

**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; the Special Rapporteur on the situation of human rights defenders; 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 (107-9) G/SO 214 (3-3-16)  
EGY 5/2012

24 February 2012

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; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 16/4, 15/21, 16/5, and 17/2.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **an increasingly restrictive environment for civil society organizations and activists.**

The difficulties for Non-Governmental Organizations (NGOs) to operate within the context of the provisions contained in the NGO law 84/2002 was the subject of a previous communication sent to your Excellency's Government on 17 November 2011 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders. We acknowledge receipt of the response which was transmitted by your Excellency's Government on 17 January 2012.

The search of several local and international civil society organizations' offices in Cairo as a result of an alleged breach of the NGO Law was the subject of a previous communication sent to your Excellency's Government on 12 January 2012, by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and

the Special Rapporteur on the situation of human rights defenders. No reply has so far been transmitted by your Excellency's Government to this communication.

According to the information received:

On 6 February 2012, judiciary officials announced that 43 international NGO workers were referred to Cairo's Criminal Court under the accusation of operating an illegal entity in Egypt and of illegally receiving foreign funding. Among the 43 persons, originally from the Arab Republic of Egypt, Germany, Norway, Serbia, the United States of America and other Arab States, 14 are from the International Republic Institute (IRI), 15 from the National Democratic Institute (NDI), seven from Freedom House, five from the International Center for Journalists, and two from the Konrad Adenauer Stiftung.

The affected organizations have been operating for several years without being investigated or asked to suspend their activities. It is thus alleged that the decision to prosecute civil society workers forms part of an ongoing campaign to control civil society organizations.

On 26 January 2012, security forces prevented about ten international staff members of civil society organizations from travelling abroad.

As described in the communication addressing the search of the offices of several NGOs in Cairo sent on 12 January 2012, armed forces raided the offices of a number of the above-mentioned NGOs. They reportedly confiscated hundreds of files and computers, without documenting the items taken from these offices in official reports. On 30 January 2012, Mr. Nasser Amin, President of the Arab Center for the Independence of the Judiciary and Legal Professions, one of the organizations raided in December 2011, appeared before an investigating judge for questioning. On 4 January 2012, Ms. Nesma Abdel Azim, Secretary of the Arab Network for Human Rights Information (ANHRI) appeared before the investigating judges for questioning. The ANHRI was not among the NGOs searched in December 2011.

Additionally, even before the trial begun, it is reported that the Ministry of Justice, public officials and the two investigating judges have been making vague accusations against rights groups and their members to the press, in particular human rights organizations, asserting that they were conspiring against the country's stability. On 8 February 2012, at a press conference, two judges in charge of the case said that although the five NGOs under investigation were denied registration under the Law on Non-Governmental Societies and Organizations, they continued their work in Egypt. They said that the case file was over 160 pages and referred to criminal code provisions, including those

which provide for a sentence of imprisonment. However, article 75 of the Code of Criminal Procedure requires investigators and others connected to the case to maintain the confidentiality of the proceedings and findings.

On 7 February 2012, NGOs had the opportunity to discuss a draft law on NGOs, which was earlier published in the media, at a Parliamentary hearing session. The draft law published in the media reportedly contained a number of restrictive provisions and did not comply with the Constitution of the Arab Republic of Egypt and State obligations under international law. The source reported that at the end of the session, officials informed that the draft law was only proposed for the purpose of getting a debate started but will need further work prior to consideration by the Parliament.

Concerns are expressed that these prosecutions and interrogations of members of civil society may be part of a broader campaign aimed at intimidating and silencing Egyptian and foreign NGOs operating in Egypt. Concerns are further expressed that despite guarantees provided by your Excellency's Government in a letter of 17 January 2012, provisions of the NGO Law 84 of 2002, particularly those related to foreign funding, are used in a way that impedes the legitimate work of NGOs.

Without expressing at this stage an opinion on the facts of the case, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the respect of the rights to freedom of association, in accordance with article 20 of the Universal Declaration of Human Rights (UDHR) and article 22 of the International Covenant on Civil and Political Rights (ICCPR), which states 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".

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in 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 your Excellency's Government to the fundamental principles set forth in 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, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 9, para. 3, point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms; and

- article 13, (b) and (c) which stipulate 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 freedom, through peaceful means. With regard to article 13, the former Special Representative of the Secretary General on human rights defenders in her 2006 report to the Commission on Human Rights noted: “In accordance with article 13 of the Declaration, the Special Representative has recommended that Governments must allow access by human rights defenders, in particular NGOs, to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments. The only legitimate requirements imposed on defenders should be those in the interest of transparency” (E/CN.4/2006/95, para. 31).

We would like to draw to the attention of your Excellency’s Government the 2009 report of the Special Rapporteur on the situation of human rights defenders to the General Assembly, where it is stated: “States should not criminalize or impose criminal penalties for activities in defence of human rights and for participating in unregistered entities” (A/64/226, para. 104). With specific regard to the issue of the draft law on NGOs, we would encourage your Excellency’s Government to take into account the recommendations put forward in the same report (A/64/226, paras. 101 to 127).

Concerning the referral of the NGO workers to criminal court and reports indicating that this series of prosecutions may form part of a broader intimidation campaign against NGOs operating in Egypt, we wish to underline that the independence of the judiciary imposes the duty on all governmental and other institutions to respect and observe the independence of the judiciary in accordance with principle 1 of United Nations Basic Principles on the Independence of the Judiciary (General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985).

The independence of the judiciary further requires judges to “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” pursuant to principle 2 of the United Nations Basic Principles on the Independence of the Judiciary (General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985). A similar provision is also enshrined in principle 1.1. of the Bangalore Principles of Judicial Conduct adopted in The Hague on 26 November 2002. Principle 1.3 of the aforementioned instrument further stipulates that “A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.”

Furthermore, in accordance with principle 2 of the latter instrument, impartiality is essential to the proper discharge of judicial office. This requires judges to perform their judicial duties “without favour, bias or prejudice” (principle 2.1), and to ensure that their conduct “maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary” (principle 2.2). Likewise, “A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.” (principle 2.4). Not only do such statements contravene international standards but also violate article 75 of the Egyptian Code of Criminal Procedure referred to in the above summary.

Finally, we would like to underline the importance of upholding the rule of law and observe the principle of the independence of the judiciary in a time of transition for Egypt. Taking effective steps to ensure that the judiciary is independent, in this context, is not only a step towards upholding the rule of law, but also a means of consolidating institutional stability and ensuring that human rights and fundamental freedoms are respected in this crucial time of transition. As stated by the Special Rapporteur on the independence of judges and lawyers in a report to the former Commission of Human Rights, “[t]he establishment of the rule of law with a democratic base is a precondition for building a lasting peace and avoiding sliding back into the situation where abuses

occurred” (E/CN/4/2006/52, para. 47). We stand ready to assist your Excellency’s Government in these efforts.

In light of these allegations, we urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the Egyptian and foreign NGO workers operating in Egypt are respected and that accountability of any person guilty of the alleged violations is ensured. We further urge your Excellency’s Government to take all necessary measures to ensure that the rule of law is upheld and that the independence of the judiciary is strictly observed. We also request that your Excellency’s Government adopts effective measures to prevent the recurrence of these acts.

Moreover, 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 cases accurate? Please provide the details of the associations concerned.
2. Has a complaint been lodged by or on behalf of the concerned associations’ members?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to these cases.
4. Please provide information concerning the legal grounds for these prosecutions and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
5. Please indicate what measures have been taken to ensure that the legitimate right to defend human rights peacefully is guaranteed and respected.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

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

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freedom of opinion and expression

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