

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 situation of human rights defenders

REFERENCE:
OL EGY 14/2016

22 November 2016

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 situation of human rights defenders, pursuant to Human Rights Council resolutions 25/2, 24/5 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a new draft law on NGOs adopted by the Egyptian Parliament on 15 November 2016, which, should it enter into force, may have a dramatic impact on civil society organizations in Egypt.

According to the information received:

On 8 September 2016 the Egyptian Cabinet approved a new draft law to govern NGOs that was later sent to Parliament. Since then, the draft law has turned into a more restrictive proposal.

On 15 November 2016, the Parliament approved this latest draft NGO law, after having circulated it among parliamentary committees, the Ministry of Legal Affairs, and other government bodies, but without any consultation with civil society. The draft was sent to the State Council for review and will be sent back to the Parliament for a final vote.

We are seriously concerned that the draft legislation would impose severe restrictions to civil society organizations and would impinge on the exercise of the rights to freedom of expression and freedom of association which are guaranteed under international human rights law.

In this regard we wish to submit the following comments on some of the aspects of the draft law and how in our views these are not in conformity with international human rights standards. We hope these comments will inform the Parliament's further discussion on this draft law. .

1. Limitations imposed through registration requirements

Under the draft law, the registration of domestic NGOs requires prior authorization from the authorities (article 9). The authorities can halt the

registration process at any time on broadly formulated grounds, including submitting documents that are not proper or if the association's purposes are criminalized in the Penal Code or "any other law" (article 9). Moreover, the legislation requires already registered associations to re-register.

An association can only be established "for the purpose of practicing civil work" and must pay a fee of, at most, 10,000 Egyptian pounds (about \$650) (article 8).

The authorities must issue a letter for the association to open a bank account (article 10).

We are concerned that the draft law's registration requirements establish a burdensome procedure to form civil society organizations and could be detrimental to smaller associations that are not able to provide the requested amount of money. Moreover, the registration provisions of the draft law grant the State a discretionary power to decide to stop the registration process. The broad reference to "any other law" as a ground to halt the registration process of an association establishes an unpredictability for associations as well as a broad discretionary power for the State.

As stated by the Special Rapporteur on the rights to freedom of peaceful assembly and association, a notification procedure, rather than a prior authorization procedure that requests the approval of the authorities to establish an association as a legal entity, complies better with international human rights law and should be implemented by States (A/HRC/20/27, para 58.).

With respect to the requirement for already registered associations to re-register, we would like to underline that the right to freedom of association equally protects associations that are not registered. Individuals involved in unregistered associations should be free to carry out any activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions. This is particularly important when the procedure to establish an association is burdensome and subject to administrative discretion, as such criminalization could then be used as a means to quell dissenting views or beliefs.

Membership requirements

The draft law requires that, in order to register, an association must have a minimum of ten members (Articles 1.2), and the board of directors shall be composed of not less than five and not more than 15 members (article 33).

According to article 4, all members of civil society organizations must have the legal capacity to exercise their civil rights and must never have received a "verdict restricting freedom in a crime or offense that breaches honor or honesty," unless they have been rehabilitated.

Article 5 indicates that “It is permitted for non-Egyptians having permanent or temporary residence in Egypt to join membership of any association or its board but they may not exceed 10% of the members and that it shall notify the administrative entity of the names of those desiring to become members of the association or its board”.

We are concerned that the provisions on membership are incompatible with international human rights law and would unduly restrict the possibility for individuals to freely join associations. The different criteria mentioned in articles 1.2, 4, 5, and 33 would in fact impose a serious obstacle to the establishment of associations in respect with pluralism and diversity of its members.

Under international human rights law, freedom of association is a right that applies to “everyone”, without setting any specific limitation as to age, nationality or criminal record (article 22 of the International Covenant on Civil and Political Rights, ICCPR). As noted by the Special Rapporteur on the rights to freedom of peaceful assembly and association a best practice legislation in this regard would be legislation that require no more than two persons to establish an association and the number should not be set as a level that would discourage people from engaging in associations (A/HRC/20/27, para 54.).

We recall that the Special Rapporteur on the rights to freedom of peaceful assembly and association has highlighted that "associations should be free to choose their members and whether to be open to any membership” (Key Guiding Principles of Freedom of Association). This aspect is particularly relevant for unions or political parties since a direct interference in their membership may jeopardize their independence.

Finally, we consider article 4 to be extremely restrictive, in particular, in the current context of other restrictive measures that we previously have noted in Egypt. In particular, the multiple travel bans and charges brought against various organizations and human rights defenders would forbid them from joining associations and carry their legitimate activities, as provided by articles 19 and 22 of the ICCPR.

2. Restrictions on the activities of associations

Article 13 provides that associations “[...]shall work in the fields of social development defined in the articles of association of the association[...]" and “[...] their work and activities within the scopes defined by a resolution by the prime minister shall get the permit to perform these works from the administrative entity after consulting the concerned governor before commencing the implementation[...]".

Furthermore, associations “[...]are not allowed to work in any field or practice any activity that is part of the work of political parties, vocational or employee

syndicates, work of political nature, or work that may cause harm to the national security, law and order, public morals, or public health”.

According to article 14, associations are prohibited to perform a wide range of activities including “[...] activities that result in destabilizing the national unity, national security, public law and order, and public morals [...]” and activities consisting of “[...] conducting surveys or research, and publishing or making available results, associations must present them to the Coordination Committee to make sure of their integrity and neutrality [...]”.

Under article 19, civil society organizations may not collaborate with, join, or participate in the work of a foreign organization without prior Ministry permission and “[...] the executive regulations shall define controls for such cooperation, affiliation or partnership with the local or foreign entity and the contents of the notification of data and information. The association may appeal against the rejection decision before the competent court”.

Article 66 provides that “[...] the associations and entities subject to the provisions of this law shall not rely on foreigners as experts, temporary or permanent workers, or volunteers except after it gets the permit to do so from the Coordination Committee in accordance with the procedures and documents defined by the executive regulation of this law”.

We are concerned that the overly broad language in these provisions are incompatible with international human rights law, in particular with articles 19 and 22 of the ICCPR. The prohibitions established under article 14 represent an interference with the rights to freedom of expression and freedom of association that jeopardizes the essence of these rights. In this regard, we would like to remind your Excellency’s Government that any restriction on the right to freedom of expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.

Prohibiting associations to undertake political activities or conduct field research or surveys is in total contravention of international legal standards. These elements could jeopardize the role of organizations whose aim is to provide an independent assessment and expertise of the human rights situation in the country. Instead, organizations should be considered as having a central role in establishing and fostering an inclusive and pluralistic public debate among society.

Furthermore, articles 19 and 66 of the draft law, restricting cooperation civil society organizations may have with foreign stakeholders imposes an undue interference of State authorities with their activities in ways that are incompatible with international human rights law.

The Special Rapporteur on the rights to freedom of peaceful assembly and association has stressed in his first thematic report that members of associations should be free to determine their statutes, structure and activities and make decisions without State interference. Associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection. They should enjoy, inter alia, the rights to express opinion, disseminate information, engage with the public and advocate before Governments and international bodies for human rights (A/HRC/20/27, para 64.).

3. Restrictions on domestic and foreign funding

Article 23 provides that an organization must notify the Ministry thirty days before receiving domestic grants and donations and must receive the Ministry's approval before it may spend such funds.

According to article 24 of the draft law, Egyptian organizations must obtain prior approval from the government before accepting donations and grants from outside Egypt: "The Competent Minister, after consulting with the Coordination Committee, shall issue a decision regulating the procedures and rules for receiving funds within one month of the date of funds receipt into the account of the association. The Coordination Committee may object to the receipt of funds within the sixty working days following the date of notification [...]".

Organizations must publish "[...] the declaration of the sources of its funding, the names of its members, its annual budget and its activities" on their websites and the Ministry of Social Solidarity's website [...] (Article 25).

We are concerned that these abovementioned provisions would complicate the access of funding for associations, and even prevent them, in some cases to access them at all, as the authorization completely relies on the State's discretion.

We recall that the ability for associations to access funding and resources is an integral and vital part of the right to freedom of association. We highlight that any associations, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations (A/HRC/20/27, para. 68). It is also considered as a best practice, legislation that does not prescribe the approval of the authorities before receiving domestic and foreign funding, regardless of the goals of the concerned organizations.

4. Restrictions imposed through provisions on state interference

Article 27 provides that State authorities may enter to the premises or branches of any association to monitor its activities and review its records on administrative,

technical and financial aspects to ensure that they are in compliance with the provisions of the law. The association and its board shall assist the representatives to fulfill their tasks.

The draft also allows the authorities to contest any decision an association makes and requests its withdrawal if such decision is deemed to violate the law (article 31). The draft provides that the authorities may review any new board members that an association proposes and disqualify those it deems ineligible for candidacy (articles 34).

We are concerned that article 27 represents an undue interference in the association's activities and would therefore jeopardize their independence and their right to privacy (article 17 of the Covenant on Civil and Political Rights). We recall that the right to freedom of association obliges States to take positive measures to establish and maintain an enabling environment. According to the Special Rapporteur on freedom of peaceful assembly and association authorities must also respect the right of associations to privacy as stipulated in article 17 of the Covenant on Civil and Political Rights.

In this connection, we would like to highlight the recommendations made in the report of the Special Rapporteur on freedom of peaceful assembly and association, that authorities should not be entitled to condition any decisions and activities of the association; reverse the election of board members; condition the validity of board members' decisions on the presence of a Government representative at the board meeting or request that an internal decision be withdrawn; request associations to submit annual reports in advance; and enter an association's premises without advance notice (A/HRC/20/27, para. 65).

5. Dissolution and criminalization

Dissolution

Article 42 foresees that the board of directors can be dissolved on grounds such as receiving funds from an external entity or send funds to an external entity (article 42.4) or for committing the “crime of wasting of funds or any other crimes covered under chapter four, volume two, of the penal code” (article 42.5).

