

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the independence of judges and lawyers.**

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (3-3-16)  
EGY 8/2013

28 June 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolution 16/4, 15/21, and 17/2.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding reports of **alleged serious physical threats and assaults on judges and interference in the independence of the judiciary from both the executive and legislative powers**. In particular, we would like to draw the attention of your Excellency's Government to information we have received on **three draft bills proposing amendments to the law governing the judiciary which are reportedly under consideration in the Shura Council**. These draft bills are referred to as the "Bill of Elhorreya wa Eladala party", the "Bill of Elwasat party", and the "Bill of Elbenaa wa Eltanmeya party".

We also would like to draw the attention of your Excellency's Government to a previous communication sent on 29 November 2012, in which the Special Rapporteur on the independence of judges and lawyers expressed serious concern regarding the content of the Constitutional Declaration issued by a presidential decree on 22 November 2012 and its impact on respect for the rule of law, the independence of the judiciary, the autonomy of prosecutors and guarantees of fair trial in Egypt. We regret that to-date we have not received a response from your Excellency's Government to this urgent appeal.

According to the information received:

*Physical threats and attacks*

Physical threats and attacks targeting judges have reportedly escalated in the past months throughout Egypt. Some judges are alleged to have been physically assaulted. Assault attempts against judges and members of public prosecution are also alleged to have taken place inside court premises.

Such threats to the mental and physical integrity of members of the judiciary, as well as their independence, also allegedly include the surrounding of courts by mobs aiming at preventing judges from delivering decisions on certain cases. On several occasions, members of Islamist movements have allegedly incited their followers to surround judges in their homes and courts. In a particular instance on 2 December 2012, after ruling on the unconstitutionality of the election law, the Supreme Constitutional Court was reportedly surrounded by a hostile mob which prevented the judges from accessing their place of work and chanted threats against the judges' lives.

Some judges are also alleged to have been transferred out of their courts as a punishment for rendering decisions that do not meet with the approval of the authorities. Besides, nine judges of the Supreme Constitutional Court were reportedly removed from their positions, allegedly in breach of domestic legislation.

It is further alleged that the Government has refused to implement court rulings and decisions. For instance, the decision of the Supreme Constitutional Court regarding the dissolution of the People's Assembly and the Court of Appeals' ruling concerning the dismissal of the Attorney General were reportedly not implemented. Court decisions and verdicts are also alleged to be constantly ridiculed publicly by the authorities.

Defamation campaigns are also alleged to have been used against the judiciary. Such campaigns allegedly accused judges of being corrupt, biased and not worthy of the respect of the people. On 19 April 2013, a rally was organized by several political parties allegedly calling for the "purging or cleansing" of the judiciary and chanting threats against judges. On 20 April 2013, public threats against the judiciary were allegedly published in the media, calling for people to besiege the homes of members of the judiciary. It is reported that no measures were taken on the part of the Government to investigate these actions and threats and to protect the members of the judiciary.

#### *Draft bills on the judiciary*

During the month of April 2013, three political parties reportedly presented three new draft bills to the Shura Council (the temporary legislative authority) that would amend the law governing the judiciary (law no. 46 of 1972). These bills are referred to as the "Bill of Elhorreya wa Eladala party", the "Bill of Elwasat party",

and the “Bill of Elbenaa wa Eltanmeya party”. The parties presenting the draft bills are allegedly the same political parties which organized the rally of 19 April 2013 mentioned above, calling for the “cleansing” of the judiciary.

It is reported that the three bills are currently under consideration in the Shura Council. The Shura Council reportedly approved the submission of the bills to the Constitutional Committee of the Council, a necessary step before the Shura Council can approve the bills in a general meeting. It is further reported that the Shura Council requested the Minister of Justice to forward the draft bills to judicial entities for their comments, as this is a compulsory constitutional measure.

One of these judicial entities, the Supreme Judicial Council, Egypt’s highest judicial authority, will reportedly consider the three draft bills and issue an opinion in the near future. Regardless of the comments and/or opinions received from the judicial entities, information received suggests that it is very possible that the draft bills be approved in the near future.

It is alleged that the Shura Council, as a temporary body, does not possess full legislative powers, and thereby does not possess the required competence to amend the law governing the judiciary as set out in article 230 of the Constitution. Reportedly, the issue around the competence of the Shura Council is currently being heard before the State Council (case no. 43720/67 J) and the judgment is expected soon. Moreover, the High Constitutional Court reportedly decided that the election system to the Shura Council was unconstitutional as it presented a clear violation of the principle of equality.

It is further alleged that these draft bills, if passed, would seriously undermine the independence of the judiciary:

First, the draft bills reportedly provide for the decrease of the mandatory retirement age for judges from 70 years old to 60 years old. It is alleged that such a decrease could result in the unjustified forced retirement of more than 3500 judges (about 30% of the workforce) who are the most experienced members of the judicial system.

