association has stated: “Any association, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations.”¹⁴ The Human Rights Council resolution on protecting human rights defenders adopted on 21 March 2013 also called on states to ensure that: “restrictions are not discriminatorily imposed on potential sources of funding aimed at supporting the work of human rights defenders” (Article 9).¹⁵

INTERFERENCE

Amnesty International is also concerned that the draft law allows for undue control and interference by the MISA or the Regional Union¹⁶ in the work of organizations. For instance, Articles 15 and 18 stipulate that organizations must annually provide a copy of their accounts, and reports of programmes and sources of funding, to the Regional Union, and a copy of their accounts to the MISA. The Ministry has the authority to inform the organization of any objections to its decisions within 15 days. If the organization takes no action within another 15 days, the Ministry can refer the matter to a court. Further, Article 16 of the draft law allows any individual, association, or body to examine records of the organization’s activities after submitting a demand to the MISA or the Regional Union.

While it may be legitimate for independent bodies to scrutinize the records of associations to ensure transparency and accountability, the potential for such procedures to be used to interfere in the legitimate work of NGOs is troubling. In this regard, the UN Special Rapporteur has noted any such procedure “should not be arbitrary and must respect the principle of non-discrimination and the right to privacy as it would otherwise put the independence of associations and the safety of their members at risk.”¹⁷

FOREIGN NGOS AND RELATIONSHIP TO NATIONAL BODIES

Amnesty International is deeply concerned that the proposed draft would significantly curtail the ability of international NGOs to carry out activities in the country. In practice, this may translate into a refusal to allow any international human rights organizations critical of the government’s record to operate in the country.

The draft law subjects the registration of international NGOs to a different regime than the one applicable to Egyptian organizations. The law creates a Co-ordinating Committee, granting it wide powers over the registration, activities and sources of funding of international NGOs.¹⁸ The Co-ordinating Committee is also granted wide-powers over foreign funding of national NGOs, and funding by Egyptian NGOs of foreign-relief projects.

The Co-ordinating Committee is to be established by a decision of the Prime Minister, to be headed by the Minister of Insurance and Social Affairs, and four representatives of “relevant ministries and agencies” to be selected by the relevant Ministers, as well as four civil society

representatives. It may also draw upon experts identified by the Committee's members (Article 53).

Amnesty International is concerned that the Co-ordinating Committee, in practice, is likely to include representatives of intelligence agencies. At the very least, the "relevant ministries" are likely to include representatives from the Ministry of Interior, which in practice under Hosni Mubarak vetted applications for registration by NGOs. If this is the case, this article would provide a legal basis for the Mubarak-era practice of control over human rights NGO activities by security agencies.

Article 54 states that international NGOs must submit their requests for registration to the Co-ordinating Committee, noting that procedures for submitting applications will be specified in the implementing regulations (yet to be published).¹⁹ The Article goes on to specify that activities of authorized organizations must be in line with the Constitution and Egyptian law. International NGOs cannot carry out any activities in Egypt if they spread partisan activities by "political parties in their countries or threaten national sovereignty" (Article 61).

Furthermore, international NGOs are allowed to spend their funds in the pursuit of their objectives as long as those are in line with "permitted" activities and the Egyptian Constitution and legislation (Article 60). Amnesty International is concerned that these vague and broad provisions may be interpreted to mean that any planned activity undertaken by international organizations must be vetted in advance by the Co-ordinating Committee. They may also be used to prevent international human rights organizations from undertaking legitimate work documenting and reporting on human rights abuses, and campaigning to put an end to them.

These provisions also open the door for the authorities to prevent international NGOs from undertaking activities in the fields of the right to freedom of expression and discrimination against women and minorities, on the grounds that such work contradicts provisions in the Constitution which in practice may limit such rights. Such provisions include Article 44, which prohibits "undermining or subjecting to prejudice all messengers and prophets" and Article 219, which defines Islamic Shari'a principles as being the "fundamental rules of jurisprudence".

Under Article 62 of the draft law, international organizations must provide the Co-ordinating Committee with bi-annual reports on their activities and an annual report on their financial accounts – as well as any other reports, statements or information the Co-ordinating Committee requests. International organizations must also provide copies to the Regional Union.

Should the Co-ordinating Committee object to any of the foreign organization's activities or project funding, they may notify the organization by registered letter. If the foreign organization does not address the supposed violation, the Co-ordinating Committee may resort to a court to request that the organization's activities be suspended pending a final decision.

International NGOs established according to an international treaty or convention which Egypt ratified must apply to the Co-ordinating Committee (Articles 54 and 56) to work in Egypt. A decision is to be issued by a Co-ordinating Committee within 30 days. A failure to respond within 30 days means that the international NGO acquired a legal character. In case of an objection, the international NGO can resort to a court unless the international treaty or agreement states otherwise. International NGOs not established according to an international treaty or convention may pursue their activities if they are so authorized by the Co-ordinating Committee; in case of its failure to respond to their request within 60 days; or based on a court ruling (Articles 54 and 57).

