

**Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association**

REFERENCE: OL  
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights to freedom of peaceful assembly and of association pursuant to Human Rights Council resolutions 19/6, 25/2, and 24/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning restrictions imposed under the Egyptian legislation on the right to freedom of expression, particularly in artistic expression and creativity. These laws and decrees include **Law 430/1955** amended by **Law 38/1992** on the censorship of audio-visual materials, **Prime Ministerial Decree 162/1993** on the implementation regulations for audio-visual materials, **Minister of Culture Decree 220/1976** on censorship of artistic works and **Law 35/1978** on the Federation of Artistic Syndicates.

We take note that Article 65 of the Constitution of the Arab Republic of Egypt of 2014 protects the right to freedom of expression "verbally, in writing, through imagery, or by any other means of expression and publication." Article 67 further guarantees the freedom of artistic and literary creativity, and recalls that the "state shall undertake to promote art and literature, sponsor creators and protect their creations, and provide the necessary means of encouragement to achieve this end." We also note the commitment your Excellency's Government has taken in its second Universal Periodic Review to ensure that freedom of expression is safeguarded in all its forms, including artistic expressions (A/HRC/28/16, para. 166.219 and A/HRC/28/16/add.1, para.14).

According to the information received:

**I. ALLEGATIONS RELATIVE TO LEGISLATION REGULATING CENSORSHIP AND IMPOSING OTHER RESTRICTIONS TO ARTISTIC EXPRESSIONS**

Law 430/1955 on the censorship of audio-visual materials provides that censorship of cinema, theatre, musical works and the performing arts aims at protecting public order, public morals and the highest interests of the State (article 1).

Minister of Culture Decree 220/1976 provides standards and criteria that are to be used in censoring artistic expressions. Article 1 of the Decree states that the censorship, referenced in Law 430/1955, aims at elevating the artistic level of expressions, to affirm the religious, spiritual and moral values of the society, to develop the culture of the public and foster the creative energies of artistic expressions. The Decree's censorship provision also asserts that it aims at preserving public morals and public order, and at protecting the youth from deviance.

On this basis, article 2 of Decree 220/1976 bans the licensing of any exhibition, production or promotion of a work that contains any of the following:

1. Calls for atheism, critic or contempt of monotheist religions and religious beliefs and calls for witchcraft.
2. Depiction of the image or the voice of the prophet, whether explicit or symbolic, or the images of the caliphs, the prophet's family, or the ten people advocating paradise, or images of Jesus Christ or any other prophets; competent religious bodies should be consulted in all cases.
3. Inaccurate recitation of Quranic verses, prophetic hadith, and the content of the revealed sacred text or the inaccurate display of religious rules of recitation and rites.
4. Presenting funerals and burial ceremonies in a manner that do not respect the dignity of death.
5. Presenting vice as a means that supports a good end, or in a way that evokes sympathy for the sinner.
6. Presenting vice in a way that might incite committing it, even if the sinner was punished at the end.
7. Showing the naked human bodies in a way that is unusual and contravenes the norms and values of society, allowing actors' clothing to expose details of the body that may embarrasses the viewers or highlighting specific body parts which are inconsistent with social norms.
8. Provocative sexual or homosexual scenes, or any gesture or phrase suggestive of them.
9. Scenes of nakedness and of dance that may lead to excitement or contravene decency and politeness in gesture of the dancers, actors and actresses.
10. Presenting drinking, drugs and addiction as a common behavior or a praiseworthy one. Also, presenting gambling and lottery as accepted sources of income.
11. Using bad words, gestures or meanings that are obscene, of poor taste or vulgar, failure to maintain good taste and judgment when using phrases intimately related to sexual life or illicit sexual relations.

