

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

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

**Mandate of the Special Rapporteur on the independence of judges and lawyers**

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

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

REFERENCE: UA G/SO 214 (3-3-16)  
EGY 16/2012

29 November 2012

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolution 17/2.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received 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.**

According to the information received:

On 22 November 2012, a Constitutional Declaration was issued by Presidential decree.

Article 1 of the Declaration provides for the reopening of the investigations and prosecutions in the cases of the murder, the attempted murder and the wounding of protesters as well as the crimes of terror committed against the revolutionaries by anyone who held a political or executive position under the former regime, according to the Law for the Protection of the Revolution and other laws.

Article 2 states that previous constitutional declarations, laws, and decrees made by the president since he took office on 30 June 2012, until the constitution is approved and a new People's Assembly is elected, are final and binding and cannot be appealed by any way or to any entity. They shall neither be suspended nor cancelled. All lawsuits related to them and brought before any judicial body are annulled.

Article 3 stipulates that the prosecutor-general is to be appointed from among the members of the judiciary by the President of the Republic for a period of four years commencing from the date of office and is subject to the general conditions of being appointed as a judge and should not be under the age of

40; and that the provision applies to the one currently holding the position with immediate effect.

Article 5 states that no judicial body can dissolve the Shura Council or the Constituent Assembly.

I would like to express serious concern about the content of this Constitutional Declaration and its consequences on the independence of the judiciary, the autonomy of prosecutors, respect for the right to a fair trial, as well as respect for the rule of law and the principles of separation of powers and legality in Egypt.

Regarding Article 1 of the Constitutional Declaration, I would like to refer your Excellency's Government to article 14(7) of the International Covenant on Civil and Political Rights, ratified by Egypt in 1982, which states: "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

Regarding Article 2 of the Constitutional Declaration, I would like to refer your Excellency's Government to article 14(1) of the International Covenant on Civil and Political Rights, which states: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." The Human Rights Committee explained in its General Comment No. 32 that: "A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal."

The independence of the judiciary is further recognized in 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 in 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." Principle 3 of the Basic Principles on the Independence of the Judiciary also states that: "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." Principle 4 of the Basic Principles adds that: "There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision."

With respect to Article 2, I would also like to remind your Excellency's Government of article 2(3) of the International Covenant on Civil and Political Rights, which states: "Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed

by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”

Article 3 of the Constitutional Declaration is reported to have resulted in the immediate termination of the term of the Prosecutor-General who had been in place for more than four years and his replacement, even though when he was appointed his conditions of tenure were different under the law. In this context, I would 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.”; guideline 6, which states: “Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.”

Moreover, in report A/HRC/20/19, I have underlined that “Security of tenure of prosecutors should be ensured as an important element for strengthening their independence and impartiality.”, and that “The appointment and selection of the Prosecutor General should be carried out in such a way as to gain public confidence and the respect of the judiciary and the legal profession.”

With respect to Article 5 of the Constitution Declaration, I would like to refer your Excellency's Government to the norms and principles relating to the independence of the judiciary cited above. I would also like to refer your Excellency's Government to article 2(3) of the International Covenant on Civil and Political Rights cited above.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency’s Government to respect and protect the principles of legality and separation of powers, the rule of law, the independence of the judiciary, and the autonomy of the Prosecutor-General, which represent sine qua non requirements for a democratic State.

Moreover, it is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide detailed information on the legal basis of the Constitutional Declaration. Please explain in details how such Declaration complies with international norms of human rights, in particular the International Covenant on Civil and Political Rights to which Egypt is a party.

I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

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

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

Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers