

Questionnaire on use of legislation to regulate activities of human rights defenders – Special Rapporteur on the situation of Human Rights Defenders

Response concerning Egypt by: Cairo Institute for Human Rights Studies and Nazra for Feminist Studies (Egypt)

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1. a) Please indicate if your country has a specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders. Please cite the names of such laws or regulations in full.

- There is no such legal framework or specific laws that can facilitate the work of Human Rights defenders, although provisions of the constitutional declaration assert the free practice of the basic rights and the freedoms; this is a contradiction that will be elaborated in detail below.

b) Please indicate how these laws and regulations are in line with the international human rights standards, including, but not limited to, the declaration on human rights defenders.

As stated in response to question 1a, there are no specific laws or regulations that could protect the work of the HRDs. On the contrary, the NGO law, for example law number 84/2002, do not comply with the international human rights standards nor with the declaration on human rights defenders. The same applies for the laws regulating the right to freedom of assembly and the freedom of expression.

c) Please also indicate what legal or administrative safeguards are put in place to prevent baseless legal action against and/or prosecution of human rights defenders for undertaking their legitimate work

- There are no legal or administrative safeguards to prevent baseless legal actions(s) against human rights defenders for undertaking their work. On the contrary, the NGO law and the penal code in particular have set restrictive measures against civil society in every administrative aspect that could limit the impact of their work, such as provisioning on

imprisoning the human rights defenders who work for unlicensed NGOs, as well as the dissolving of their organizations, as will be elaborated below.

2. a) Please describe the measures taken, if any, to ensure that your country's national security-related laws (including laws on public order, public safety, respect for morals and counter-terrorism laws) are not used to unduly restrict the scope of activities of human rights defenders.

- The national security laws and regulations have been and still are used to restrict the scope of activities of Human Rights Defenders. The Egyptian Penal code imposes in Article 98 harsh penalties on any Egyptian/Foreigner who establishes any institution, foundation, or organization the formative purpose of which is to cause disturbances to the social/economic system, to overthrow the regime, or to undertake lethal measures, noting that the legislator did not specify in particular what actions could fall under these categories. This grants the security agencies a wide range of executive powers to detain any person considered to allegedly dismantle the socio-economic system of the state.
- Moreover, the NGO law grants the Ministry of Social Affairs the right to approve the establishment of any NGO which, under article 11, set restrictions on the fields of work the NGOs can functions through; i.e. banning NGOs from doing any political- or trade union activities and from undertaking actions that can threaten national unity, public order or morals, limiting the activities of NGOs to social care and the developmental fields, putting the NGOs working on Human Rights issues such as torture under continual threat.

b) Please also indicate in particular how these national security-related laws respect the human right to freedom of expression and opinion.

- The laws regulating the freedom of expression and opinion in Egypt pose restrictions on the free practice of such rights. The provisions of the penal code and the journalism law penalize actions of:
 - I. Insulting or criticizing any public official, diplomatic depute, or the president of the state and any other president,
 - II. Publishing news that can, allegedly, undermine the country's reputation or disturb the state security,
 - III. Calling for Changing the basic principles of the society

Article 98B of the Egyptian Penal Code, as amended in 1971, allows sentences of up to five years in prison for whomever demands in the Republic of Egypt, by any means, the call for changing the basic principles of the Constitution or the basic systems of the social community, once the use of force or terrorism, or any other illegal method, is noted in doing that. The same penalties shall be inflicted on whoever advocates in any way whatsoever the foregoing deeds.

Article 98B(bis) further extends these penalties to "whoever obtains, personally or by an intermediary, or possesses written documents or printed matter comprising advocacy or propagation of anything of what is prescribed in articles 98B and 174, if they are prepared for distribution or for access by third parties, and whoever possesses any means of printing,

recording or publicity which is appropriated, even temporarily, for printing, recording, or diffusing calls, songs, or publicity concerning a doctrine, association, corporation, or organization having in view any of the purposes prescribed in the said two articles."

