

**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 and the Special Rapporteur on freedom of religion or belief.**

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (56-23)  
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on freedom of religion or belief pursuant to Human Rights Council resolutions 16/4 and 22/20.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the content of the final draft of the new Constitution approved by the Constituent Assembly on 3 December 2013, including a number of provisions that may not currently be fully in line with human rights, particularly as regards freedom of religion or belief and freedom of opinion and expression.

According to the information received:

On 20 July, a committee of 10 experts was established to propose amendments to the suspended 2012 Constitution within 30 days from its establishment. On 25 August, the 10-expert constituent committee finalized a draft constitutional proposal to be reviewed by a 50-member committee (the Constituent Assembly) for final adoption within a timeframe of 60 days. On 1 September, the Assembly's composition was announced through a Presidential decree. On 3 December, the President of the Constituent Assembly transmitted the adopted text of the new constitution of 247 articles to the Interim President. It was announced that this draft will be put forward on 14-15 January 2014 for approval by the people of the Arab Republic of Egypt through a national referendum.

We would like to submit brief comments with regard to the adoption of draft articles 2, 3, 10, 24, 53, 64, 65,67,71,72, 74, 104, 144, 165 and 235, which, as they currently stand, may be incompatible with the Arab Republic of Egypt's international treaty obligations and could seriously compromise human rights, particularly freedom of religion or belief and freedom of opinion and expression.

We would like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief is protected in the Constitution in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) that your Excellency's Government ratified on 14 January 1982.

We note that the preamble to the draft Constitution includes several references to the special place and role of "the three revealed religions" in Egyptian history. While this may reflect a historical reality, human rights, including freedom of thought, conscience, religion or belief, are based on "recognition of the inherent dignity ... of all members of the human family", to quote from the preamble of the UDHR. We are concerned that specific references to some religions in a constitutional document might lead to discrimination against members of other religions or beliefs.

We note that the preamble to the draft Constitution includes several references to the special place and role of "the three revealed religions" in Egyptian history. We are concerned that this risks excluding members of other religions, as well as atheists and agnostics, from Egypt's historical and cultural narrative.

In its current drafting, article 2 of the draft Constitution provides that Islam is the religion of the State and that Islamic Sharia will be the principle source of legislation. While recognizing the right of the State to regulate the relation between religion and state, we would like to call your Excellency's Government's attention to the UN Human Rights Committee General Comment 22, paragraph 9, which observes that "The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers."

Also, in relation to draft article 2 and draft article 3 dealing with Christian and Jewish religious affairs, we would like to bring to the attention of your Excellency's Government article 26 of the ICCPR which provides that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law". We therefore note and welcome the provisions in draft article 53 regarding equality in public rights and duties, which stipulate that citizens may not be discriminated against on the

basis of religion, or for any other reason and we would expect your Excellency's Government to interpret articles 2 and 3 in a manner consistent with this provision.

Furthermore, we would also like to refer your Excellency's Government to the Human Rights Committee's General Comment 22, paragraph 2, which emphasizes that article 18 of the ICCPR "protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are thus to be broadly construed. Article 18 is not limited in its application to traditional religions, nor to religions and beliefs with institutional characteristics, nor to practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community."

Article 3 provides that the "principles of the laws of Egyptian Christians and Jews are the main source of laws regulating their personal status, religious affairs, and selection of spiritual leaders". As concerns personal status laws, we would like to recall that from the perspective of universal human rights in general, and freedom of religion or belief in particular, personal status questions must be handled in a manner that accommodates existing religious or belief-related pluralism fairly and without discrimination. Persons belonging to a religious or belief minority or not professing any religion should have legally established and reliable options in this regard. By merely acknowledging Christian and Jewish principles of personal status law, this provision fails to address the status of people of other religious or belief orientation. It also could prevent members of these communities from having personal status issues heard by a civil court. Article 3 also denies other religious groups the right to regulate their own religious affairs and to choose their spiritual own leaders.

Concerning draft article 10 which refers to the family as the basis of society and notwithstanding the provisions regarding the place of women, motherhood and childhood contained in the subsequent draft article 11, we expect that these provisions should be interpreted in conformity with article 26 of the ICCPR on non-discrimination, including on the grounds of sex or religion. In this regard, we would like to bring to your Excellency's Government's attention the comments of the Special Rapporteur on freedom of religion or belief in his report A/68/290, in which he emphasizes that "74 (i) States should identify and close human rights protection gaps in personal status laws, including denominational family laws, which disproportionately affect women from religious or belief minorities. The purpose must be to create family law systems that fully respect equality between men and women while at the same time do justice to the broad reality of religious or belief diversity, including persuasions that go beyond the realm of traditionally recognized religions."

With respect to draft article 24 dealing with religious education, we would like to recall that article 18 (4) of the ICCPR provides that “the States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.” Similarly, article 5 (2) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief stresses that “every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.” Furthermore, General Comment 22 notes that “public education that includes instruction in a particular religion or belief is inconsistent with article 18 (4) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.” We would therefore emphasize that in order to comply with international human rights standards, the state will need to ensure schools implement article 24 in a non-discriminatory manner that allows children to opt-out of classes and does not expose them to religious instruction against their or their parents’ convictions.