12. Failure to maintain the sanctity of marriage and family values, or the depiction of scenes that are inconsistent with respect for parents.
13. Presenting crime in an encouraging way by idealizing criminals as heroes or minimizing the commission of criminal acts.
14. Presenting revenge crimes in a justified way.
15. Detailed depiction of murder, beatings, torture, and cruelty or the use of horror to frighten the public or in a way that may shock the viewer.
16. Presenting suicide as a reasonable solution to life's troubles.
17. Inaccurate or distorted display of historical events or national figures.
18. Criticizing any foreign country or nation that enjoys good relations with Egypt improperly, if it is not necessary to present an historical analysis of the context.
19. Presenting any issue related to any human being or given people, any given nation in a stereotyped way that subjects them to humiliation or mockery, unless it is necessary to alter this image in a positive manner, such as to discourage racism.
20. Introducing social problems in a way that provokes despair, sectarianism, class division, or threatens national unity.

Prime Ministerial Decree 162/1993 on implementing regulations of censorship allows censoring any work containing elements that broaches certain values, specifically those related to non-mainstream views of matters of religion, sex, or politics, particularly if the artwork advocates atheism or disparages the Abrahamic religions, portrays vices or drug use in an encouraging way or if the artwork includes provocative sexual scenes (Article 8).

The Egyptian Penal Code (Law 58/1937) imposes similar restrictions to freedom of artistic expression on the basis of protecting public morals, religions and the reputations of persons and institutions and foreseen liberty-depriving penalties. Article 98 prohibits and imposes criminal sanctions for “whoever exploits and uses the religion in advocating and propagating orally, in writing or by any other method, extremist thoughts with the aim of instigating sedition or division, or disdaining and contempting any of the heavenly religions or prejudicing national unity and social peace. Article 161 provides further sanctions for misdemeanors connected with religions. Part 14 of the Penal Code (articles 171 to 201) describes crimes occurring by the means of newspapers and “any other method of representation made in public”, including drawing, writing, pictures, photographs, signs and symbols and any other representation method.

According to information received, at least 10 artistic works have been censored and certain artists prosecuted or threatened of prosecution since 2014 on the basis of these instruments. It is also reported that press, media and journalist work were also censored under these provisions.

## **II. ALLEGATIONS RELATIVE TO CENSORSHIP POWERS OF THE MINISTRY OF CULTURE**

Articles 2 and 9 of Law 430/1955 on the censorship of audio-visual materials grant censorship powers to the General Directorate for the Censorship of Artistic Works under the Ministry of Culture. The Ministry of Culture may give, deny or revoke permits required for artistic works and may oversee both the creation of an artwork and any future developments or change by its author.

The current system to appeal refusals to grant or renew permits, as well as decisions to revoke them, outlined in articles 12 and 13, requires the petitioner to pay an insurance fee in order to file the appeal. The amount of such fee is not specified by the Law but determined by Cabinet decree 4248/1998 of the Minister of Culture. The petitioner is also charged all fees relating to expertise required to advise the Committee formed by the Minister of Culture to consider the appeal, which may amount to a large sum for the petitioner.

Under article 5 of Law 430/1955, permits are temporary and have an expiry period. The Law also grants the censorship authority the power to specify the venue in which the permit applies.

Furthermore, article 2 of Decree 220/1976 requests that any depiction of the prophet Muhammad in particular and all the prophets in general, whether in explicit or symbolic forms, should be reported to competent religious bodies.

According to information received, the administrative process related to the implementation of censorship regulations, in particular the many steps required over time, constitute serious obstacle to artistic expression and involve to substantial costs for artists seeking to practice their art.

### **III. ALLEGATIONS RELATIVE TO THE RIGHT TO FREEDOM OF ASSOCIATION OF ARTISTS**

Law 35/1978 on the Federation of Artistic Syndicates states that artists who do not join their relevant professional syndicate (acting, film production, music) or obtain from them a temporary work permit, cannot produce, participate in, or disseminate artworks nor exhibit their art. Sanctions include imprisonment (article 5). The law also prohibits cultural facilities to sign a contract or employ a person who is neither a syndicate member nor the holder of a temporary permit.

### **IV. ALLEGATIONS RELATIVE TO SANCTIONS, INCLUDING CRIMINAL PENALTIES**

Penalties are provided in case of violations of Law 430/1955. Imprisonment for up to two years and/or fines are set out for presenting artistic work without a permit (article 15), applying also to any distributor and the director of the place showing it; changes in a licensed work or the use of segments disqualified by the censorship authority are subject to one year in prison and/or a fine. In addition, an

artist convicted or not complying with the rules set out in article 8 prohibiting the infringement of society's religious, spiritual or moral values, public morale or the public order, sees his/her permit revoked.