In cases where an international organization discontinues its activities in Egypt based on a court order or their own decision, the organization has the choice to either transfer its money abroad or to a national organization working in the same field (Article 64). The law does not

specify whether permission must be obtained first from the Co-ordinating Committee to transfer money to a local organization.

Under the draft law, no Egyptian government agency can carry out any activities or projects with foreign agencies or bodies unless Co-ordinating Committee is notified (Article 58). National NGOs can co-operate with international ones as long as the activity in question does not conflict with the national NGO's stated goals and the Co-ordinating Committee was notified (Article 12).

Currently, international NGOs wanting to undertake activities in Egypt must submit a request to the Ministry of Foreign Affairs.²⁰ Under Articles 5-7 of the implementing regulations of Law 84 of 2002, the Ministry of Foreign Affairs should respond to these requests within 60 days, and the MISA allow the activities within 15 days of receiving the report of the Ministry of Foreign Affairs.

However, in practice, the Egyptian authorities simply do not respond to the formal requests of international NGOs to operate in Egypt. This has effectively forced these organizations to operate in a legal limbo, without official approval but also without any official rejection of their application. Amnesty International is concerned that a similar system, if not a worse one, is likely to develop under the proposed draft law.

In July 2011, the Egyptian government launched an investigation into the foreign funding of NGOs. The investigation led to an unprecedented series of raids on civil society in December 2011, including five international organizations and two Egyptian human rights organizations.²¹ The investigation was also launched at a time of increased tension between the Egyptian and US governments over the US government's foreign funding for civil society and threats that US military aid to Egypt may be partly contingent on the authorities' human rights record. Following the raids, 43 staff members of international organizations were put on trial on charges of operating without official registration and obtaining foreign funding without the authorities' permission. The trial is still ongoing. Amnesty International has called on numerous occasions for the charges to be dropped.

There is some scope for Egyptian authorities to regulate foreign-based organizations operating in the country. However, Amnesty International is concerned that, in practice, provisions such as those put in the new draft law have allowed the Egyptian authorities to ban foreign organizations from obtaining any form of legal status in Egypt. Amnesty International is concerned the authorities could use provisions in the draft law to suppress the work of international organizations seeking to support Egypt's political transition and to monitor and report on the country's human rights record. The manner in which similar existing provisions are currently being applied is in violation of Egypt's international human rights obligations. The organization is urging the Egyptian authorities to ensure that the law allows international organizations to fully enjoy the rights to freedom of association and expression in Egypt.

The UN Special Rapporteur on the situation of human rights defenders has said that "no distinction regarding the types of permitted activities should be made between national and foreign organizations" and that "foreign NGOs carrying out human rights activities should be subject to the same set of rules that apply to national NGOs; separate registration and operational requirements should be avoided."²²

The draft law's approach to international NGOs is contrary to the best practices outlined by the UN Special Rapporteur on the right to freedom of peaceful assembly and association who advises that "the formation of associations, foreign, association or unions or networks of association, including at the international level should be subject to the same notification procedure [as national associations]."²³

CRIMINAL PENALTIES AND DISSOLUTION

Amnesty International remains concerned that the proposed legislation imposes heavy fines, and also paves the way for organizations found to be in breach of the law to be dissolved. Further, Amnesty International is concerned that the Penal Code can be applied to crimes under this law if the penalty in the Penal Code is found to be heavier.

In the draft law, receiving or sending money abroad without the permission of the Co-ordinating Committee is punishable by a fine of up to LE100,000 (around US\$14,800) (Article 71).

Under Article 72 of the draft, organizations may be penalized, including by being dissolved by a court, for breaching provisions or the law, including using moneys for purposes other than “those for which they were established”, receiving money or donations contrary to the provisions of the law, or joining a foreign entity or organizations “contrary to the law”.

In such cases, the administrative court can either allow the organization to rectify the violation, discontinue the organization’s activities, freeze the membership of the “offending” member from the board, freeze the board, or dissolve the organization and liquidate its funds. The proposed draft does not specify the right of the organization to appeal such decisions.

The UN Special Rapporteur has recommended that suspension or dissolution of an association should only be sanctioned by an impartial and independent court in a case of a clear and imminent danger resulting in a flagrant violation of domestic laws, in accordance with international human rights law.²⁴

RECOMMENDATIONS

Amnesty International is urging the Egyptian authorities to:

- Ensure that legislation to replace Law 84 of 2002 is in line with international law and standards, including Articles 19 and 22 of the ICCPR, Article 10 of the African Charter on Human and Peoples’ Rights and the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (commonly known as the Declaration on Human Rights Defenders).
- In particular, ensure that the new legislation guarantees that, in line with the 2002 concluding observations of the UN Human Rights Committee, non-governmental organizations will be able to carry out their activities without impediments which are inconsistent with the provisions of Article 22 of the ICCPR, such as prior authorization and funding controls.
- In line with the recommendations of the UN Special Rapporteur on the situation of human rights defenders, clarify that persons forming associations are not required to register the association unless they wish to enjoy the benefits of a separate legal personality for the association.
- Ensure that individuals are in principle able to engage in association with one another in any activity that is lawful under Egyptian law and that the only restriction on activities by associations is in relation to those activities that are already prohibited by Egyptian laws which are themselves consistent with human rights.
- Ensure that the law provides that in any attempt by the authorities to deny registration or restrict activities or funding of an organization, as well as any action to dissolve an organization, the onus is on the authorities to demonstrate that the proposed measure will not be overly broad, that it will be necessary and proportionate to a specifically identified legitimate aim being pursued, and that all such measures are subject to review by an independent and impartial court which can reject the imposition of restrictions that cannot be justified by government under international standards.
- Ensure that the MISA, Co-ordinating Committee, or any other government agency cannot reject the registration of an organization without providing, in writing, both a specific and individualized description of the precise activities that would be unlawful, as well as the necessity and proportionality of the specific action taken against the organization.