Concerning article 53, paragraph 2, requiring that “incitement to hate” be punishable by law, we would signal to the attention of your Excellency’s Government that such a phrase must be defined in a precise manner as well as in full appreciation of the significance of freedom of expression and other rights of communicative freedom. In this respect, we would like to recall that in its General Comment 34 (on freedom of opinion and expression), the Human Rights Committee stressed that “[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26 of the ICCPR. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”

Furthermore, the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4, annex, appendix), makes clear that the related article 20 of the ICCPR requires a high threshold because, as a matter of fundamental principle, limitation of speech must remain an exception. Such a threshold needs to be read in consonance with article 19 of the ICCPR. Indeed the three part test for restrictions (legality, proportionality and necessity) also applies to incitement cases, i.e. such restrictions must be provided by law, be narrowly defined to serve a legitimate interest,

and be necessary in a democratic society to protect that interest. This implies, among other things, that restrictions: “are clearly and narrowly defined and respond to a pressing social need; are the least intrusive measures available; are not overly broad, in that they do not restrict speech in a wide or untargeted way; and are proportionate in the sense that the benefit to the protected interest outweighs the harm to freedom of expression, including in respect to the sanctions they authorize.”

As concerns draft article 64 on freedom of belief, which grants absolute freedom of practicing religious rituals and establishing places of worship to followers of revealed religions (as regulated by law), we would like to recall that international standards protect a much broader range of religious activities and extend this freedom to followers of all religions and beliefs. We also note with concern that there is no mention of the right to change one’s religion, nor of the right of parents to raise their children consistent with their own religion or belief. With regard to draft article 235 on freedom of building and renovating churches, this freedom should cover all religions and beliefs and their respective places of worship, devotion or teaching. In this respect, we would like to again call your Excellency’s Government’s attention to the Human Rights Committee’s General Comment 22, paragraph 4, in which it postulates that “the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as, inter alia, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.”

With regard to draft article 65 on freedom of thought, we would like to bring to your Excellency’s Government’s attention article 19 of the ICCPR which establishes not only the “freedom to hold opinions without interference”, but also the right “to seek, receive and impart information and ideas through any media and regardless of frontiers”.

We would also like to refer to draft article 67 which deals with artistic and literary creation and article 71 dealing with freedom of publication. In particular we are concerned by the unclear wording of exceptions relating to the crimes of “incitement of violence, discrimination between citizens and impugning the honour of individuals”. In this respect, we would like to recall that any restriction imposed on the right to freedom of expression, on the basis of any of the above-mentioned instruments, must strictly

comply with the three-part test of limitations to this right, as stipulated in article 19 (3) of the of the ICCPR. This means that any restriction must be provided for by law, which is clear, unambiguous, precisely worded and accessible to everyone.

With regard to article 72 which deals with the independence of press institutions and establishes that “the State shall ensure the independence of all press institutions and owned media outlets, in a way that ensures their neutrality and expressing all opinions, political and intellectual trends and social interests and guarantees equality and equal opportunity in addressing public opinion”, we are concerned by its unclear language and the possible violations of the freedom of the press it may lead to given the vaguely defined role of the State in the oversight of the “neutrality” of all media. Again, we would like to recall the importance of ensuring that any regulation of the media fully complies with the three part test limitation established through article 19 (3) of the ICCPR.

In connection with draft articles 104, 144, and 165 which require the President, Prime Minister, cabinet ministers and members of the House of Representatives to “swear by Almighty God” in the oath of office, as well as with regard to article 74 dealing with “freedom to form political parties”, which prohibits the exercise of political activities or the formation of political parties on the basis of religion, we would like to warn your Excellency’s Government against the potentially discriminatory potential of these provisions and call its attention to article 4 (1) of the Declaration which states that “All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.”.

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.”

In view of all of the aforementioned articles, we would like to call on your Excellency’s Government to ensure conformity with the international human rights legal obligations to which the Arab Republic of Egypt is a state party. Indeed, article 93 of the draft Constitution provides that “The State is committed to the agreements, covenants, and international conventions of human rights that were ratified by Egypt.”

We would respectfully request that your Excellency’s Government transmit this letter to the Constituent Assembly and would be grateful for your Excellency’s Government’s observations on the issues outlined herein. We would particularly

appreciate receiving information from your Excellency's Government on how it expects to uphold the afore-mentioned international norms and standards in the implementation of the Constitution, guaranteeing freedom of religion or belief and freedom of opinion and expression. We undertake to ensure that the reply is accurately reflected in the report that we will submit to the Human Rights Council for its consideration.

We would furthermore like to state our readiness to engage with your Excellency's Government and to provide any guidance and assistance in relation to the proposed legislation to ensure its conformity with international human rights law and norms in accordance with our mandates.

Given the concerns identified above, we also wish to inform you that we intend to issue a press statement following the referendum in order to notify the public of our views.

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

Frank La Rue  
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opinion and expression

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