Article 43 indicates that an association can be dissolved for very broad reasons, including, failing to undertake activities foreseen in article 14 (see above) (article 43.2), for receiving “funding from an external entity without obtaining the necessary permit or spends these funds in violation to the provisions” of the law (article 43.4), if it “cooperates, joins, subscribes or affiliates to a foreign club, association, authority or organization in violation to the provisions” of the law (article 43.6) or, “conducting actual works or serious programs for a year from the date of establishment or from the date of the last activity” (article 43.7).

It must be noted that article 44 foresees an urgent procedure if the competent court decides there is a violation of article 42 or 43: the case could skip the regular procedure of presentation in front of the Egyptian Lawsuits Authority.

We are concerned that articles 42 and 43 use overly broad and vague grounds for the dissolution of, respectively, the board of directors and organizations. Furthermore, it is unclear why dissolution of associations should go through an accelerated procedure and not through the ordinary judicial procedure.

We recall that the suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient. Moreover, such measures should only be taken by independent courts (A/HRC/20/27).

Criminalization

The draft law reinstates individual criminal penalties, including prison terms of at least one year and up to five “without prejudice to any severer penalty stipulated in the penal code or any other law” (article 86), for individuals found guilty of, different broad charges, including for conducting prohibited activities contained in article 14, a. and b. (see above), receiving “[...] funds from abroad or sends money to abroad or collects donations in violations to provisions of this law[...]” (article 87.b), performing a national activity in Egypt without obtaining a permit from the Coordination Committee or in violation to the provisions of this law or the rules of performing the licensed activity” (article 87.d), administering

field research or surveys without prior permission (article 87.e) or for working with an unregistered or unauthorized organization (article 87.f.).

Furthermore, a jail sentence not exceeding a year or a fine of no less than twenty thousand pounds and not exceeding five hundred thousand pounds shall be imposed whoever deliberately refrains from enabling the authorities to monitor and examine the activities of the association (article 88.b) or whoever moves the premises to a different location than the notified one (88.c).

We are seriously concerned about the establishment of these harsh and disproportionate criminal penalties on associations and their members. If adopted, these provisions would impose severe restrictions on articles 19 and 22 of the ICCPR. Moreover, we reiterate our concerns vis-à-vis the use of overly broad and vague terms to criminalize individuals for the legitimate exercise of the rights to freedom of expression and freedom of association.

6. Restrictions on foreign non-governmental organizations

Article 70 provides that the National Foreign NGO Regulatory Agency, the Coordination Committee working under the supervision of the Prime Minister, undertakes the responsibility of looking into matters related to the establishment, work and activity of foreign NGOs in Egypt. Article 72 lists the different representatives forming the board of directors of the Coordination Committee, including representatives from various intelligence and security services, such as the military, the Ministry of Interior, the Ministries of Justice and of Foreign Affairs.

Article 59 provides that foreign NGOs that are not affiliated with a “foreign government, political party, or foreign syndicate” may only operate in Egypt with prior permission. An operating permit for a foreign organization may last a maximum of three years, and cost up to 300,000 Egyptian Pounds (\$20,000) – a fee which will increase by 20 percent every five years (articles 61).

Foreign organizations may only engage in activities that are “[...] consistent with the needs of the Egyptian society based on the priorities of development plans. It shall not be involved in the work of political parties, vocational or employee syndicates, work of political nature, or work that may cause harm to the national security, law and order, public morals, or public health” (Article 62). According to article 64, foreign NGOs are prohibited from sending, moving or transferring any funds or donations allocated for implementing activities or projects in Egypt in the outside unless after obtaining an authorization from the Coordination Committee. Associations need prior authorization from the Coordination Committee to rely on foreigners as experts, temporary or permanent workers, or volunteers (Article 66). The competent minister may, with the approval of the Coordination Committee, freeze the activities of a foreign organization at any time or cancel the organization’s licence if it commits violations of the law (Article 68).

We are concerned by the composition of the Coordination Committee made up of representatives from various intelligence and security services as they might put at risk the independence of civil society organizations. We are seriously concerned that the above-mentioned provisions grant the authorities a wide range and discretionary powers over foreign organizations, in ways that are incompatible with the permissible restrictions to the rights to freedom of expression and freedom of association under international human rights law.

We recall that resolution 24/5 of the Human Rights Council reminds States of their obligation to “respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and 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 moreover refer to resolution 2005/38 of the Commission on Human Rights, highlighting that the right to peaceful assembly and association and the right to take part in the conduct of public affairs, are intrinsically linked to freedom of opinion and expression. In this context, states are to take all necessary measures to create conditions for the promotion of these rights. The promotion of civil society is fundamental to ensure stability and economic growth, and states should take all measures to promote civil society, including through legislation that is in compliance with international human rights law.

As 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, we would therefore be grateful for your observations on the abovementioned matters.

While awaiting a reply, we urge that all relevant authorities in Egypt take all necessary measures to ensure the full compliance of domestic legislation with international human rights norms and standards, in particular reversing or revoking the legislative provisions and other measures that impose undue limitations to the right to freedom of association. We would like to take this opportunity to express our interest and availability to discuss the draft legislation in more detail with your Excellency's Government at your convenience and provide further assessment towards its revision.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the draft law. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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

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

Michel Forst
Special Rapporteur on the situation of human rights defenders