Article 102(bis) of the Penal Code allows for the detention of "whoever deliberately diffuses news, information/data, or false or tendentious rumors, or propagates exciting publicity, if this is liable to disturb public security, spread horror among the people, or cause harm and damage to public interest."

It's worth mentioning that these provisions were brutally employed by the ousted president Hosni Mubarak and his regime and the ruling Military council to silence the opposition and the activists who contributed to the exposure of the regime's violations of human rights justifying the regime's baseless decision of extending the emergency status for more than 31 year, as what happened to the two activists Maikel Nabil Sanad and Ala'a Abdel Fatah who were detained and prosecuted in front of military courts due to some tweets and blog posts they published in which they criticized the decisions of the ruling military council. The law that regulates the journalism profession also sets restrictions on the registration of journalists in their syndicate and imposes liberty-depriving penalties on the journalists if they publish news that could disturb the public order.

3. a) Please describe the measures taken, if any, to ensure that provisions of the criminal code, or other national laws, are not ambiguous or too broad to allow their arbitrary use, thereby restricting the activities of human rights defenders.

- Regrettably, no measures have been taken to ensure that the provisions of the penal code and other ruling laws cannot be vaguely employed in the benefit of the executive authority which systematically restricts the activities of the Human Rights Defenders because of these ambiguous charges such as "Disturbing the public order," "Dismantling the Public morals," and "Overthrowing the regime." The ambiguity of the penal code provisions facilitated and paved the way for legalizing the restrictions set on NGOs activities.
- A very clear example of the restrictive legal framework that HRDs have to deal with is Law 14/1923 regarding public gatherings which stipulates that:
 - a. Although Article 1 of the law confirmed the right to freedom of assembly, article 2 of the same law requires the organizers of public assemblies to notify the authorities of the time and place of the assembly at least 3 days before the assembly takes place.
 - b. According to Article 4, security authorities can ban public gatherings, demonstrations, and processions if they are of the view that these gatherings will lead to the disturbance

of public order or public security due to their underlying purpose, timing, location or any other significant reason.

- c. The Law, although providing for the right to freedom of assembly, places many restrictions that make state authorities virtually in control of whether “public gatherings, demonstrations, and processions” take place at all.

b) Please indicate what legal or administrative safeguards are in place in order to ensure that human rights defenders are not discriminated against in the administration of justice, be it through the handing down of disproportionate sentences, the unreasonable prolongation of criminal or other trials, or any other means.

- Human Rights Defenders have faced and are still facing discriminative actions in the administration of justice through trying them in front of military and exceptional courts that do not grant the litigants their basic rights. Reports estimate the number of civilians tried in front of military courts, most of whom are activists and human rights defenders, at around 12,000. This should be seen in light of the critique pointed at the judiciary for its lack of independence that raised allegations on the politicization of its verdicts. Pledges for drafting a law that can provide safeguards for the independence of the judiciary were never looked at and still not discussed.

4. a) Please indicate if your country has specific laws or administrative rule governing the registration, functioning and funding of non-governmental organizations. Please cite the names of any such laws or regulations in full.

- The law that regulates and governs the registration, functioning and funding of NGOs is law number 84/2002.

b) Please explain how these legal or administrative provisions comply with your country’s international human rights obligations regarding the right to freedom of association.

- Law nom. 84/2002 regulates the processes of registration and funding of the NGOs with restrictive legislative philosophy that was reflected in the law provisions as the law:
 - I. Provisions in Article (6) that the Ministry of Social Affairs solely license the NGOs, provided that the registered NGOs don’t practice any military, political, and trade

- union activities or any other activity ,as we aforementioned, that could disturb public order or threaten the state security,
- II. Granted in article (17) the right to approve the funding (foreign and national) the NGOs receive, regardless of the quantity, to the Minister of Social Affairs solely which was maliciously utilized against the NGOs to restrict their work through limiting their funds,

The abovementioned provisions clearly demonstrates that the law breaches the international human rights obligations of the state to respect and guarantee the free practice of the right to freedom of association; a breach that was discussed in Egypt's 2010 UPR that recommended that the Egyptian government shall take serious measures not only towards granting civil society the right to practice the freedom of association more openly and with compliance to the ICCPR, but also to review legislation with regards to the funding approval procedures.

