

TIME RECEIVED	REMOTE CSID	DURATION	PAGES	STATUS
January 30, 2014 5:39:36 PM GMT+01: 41 22 7384415	41 22 7384415	153	5	Received
30/01/2014 18:21 41-22-7384415	MISSION EGYPTE			PAGE 01/05

*Permanent Mission of the Arab Republic of Egypt
to the United Nations Office
of International Organisations
in Geneva*



البعثة الدائمة لجمهورية مصر العربية
لدى الأمم المتحدة
والمنظمات الدولية
في جنيف

URGENT & CONFIDENTIAL

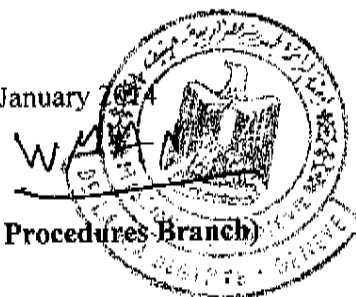
CHAN.2014.028

The Permanent Mission of the Arab Republic of Egypt to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR-Special Procedures Branch), and with reference to your fax dated January 14th 2014 regarding the Joint Urgent Appeal "UA G/SO 214 (67-17) G/SO 214 (56-23) EGY 1/2014" presented by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on freedom of religion and belief concerning the content of the final draft of the new Constitution approved by the Constituent Assembly on 3 December 2013, has the honor to attach a letter addressed by the Permanent Representative of the Arab Republic of Egypt to the United Nations and Other International Organizations in Geneva Ambassador Dr. Walid M. Abdelnasser to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Mr. Frank La Rue, and the Special Rapporteur on freedom of religion and belief Mr. Heiner Bielefeldt.

The Permanent Mission of the Arab Republic of Egypt to the United Nations and Other International Organizations in Geneva appreciates bringing the attached letter to the attention of the two aforementioned mandate-holders.

The Permanent Mission of the Arab Republic of Egypt to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights (OHCHR-Special Procedures Branch), the assurances of its highest consideration.

Geneva, 29 January 2014



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البعثة الدائمة لجمهورية مصر العربية
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Geneva, January 29th 2014

Dear Mr. La Rue, and Mr. Bielefeldt,

With reference to your joint urgent appeal, dated 14 January 2014, and the valuable comments contained therein on specific articles of the Egyptian Constitution, I would like to seize this opportunity to express appreciation for the interest you have both shown in the text. However, I am certain that you have closely followed the news regarding the overwhelming approval of the draft constitution through a public referendum, held on the very same day.

Throughout the term of its mandate, the Committee of 50 (Constitutional Committee) considered countless submissions and held hundreds of public hearings and consultations with different social and political forces and interest groups in an open and transparent manner, and attempted to address the multiple demands and concerns raised. The Government was not involved in the drafting process, and has no prerogative to amend it now according to the newly adopted Constitution. Had your appeal been dispatched earlier, it may have been possible to submit it to the Constituent Committee pursuant to your request, but the latter ceased to exist once it concluded its arduous work and transmitted the final draft to the Interim President on 3 December 2013, as you would surely understand. However, your comments were relayed to all concerned branches of Government, and they are keen on observing these comments in their efforts to follow through with the implementation of the Constitution's provisions.

Rest assured that the Government of the Arab Republic of Egypt takes its obligations under International Human Rights Law with utmost seriousness, in full respect of their spirit and letter. There are myriad instances throughout its history in which the judiciary based itself on Egypt's respective obligations under International Human Rights Law. Additionally, Article 93 of the new Constitution spells out in unambiguous terms that: "the State commits to the international human rights covenants, treaties and conventions ratified by Egypt, and they have the full force of law after publication..." At this stage, I would like to share with you the following preliminary remarks on the issues raised in the joint urgent appeal:

1. It goes without saying that any provision of the Constitution must always be read and interpreted in conjunction with other relevant provisions therein. In fact, Article 227 of the General Provisions Chapter states clearly that “the Constitution with its preamble and all its provisions represent an intertwined fabric and an indivisible whole, and its stipulations are integrated in an organic unity.” Such is the case with regards to Articles 9, 10, 11, 19, 48 and 53 pertaining to equality and non-discrimination, be they related to personal status issues, religious education or otherwise. Similarly, a careful reading of Articles 2, 3, 24, 47, 50, 53, 64 and 80 underlines the need to consider them together when addressing freedom of religion or belief, without prejudice to the provisions on non-discrimination and other relevant Articles as there may be.
2. By the same token, the prohibition in Article 74 on the exercise of political activities or the formation of political parties on the basis of religion, or distinction on grounds of sex or origin, is congruent with the clause in the preamble regarding the civilian nature of government, as well as the principles of equality and non-discrimination, in particular in connection to Article 53. This Article mainly serves to avoid conditions restricting party membership exclusively on the grounds of religion, hence attempting to promote tolerance and avert the dangers of sectarianism and religious fascism.
3. Article 2 provides that Islam is the religion of the State. Other Articles on equality and non-discrimination ensure that this fact shall not result in any discrimination or impairment of the enjoyment of any of the rights under the International Covenant on Civil and Political Rights (ICCPR). Recent rulings of the High Administrative Court assert the equal civil and political rights of all citizens regardless of their religion.
4. Furthermore, Article 64 holds that the freedom of belief is absolute, which in itself is an assurance of protection that very much covers the full extent of Articles 18-1 and 18-2 of ICCPR. The text also makes the distinction between having a religion or belief and manifesting one. In accordance with Article 18-3 of ICCPR, “freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”
5. On the other hand, Article 235 has to be understood against the backdrop of the rampant violent backlash against Egyptian Christians by extremists since July 2013, which resulted in the destruction of nearly 100 churches across the country. Restoration of 10 places of worship is already underway by the Government, but the reconstruction of the remaining religious facilities will cost around 300 Million Egyptian pounds and take some time, due to their total destruction. Therefore, this Article is included in the Transitional Provisions Chapter, mandating the House of Representatives (the House) to issue, during its first legislative session following the adoption of the Constitution, a law to give priority to the construction and restoration of these churches, in order to ensure the freedom to practice religious rituals for Christians. There are laws and regulations already in place to organize the construction and refurbishment of places of worship in general.