Article 17 of the Law stipulates that, in case of violation, any public space involved in the offence will be closed down and all material used will be confiscated.

Article 98 of Egyptian Penal Code (Law 58/1937) provides fines or detention between six months and 5 years of fines for whoever exploits and uses the religion in advocating and propagating orally, in writing or by any other method, extremist thoughts with the aim of instigating sedition or division, or disdain and contempting any of the heavenly religions or prejudicing national unity and social peace. Article 161 provides further sanctions for misdemeanors connected with religions.

Criminal penalties are also provided for violation of Law 35/1978 regulating the Federation of Artistic Syndicates. Imprisonment for up to three months and/ or fines are set out for artists producing, participating in or disseminating an art work who are not members of a professional syndicate and do not hold a permit from one.

According to information received, a number of artists, as well as journalists, have been sentenced over the last years under these laws, in particular articles 171, 174, 178 and 184.

Regarding the **allegations relative to Egyptian legislation regulating censorship and imposing other restrictions to artistic expressions**, we are concerned that the grounds for prohibiting artistic works, as listed under law 430/1955 and Decrees 220/1976 and 162/1993, and above-mentioned articles of the Penal Code (Law 58/1937), do not comply with applicable international human rights standards, in particular with the right to take part in cultural life and to enjoy the arts, and the right to freedom of opinion and expression of information and ideas of all kind, as enshrined in article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt in 1982. We express concern as the lists of expressions that could be censored and are prohibited by law go well beyond the permitted restrictions established under the Covenant and impose undue restrictions to the right to freedom of expression and to take part in cultural life. Namely, restrictions on freedom of expression must be provided by law, may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3 of article 19 and must be necessary and proportionate to achieve one of these legitimate aims (see CCPR/C/GC/34). These Laws and Decrees also contain several provisions that unduly restrict the freedom to manifest one's religion or beliefs, particularly for artistic works that discuss religious issues or matters of belief, a right that is protected by article 18 of the ICCPR.

Regarding **the allegations relative to censorship powers granted to the Ministry of Culture**, concern is expressed that these provisions establish a regime of prior and post-censorship of the arts. Censorship operates over a long period of time and in various spaces, creating a permanent bond between the censorship apparatus and artworks. We express particular concern at prior-censorship systems and the excessive restrictions that these could exert on the right to freedom of expression, as established under the provisions of article 19 (3) of the ICCPR.

Regarding **the allegations relative to the right to freedom of association of artists**, concern is expressed that such provisions are in contradiction with the right to freedom of association, as enshrined in article 22 of the ICCPR and Article 8 of the ICESCR which enshrines the right of everyone to form trade unions and join the trade union “of his choice”, and contribute to further censorship of artistic expression through membership criteria and procedures.

Regarding **sanctions, including criminal penalties**, concern is expressed that the criminal nature and severity of the sanctions, including deprivation of liberty and the closing of public space, are disproportionate for breaching regulations set out in the law and are in contradiction with the protection to the right of freedom of expression and artistic creativity as set out in the ICCPR, ICESCR, as well as article 65 and 67 of the Constitution of the Arab Republic of Egypt of 2014 and the commitment your Excellency’s Government has voluntarily taken in its first Universal Periodic Review, in accepting the recommendation to complete the abolition of imprisonment penalties for publication offences (A/HRC/14/17, para. 95.103).

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all concerns brought to our attention. Therefore, we would be grateful for any additional information and any comment you may have on the above mentioned allegations.

In particular, we would greatly appreciate any information relative to the implementation of these provisions, in particular information indicating how many persons have been prosecuted, how many persons have been sentenced, indicating the nature of the sentence, and how many persons have been detained in relation to conducts described under the above-mentioned provisions of law 430/1955, Decrees 220/1976 and 162/1993, and Law 58/1937. Please provide additional information on the legal grounds justifying censorship or restrictions to artistic forms of expression, indicating how these are compatible with international human rights norms and standards. Please provide information that is desegregated by sex and age, indicating if these provisions have been applied to juveniles (i.e. under 18 years old).