5. a) Are there criminal or other legal or administrative sanctions for human rights defenders who undertake activities on an individual basis or while the association they are member of is unregistered?

- Yes, there are criminal and administrative sanctions for HRDs who work for unregistered NGOs stipulated in the penal code and the NGO law number 841/002. Also, in different articles in the penal code number 58/1937, for example article 98 "a" bis which criminalizes, by liberty-depriving penalties, the formation of NGOs or any other entities that aim to dissent from the socialist regime or the basic principles of the society

b) If such a legal framework exists, does it restrict the type of activities that human rights defenders can undertake? If yes, please provide further details.

- The legal framework that regulates the work of NGOs can best be characterized by the "restrictive" philosophy of its provisions as it imposes severe sanctions on unregistered NGOs. The NGO law in article 76 stipulates that the administrative authority shall order the dissolving of the NGO if it is not licensed and it can ask for the issuance of warrants to impose imprisonment sanctions on the board of the NGO, while the penal code criminalizes the work of the unregistered NGOs in Article 98 through provisioning harsh imprisonment verdicts on those who run an unregistered NGO. These criminal sanctions stand as an obstacle towards freeing civil society from the arbitrariness of the administrative authority and limit the NGOs mobility to freely spread the culture and principles of human rights and contribute to the promotion of human rights norms. This restrictive framework was one of the facilitating factors for the security raid on the premises of some local and international NGOs last December, a preliminary step in the state's crackdown on NGOs that ultimately led to the prosecution of some of the employees of these NGOs who were convicted of practicing unregistered activities. Some of these employees are being tried now and might face serious charges in addition to the dissolving of their NGOs.

6) Please indicate the measure taken, if any, to ensure that internal security and official secret-related laws are used to deny freedom of information to human rights defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.

- Until now, there is no ruling legislation to regulate the practice of the right to access information whether for the HRDs or any Egyptian national, despite many pledges to issue a law that can regulate a free circulation of information (a draft law on this matter is currently being discussed in parliament). The Government has blocked the free access to information for the past decades, using national security considerations as justification – an ambiguous justification employed in several incidents. Blocking facebook and twitter during the 25th of January revolution is a clear example of how the government acts in times when the circulation of information is of grave importance. When the protesters and activists raided the premises of the state security service, they found hundreds of thousands of shredded documents which they believe could have helped in the truth seeking process, while the other undamaged documents were handed over by activists to the military police who promised the exposure of these documents publicly; a promise that has not been met until now. Moreover, fact finding missions of all the massacres and brutal crackdown on protesters during and after the revolution faced difficulties in accessing information that could unveil the truth and the public prosecution itself admitted in its pleading in Mubarak's trial that the state security agencies (Intelligence and the Ministry of Interior) were not helpful in the process of gathering the information that could have seen the perpetrators facing severe charges for their crimes instead of the innocence verdicts some of them recently received.

7. a) Please indicate the measures taken, if any, to avoid the use of defamation, slander or blasphemy laws to unduly restrict the right to freedom of opinion and expression of human rights defenders.

b) How is it ensured that such laws, as well as laws on printing, publication and censorship, comply with international human rights standards and do not target human rights defenders carrying out their legitimate work?