6. On freedom of thought and the right to hold opinion, kindly be advised that Article 65 ought to be read and interpreted in conjunction with Articles 57, 58 and 59, as they tackle different aspects of non-interference in the contexts of the inviolability of private life and homes, and the right to safety and security of the person.
7. As you have rightly pointed out, Articles 67 and 71 do not only extend to elements related to the right to freedom of expression, but also address the prohibition by law of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Together, Articles 57, 58, 59, 65, 67 and 71 cover the full scope of Articles 19 and 20 of ICCPR, without prejudice to non-discrimination provisions in the Constitution. However, it is surely for the House to assess existing laws, in order to define restrictions on the exercise of the right to freedom of expression in a clear and narrow manner, and their necessity in response to a pressing social need. The determination of any case of incitement or, conversely, a violation of the right to freedom of expression will only be judged by a competent court.
8. Article 72, on the other hand, deals solely with the press and other media institutions owned by the State, and instructs the latter to ensure their neutrality and all-inclusive representation of views. It follows that the Government may not interfere with the work of privately owned media institutions.
9. The principles of equality and non-discrimination are well entrenched in Egyptian jurisprudence, as reflected in numerous decisions by the Supreme Constitutional Court. Any verdict by a court of first instance may be reconsidered before the court of appeal, in accordance with international standards and guarantees of fair trial, in addition to the option of resorting to a third tier, which has the competence to revise the appropriate application of the law (court of cassation).

On its part, the Government is determined to reinstate the rule of law and uphold the full respect of the independence of the judiciary, and is very careful not to repeat the mistakes of the recent past. After the adoption of the new Constitution, the next step is to establish an Independent Commission for the Elimination of all Forms of Discrimination, as ordained by Article 53 thereof. Should there be certain practices or applications of the law that prove to be discriminatory or inconsistent with the obligations under International Human Rights Law, the Government will seek to rectify them as early as possible. If not, then the judicial system will surely be more than capable of addressing the matter. Egyptians have great faith in the judiciary as the final arbitrator and guarantor of their nascent democracy and the realization of all human rights and fundamental freedoms for all, without distinction.

I hope that the aforementioned clarifies the areas of misunderstanding and alleviates your concerns. Perhaps a thorough second reading of the Constitution in its entirety in light of the remarks above, and a careful analysis of its provisions in view of its own national context, would add more clarity and assurance of Egypt's solid determination to pursue its nationally devised roadmap towards genuine democracy. Mishaps may occur of course, but as Egypt moves forward, the system should be able


to correct itself in implementation; and if the need arises to amend the Constitution, it would then be the responsibility of the House, according to Article 226.

Let me reiterate that the Government believes that it would have been extremely useful if you had conveyed your comments and concerns before the Constitutional Committee had concluded its work. At least, that would have given the Committee an opportunity to consider them, especially that the draft was readily available in the media since late November 2013. Even if you had communicated your views afterwards, but well on time before the referendum, these comments would have enriched the national debate and allowed the public to take a more informed decision when casting their votes. The urgency of your appeal may have been justifiable in either case. In all honesty, the Government fails to see the benefit of issuing a press statement at this stage, as you intend to do. I would thus urge you to reconsider this decision, which we deem would be counterproductive, and to weigh its implications well on the sentiments of the broad majority of Egyptians and its value added for the future of the country.

Rather, I invite you both to work constructively with the current and future Governments, taking into consideration the abovementioned remarks, given that most of the concerns you raise are relevant to the implementation of the Constitution's provisions, more than they are to the text itself, which had just been adopted by an overwhelming majority.

Sincerely,

Dr. Walid M. Abdelnasser



Permanent Representative of Egypt to the UN

And other International Organizations in Geneva

Mr. Frank La Rue
Special Rapporteur on the promotion and protection
of the rights to freedom of opinion and expression

Mr. Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

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