- In line with the recommendations of the Special Rapporteur on the situation of human rights defenders, ensure the rights of foreign human rights NGOs to operate in Egypt, of Egyptian NGOs to affiliate with international NGOs, and of NGOs to receive funding from foreign sources:
 - Foreign NGOs carrying out human rights activities should be subject to the same set of rules that apply to national NGOs; separate registration and operational requirements should be avoided;
 - NGOs should not require prior governmental authorization to apply for or receive funding from abroad;
 - Ensure the law compels the Ministry responsible for registering NGOs to respond to the applications of foreign organizations in a timely manner;
 - Ensure that the process of enacting legislation to replace Law 84 of 2002 is transparent and includes meaningful consultation with civil society organizations including human rights organizations.

¹ Minor modifications were made to the draft law throughout May 2013; however Amnesty International's concerns on the April draft remain current.

² This document highlights key concerns of Amnesty International. However, the fact that a proposed provision is not mentioned in this document should not necessarily be taken as meaning that it is free from human rights concerns. Amnesty International is also aware of separate draft laws on associations which contain similar and additional restricting provisions.

³ UN Special Rapporteur on the situation of human rights defenders, Report to the General Assembly (UN Doc: A/64/226), 4 August 2009.

⁴ See *Concluding observations of the Human Rights Committee: Egypt. 28/11/2002* (UN Doc: CCPR/CO/76/EGY), 28 November 2002, para21.

⁵ See *Concluding observations: Egypt* (UN Doc: CRC/C/EGY/CO/3-4), 20 June 2011, paras31-32.

⁶ See *Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families* (UN Doc: CMW/C/EGY/CO/1), 25 May 2007, para9.

⁷ The Committee did not refer to specific legislation, but to "The legal and practical restrictions on the activities of non-governmental organizations engaged in human rights work". See *Conclusions and recommendations of the Committee against Torture: Egypt* (UN Doc: CAT/C/CR/29/4), 23 December 2002, para5(i).

⁸ A/HRC/22/L.13

⁹ UN Special Rapporteur on the situation of human rights defenders, Report to the General Assembly (UN Doc: A/64/226), 4 August 2009, para59-66 and 103-104.

¹⁰ *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai* (UN Doc: A/HRC/20/27), 21 May 2012, para58.

¹¹ The implementing regulations note that organizations may receive funds from Egyptian organizations, or authorized foreign organizations, so long as they notify the MISA of the donor and the value of the donation (Article 56).

¹² Article 42 makes reference to Article 16, which states that associations may join, participate or belong to a body based outside Egypt so long as they notify the MISA and the Ministry does not object in writing within 60 days.

¹³ UN Special Rapporteur on the situation of human rights defenders, Report to the General Assembly (UN Doc: A/64/226), 4 August 2009, para123-124.

¹⁴ A/HRC/20/27, para68.

¹⁵ A/HRC/22/L.13

¹⁶ Described in Article 1 of the draft law as a voluntary union, created by organizations subject to the law in the same Governorate.

¹⁷ A/HRC/20/27, para65.

¹⁸ International NGOs can effectively only rent buildings and other infrastructure to enable them to carry out their activities following permission by the Co-ordinating Committee (Article 61). International organizations are also prohibited from undertaking any activities in their headquarters other than those authorized by the Co-ordinating Committee.

¹⁹ Article 56 of the draft law divides international NGOs between organizations established on the basis of international conventions or treaties signed by Egypt, whose application to work in Egypt will be decided by the Co-ordinating Committee within 30 days of the organization's request, and other foreign organizations, which will be decided within 60 days of the organization's request.

²⁰ The process for INGO registration is detailed in the Implementing Regulations of Law 84 of 2002 (No. 178 of 2002).

²¹ Those raided included five international NGOs, the US-based National Democratic Institute (NDI), International Republican Institute (IRI), Freedom House (FH) and International Centre for Journalists (ICFJ), as well as the German-based Konrad Adenauer Stiftung (KAS). They also included at least two Egyptian human rights organizations, the Arab Centre for the Independence of the Judiciary and Legal Profession (ACIJLP) and the Budgetary and Human Rights Observatory (BAHRO).

²² UN Special Rapporteur on the situation of human rights defenders, Report to the General Assembly (UN Doc: A/64/226), 4 August 2009, paras 122 and 126.

²³ A/HRC/20/27, para59.

²⁴ A/HRC/20/27, para100.