While awaiting your Excellency's response, we would like to urge your Excellency's Government to take all the necessary measures to review the above-mentioned legislation in order to ensure these are consistent with international human rights law and standards, and ensure that its application do not result in imposing undue restrictions on the right to freedom of artistic expression and creativity, in light of relevant international human rights law provisions. We also call your Excellency's Government to ensure that those revisions are carried out in coordination and cooperation with representatives of independent associations of artists and human rights organizations. The full array of States obligations to respect, protect and fulfil the right of every person to freedom of artistic expression and creativity should be considered for this exercise.

We would welcome a response within 60 days.

Your Excellency's Government's response will be made available in a report submitted to the Human Rights Council for its consideration.

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

Farida Shaheed  
Special Rapporteur in the field of cultural rights

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Maina Kiai  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government attention to the relevant Human Rights standards and instruments below.

#### **I- CENSORSHIP AND OTHER RESTRICTIONS TO ARTISTIC EXPRESSIONS**

Regarding the allegations relative to legislation regulating censorship and imposing other restrictions to artistic expressions, we would like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the State of Egypt on 14 January 1982, protecting the right of each person to freedom of expression, which includes the 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 or her choice. In particular, we also recall the General Comment no.34 of the Human Rights Committee, which provides a detailed authoritative interpretation of article 19 of the ICCPR.

We also would like to refer to Article 18 of the ICCPR which provides that the right to 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.

Furthermore, we would like to refer your Excellency's Government to article 15 of International Covenant on Economic, Social and Cultural Rights (ICESCR), also ratified by your Excellency's Government on 14 January 1982. Article 15 recognizes the right of everyone to take part in cultural life and to enjoy the arts. Under this provision, States Parties have also undertaken "to respect the freedom indispensable for scientific research and creative activity".

We would like to draw the attention of Your Excellency's Government to the conclusions of the Committee on Economic, Social and Cultural Rights considers that States must "abolish censorship of cultural activities in the arts and other forms of expression (E/C.12/GC/21, para. 49 c).

As mentioned by the Special rapporteur in the field of cultural rights, the right to freedom of artistic expression and creativity includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. It also entails artistic expressions and creations contesting meanings and revisiting culturally inherited ideas and concepts. According to the Special Rapporteur in the field of cultural rights, States have the challenge of ensuring the full implementation of artistic freedoms and resort to limitations only when absolutely necessary. States shall bear in



mind that they shall not single out some individual conceptions of the beautiful or sacred for official protection, as all persons are equal before the law and are entitled without any discrimination to the equal protection of the law (article 26 of ICCPR) (A/HRC/23/34, paras.3 and 32). Moreover, “it is not compatible with the [ICCPR] for a restriction to be enshrined in traditional, religious and other such customary law” (CCPR/C/GC/34, paras. 24 and 32).

The Special Rapporteur in the field of cultural rights has also stressed that artistic expression and creativity may entail the re-appropriation of symbols, whether national (flags, national anthems), religious (figures, symbols, venues) or social/economical (a certain brand for example), as part of a response to the narratives promoted by States, religious institutions or economic powers. The use of the imaginary and fiction must be understood and respected as a crucial element of the freedom indispensable for creative activities. Representations of the real must not be confused with the real, which means, for example, that what a character says in a novel cannot be equated with the author’s personal views. Hence, artists should be able to explore the darker side of humanity, and to represent crimes or what some may consider as “immorality”, without being accused of promoting these. Decision makers, including judges, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision. (A/HRC/23/34, paras. 36, 37, 88 and 89 d).

Finally, in reference to the banning of “inaccurate or distorted display of historical events” in artworks, we would like to draw the attention of Your Excellency’s Government to the recommendation of the Special Rapporteur in the field of cultural rights to respect the right to freedom of artistic expression and creativity in addressing memorialization issues (A/HRC/25/49, para. 106 e).