- The laws that regulate the Journalism profession unfortunately do not comply with the universal human rights standards on the freedom of expression, as its provisions give the right to the executive authority represented by the Ministry of Information to impose censorship, mostly implicit, on the human rights defenders and activists while carrying their work. Several reports state that opposition newspapers were confiscated on several occasions since the Mubarak era and until now, basically for allegedly threatening national security. Human Rights Defenders have faced nearly the same repression when it comes to publishing and printing their publications, especially those who criticized and exposed human rights violations. Though the ICCPR limits the freedom of Expression where there is a threat to the public order or any call for violence, the Egyptian penal code goes further to criminalize any criticism or insult to the president (Art: 179) or the president of another state (Art 181), or its representative (Art 182), or the parliament, judiciary authority, and the Army (Art 184). Censorship and self-censorship on the newspapers has lasted for more than 30 years, which is the duration of the extended state

of emergency. The same applies to Human Rights activists, a large number of whom have been detained and charged for breaching the public order and morals because they publicized publications and print-outs exposing human rights violations, including graffiti posts. Most of these were tried in front of a military court.

8) Please indicate if any other type of legislation is used to regulate the activities of human rights defenders in your country and how the application of the legislation mentioned affects the activities of human rights defenders. Please cite the names of any such legislation in full.

- Legislation used to regulate the activities of human rights defenders in Egypt:

1- Assembly Law 10/1914:

- a. Deals with gatherings of five or more persons, setting penalties for those who refuse to obey the orders to disperse, if authorities deemed the assembly a “threat to public peace”. Penalties range from a jail sentence for a period of 6 months to life imprisonment or a fine that ranges from 20-50 Egyptian pounds (\$3.3-\$8).
- The Law makes state authorities in control of any gathering of more than five persons. The right to disperse the gathering if it constitutes a “threat to the peace” is a vague condition that can, in effect, be used to disperse any gathering the state deems unfavorable. The penalties put in place for those refusing to obey the order to disperse curtails the ability of human rights defenders to practice the right to freedom of assembly and punishes them for the practice of the right.

2- Labor law 12/2003:¹

- a. Article 192 provides for the right to strike. The right is curtailed by provisions in Articles 192-195:
 - i. According to Article 192, unions must inform the management of any business or other organization of a strike at least 15 days before it is called.
 - ii. According to Article 193, workers are prohibited from staging strikes that aim to modify the “collective labor agreement during its validity period”
 - iii. According to Article 194, strikes are prohibited in “strategic or vital establishments where interrupting the work therein will result in disturbing national security or the basic services provided by them to the citizens”
 - iv. According to Article 195, the period of the strike will be considered one of “leave to the worker without wage”.
 - Labor activists are thus greatly constricted in their ability to stage strikes, required by the law to report it and legally not entitled to stage a strike that aims to modify the “collective labor agreement during its validity period”. Furthermore, the law
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does not specify what constitutes “strategic or vital establishments” in which strikes are prohibited entirely.

3- The Universities Organization Law 49/1972 and its executive regulations charter 809/1975:

- a. According to article 124 of the Regulation List, certain actions, all entailing rights that every Egyptian citizen supposedly enjoys, can warrant the referral to investigations or to the Board of Inquiry, including the right to peaceful assembly and freedom of expression. Actions that warrant penalties include the organization of strikes inside university buildings or the participating in demonstrations that contravene “public order or proper conduct”; obstructing the course of study or inciting towards such an end; and the planned abstention of attending classes and other university activities that must be attended.
 - b. Penalties are listed in Article 126 of the executive regulations charter and include suspension from the university for a period that does not exceed one month; denying the student(s) concerned from taking a test in one or more subjects; the annulment of the results of a test in one or more subjects; and the complete suspension from the university, which entails the inability to gain access to universities in Egypt, among other penalties.
- The law thus makes it possible to levy extreme penalties on students for actions such as the organization of a strike inside a university building. Similar to provisions found in the aforementioned laws, wording such as demonstrations that contravene “public order or proper conduct” is ambiguous enough to allow the university administration to punish students at whim.