Second, the draft bills are also reported to contain provisions which would allegedly restrict the rights to freedom of association, freedom of peaceful assembly, and freedom of expression of judges, even setting up criminal responsibility for those judges found in breach of such new provisions. In particular, actions taken by courts’ general assemblies (the sole authority that can organize and manage the work of each court) to protest against attacks on their independence, such as strikes, would reportedly be unduly restricted by the new provisions proposed in the draft bills.

Third, it is reported that the draft bills would introduce new legal obligations forcing judges to participate in the supervision and monitoring of elections. Such legal obligations are reportedly accompanied by sanctions that could be imposed on any judge who refuses to participate in the monitoring of elections.

Fourth, the draft bills are also alleged to contain a provision granting immunity from judicial supervision to all presidential decrees issued between the period of 11 February 2011 and 8 December 2012.

Finally, it is alleged that the draft bills would create an ambiguous standard for appraisal of judges' work. Indeed, "competence" would allegedly be introduced as an essential condition to continue in a judicial post. The vagueness of the term "competence" would allegedly create a way to justify the removal of any judge from his post alleging his/her incompetence without following due process.

On 21 April 2013, allegedly protesting against the submission of these bills, the Minister of Justice, Mr. Ahmed Mekki, resigned. On 23 April 2013, the resignation of Mr. Mohamed Gadallah, presidential adviser on judicial affairs, was also announced and is alleged to be linked to the degrading situation of the independence of the judiciary and the tabling of the draft bills.

We would like to express serious concern regarding these alleged serious physical threats and assaults on judges, and interference in, the independence of the Egyptian judiciary. In particular, we would like to express our concerns about the content of the above-mentioned draft bills and their possible consequences on the independence of the judiciary, the rule of law and the principle of separation of powers in Egypt.

In this connection, we would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular:

- Principle 1, which states: "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary." and

- Principle 2, which states: "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

We would also like to refer your Excellency's Government to the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular guideline 4, which states: "States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability."; and guideline 5, which states: "Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions."

Regarding the alleged dismissal of judges, as well as in relation to the draft bills' provision allegedly imposing sanctions on judges who would refuse to participate in the monitoring of elections, and the provision allegedly introducing the possibility to dismiss judges for incompetence, we would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, and in particular the following principles:

- Principle 17, which states: "A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.";

- Principle 18, which states: "Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.";

- Principle 19, which states: "All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct."; and

- Principle 20, which states: "Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings."

Moreover, regarding the alleged transfer of judges from one court to another as a way to sanction the decisions they make, we would like to refer your Excellency's Government to the Universal Charter of the Judge, approved by the International Association of Judges on 17 November 1999, and in particular article 8 which states, *inter alia*: "A judge cannot be transferred, suspended or removed from office unless it is provided for by law and then only by decision in the proper disciplinary procedure."

As regards the draft bills' provision which allegedly proposes to decrease judges' retirement age, we would like to refer your Excellency's Government to the Universal Charter of the Judge, and in particular article 8 which states, *inter alia*: "A judge must be

appointed for life or for such other period and conditions, that the judicial independence is not endangered. Any change to the judicial obligatory retirement age must not have retroactive effect.”

In relation to the draft bills’ provision which allegedly restrict judge’s rights to freedoms of peaceful assembly, of association, and of expression and provide for criminal responsibility, we would like to refer your Excellency's Government to article 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified on 14 January 1982, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”; as well as to article 19 of the ICCPR, which 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.”

We would also like to refer to the Basic Principles on the Independence of the Judiciary, and in particular principle 8, which states: “In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.”; and principle 9, which states: “Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.”

The rights to freedom of expression and of association of judges are also recognized in the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), and in particular in principle 4.6, which states: “A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.”; and principle 4.13, which states: “A judge may form or join associations of judges or participate in other organizations representing the interests of judges.”

With regards to the alleged lack of implementation of court decision, we would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, and in particular principle 4, which states: “There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.”

Finally, with reference to the draft bills’ provision which allegedly grant immunity from judicial supervision to all presidential decrees issued between the period

of 11 February 2011 and 8 December 2012, we would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, and in particular principle 3, which states: "The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law."

It is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide detailed information on the measures undertaken by the authorities to ensure that the independence of the judiciary, the rule of law and the principle of separation of powers are respected, including in newly adopted legislation, in compliance with the international human rights obligations of Egypt.
3. Please provide detailed information on protection measures undertaken to ensure the physical and mental integrity of members of the judiciary and prosecution services, in compliance with international human rights norms, in particular the UN Basic Principles on the Independence of the Judiciary and the UN Guidelines on the Role of Prosecutors.
4. Please provide information about the measures that have been taken to ensure that the rights to freedom of expression and of association are respected and enjoyed by all without undue limitations.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee the independence of the justice system and respect for the rule of law and the principle of separation of powers.

In light of the potentially serious implications of this situation, we are considering to publicly express our concern in the near future.

Please accept, Excellency, the assurances of our highest consideration.

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freedom of opinion and expression

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