## **II- CENSORSHIP POWERS OF THE MINISTRY OF CULTURE**

Regarding the censorship powers of the Ministry of Culture and the concern that these provisions establish a regime of prior and post-censorship of the arts, we would like to draw the attention of Your Excellency’s Government to the conclusions of the Special Rapporteur in the field of cultural rights who emphasized that a system whereby content automatically requires official clearance before it can be released would be unacceptable, as its harm to freedom of artistic expression and creativity would by far outweigh the benefit of its goals. The Special Rapporteur in the field of cultural rights and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression recommends that States abolish prior-censorship bodies or systems where they exist and use subsequent imposition of liability only when necessary under article 19 (3) and 20 of the ICCPR. Such liability should be imposed exclusively by a court of law. Prior censorship should be a highly exceptional measure, undertaken only to prevent the imminent threat of grave irreparable harm to human life or property. Avenues for the appeal before an independent entity of any decision to exercise prior restraint should be guaranteed (A/HRC/23/34, paras. 61 and 89 b). Classification bodies or procedures may

be resorted to for the sole purpose of informing parents and regulating unsupervised access by children to particular content, and only in the areas of artistic creation where this is strictly necessary due in particular to easy access by children. States shall ensure that (a) classification bodies are independent; (b) their membership includes representatives of the arts field; (c) their terms of reference, rules of procedure and activities are made public; and (d) effective appeal mechanisms are established. Particular attention should be paid to ensuring that the regulation of access by children does not result in prohibiting or disproportionately restricting access for adults.

### **III. FREEDOM OF ASSOCIATION OF ARTISTS**

Regarding the right to freedom of association of artists, we would like to refer to article 22 of the ICCPR on the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests, and article 8 of the ICESCR which enshrines the right of everyone to form trade unions and join the trade union “of his choice”, and contribute to further censorship of artistic expression through membership criteria and procedures.

In this connection, we would also like to recall the UNESCO 1980 Recommendation on the Status of the Artist. Under article III-4 of this Recommendation, States should ensure that artists have the freedom and the right to establish trade unions and professional organizations of their choosing and to become members of such organizations, if they so wish. This implies the freedom not to be a member of any association.

In his report A/HRC/20/27, the Special Rapporteur on the rights to freedom of peaceful assembly and of association underlined that “an important component of the right to freedom of association is that no one may be compelled to belong to an association... This aspect is particularly relevant for unions or political parties since a direct interference in their membership may jeopardize their independence” (para. 55).

### **IV- SANCTIONS, INCLUDING CRIMINAL SANCTIONS**

Regarding sanctions, including severe criminal sanctions, deprivation of liberty and the closing of public space, we would like to draw the attention of Your Excellency’s Government to articles 9, 14 and 19 of ICCPR and to the ICESCR, as well as article 65 and 67 of the Constitution of the Arab Republic of Egypt of 2014 and the commitment your Excellency’s Government has voluntarily taken in its first Universal Periodic Review, in accepting the recommendation to complete the abolition of imprisonment penalties for publication offences (A/HRC/14/17, para. 95.103).

In this connection, we would like to recall the recommendations made by the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur in the field of cultural rights to distinguish between a) expression that constitutes a criminal offence; (b) expression that is not criminally punishable but may justify a civil suit or administrative sanctions; and (c) expression that does not give rise to criminal, civil or administrative sanctions but still raises a concern in terms of tolerance, civility and

respect for the rights of others (A/66/290, para. 18; A/HRC/23/34, para. 31). What may be morally objectionable (from one point of view) may not necessarily be legally inadmissible or condemnable. Criminal sanctions should be the very last resort measures only, to be applied in strictly justifiable situations. In this regard, we would like to draw your Excellency's Government attention to a particularly useful suggestion in the Rabat Plan, to use a six-part threshold test for those expressions that are criminally prohibited, implying an analysis of the context, speaker, content or form (which implicitly also refers to "the form of art"), extent of the speech, and likelihood, including imminence (A/HRC/22/17/Add.4).