

**Mandates of 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 promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as 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 promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 41/12, 43/16 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the Law 149/2019 (hereinafter: NGO Law) and its 2021 by-law (or regulations), which limit civil society's access to funding and enable the executive to carry out supervisory control and broad discretion to regulate and dissolve civil society organisations.

This legislation is adopted in a context where several human rights defenders are under investigation and/or being sentenced allegedly for their legitimate activities in defense of human rights. We have expressed our concerns about the detention and other alleged violations committed against civil society actors, including human rights defenders, in the name of national security or terrorism in various communications (EGY 15/2020, EGY 13/2020, EGY 10/2020, EGY 14/2017, EGY 10/2019, EGY 11/2019, EGY 12/2019, EGY 13/2019, EGY 14/2019, EGY 1/2020, EGY 6/2020, EGY 10/2014, EGY 10/2015). We thank Your Excellency's Government for its responses to EGY 10/2014, EGY 10/2015, EGY 14/2017 and 13/2019. We worry that the intersection of these multiple legislative enactments in the current context, could result into shrinking civic space further.

While the NGO Law is the only piece of legislation specifically governing civil society work in Egypt, numerous other laws hamper the work of civil society organisations. These laws include the Anti-Cyber and Information Technology Crimes Law (Law 175 of 2018), the Terrorist Entities Law (Law 8 of 2015), the Anti-Terrorism Law (Law 94 of 2015) and the Right to Public Meetings, Processions and Peaceful Demonstrations Law (Law 107 of 2013). We previously expressed concern about the very broad definitions of terrorism-related legislation in EGY 4/2020. We thank your Excellency's Government for its response dated 8 April 2020.

According to the information received:

On 14 July 2019, the Egyptian Parliament approved the NGO Law, which replaced the Law Regulating the Work of Associations and Other Institutions Working in the Field of Civil Work (Law no. 70/2017). The current law contains elements to be highlighted, as unlike the previous one it no longer provides imprisonment penalties. It is also recognised that the new law integrates the participation of various authorities so that decisions do not rest with a single body. In addition, it gives civil society the possibility to amend

irregular situations that the authority may point out prior to a sanction. However, the NGO Law still establishes procedures and burdens for the civil society that hinders their activity.

The 2021 by-law provides a one-year time-frame for associations to regularize themselves and comply with the new legal provisions. As a result, a domestic and international debate is ongoing in relation to the interpretation and analysis of the NGO Law and its by-law. We hope this detailed analysis based on international norms and standards could contribute to such debate.

During this time, NGOs worked with extensive legal uncertainty due to the broad and vague wording of numerous provisions of the NGO Law. According to the information received, the legislative processes of the NGO Law and the by-law, took place without adequate transparency or without consultation with broader civil society organisations. Reportedly, both the NGO Law and the by-laws were discussed in a single day within the Egyptian Parliament preventing civil society to provide inputs to a legislation that will ultimately affect its work.

#### *State monitoring of NGOs.*

Article 76 of the NGO Law establishes a Central Unit for Associations and Civil Work (Central Unit) which is responsible for supervising that NGOs act in accordance with the law. To that aim, the Central Unit will hold information provided by civil society to apply for various permits and licences, including personal information of NGO members, and will be able to share it with other relevant authorities in case there is a suspicion of terrorist, money laundering or other criminal related activities (art. 80 and 81 NGO Law and art. 172 of the by-law).

The Central Unit function as a liaison office between civil society organisations and government authorities. As will be detailed below, civil society organisations must apply for various permits, which are supervised by the Central Unit, while the authorities, in order to sanction civil society, rely on information gathered by the Central Unit.

#### *Scope of action of civil society.*

Starting from the entry into force of the by-law, all registered civil society organizations have one year to standardize their status according to the NGO Law and by-law. The Central Unit shall notify NGOs that have not adjusted their status to make the necessary adjustments in accordance with the NGO Law and by-law. Failing to do so subjects an entity to dissolution or suspension, whereupon all its assets accrue to the Civic Associations and Foundations Support Fund (art. two NGO Law, art. 2 and 13 of the by-law).

The NGO Law lists the activities that NGOs can carry out, which must be set out in their statutes. Article 14 of the NGO Law establishes that NGOs can work in “the fields of societal development [...] with consideration of the development plans of the state and the needs of the community”. If an NGO wants to act outside of the scope “of the State development plans and the needs of the community”, it should obtain a permit from the Central Unit.

Because of the ambiguity of the wording of article 14, it remains unclear if work on human rights and related issues would need such a permit. The by-laws set out the requirements, among them, that the areas must be specified in a decree issued by the Prime Minister and forbids to practice any activity before the authorisation (art. 28 and 29 NGO Law).

Although the by-law establishes that NGOs shall be established when they notify the Central Unit that the requirements of article 14 of the by-law have been met, including the detailed information of the NGO and their members, the payment of fees, proof of legal residence in Egypt and the Code of Conduct for employees (article 14 of the by-law); as mentioned, there may be several barriers such as aligning their statutes with “the scope of the State development plans and the needs of the community” in order to be allowed to perform their functions. In other words, even if the NGO is established legally, the exercise of its activities is still subject to other permits, such as the updating of its activities in its statutes or, if it wishes to carry out something broader than what the law stipulates, the respective license, as non-compliance carries with it various sanctions, including its demise.

Article 15 of the NGO Law lists prohibited activities for NGOs. Among other things, it prohibits performing activities that violate public order, public morals, national unity or national security; advocate, promote, support or financing of violence or terrorist organisations, and conducting opinion polls and publishing or making their results available. Also, according to the article 4 of the NGO Law, members of civil society “shall not be previously convicted in a conclusive verdict with a criminal penalty or a sanction restricting his/her freedom in a crime or offense that breaches honor or integrity, unless rehabilitated. Such member shall not also be listed on terrorist lists”.

While neither the NGO Law nor the by-law define terms like “social development, public order and morals, national unity or national security”, acting against them leads to the suspension of the NGO (art. 45 NGO Law). The same applies to foreign NGOs (art. 68 NGO Law). It is alleged that such abstract terms, at the discretion of the authority, can be used arbitrarily to impede NGO activity.

The law affirms the right of local associations to affiliate, join, or cooperate with local peer organisations after notifying the Central Unit (art. 19 NGO Law). However, the regulations set arbitrary conditions that could impede such cooperation, such as requiring that there be some concrete benefits behind the affiliation/cooperation. The interpretation of the meaning of “the benefit of cooperation” is left to the discretion of the administrative body (art. 31 by-law).

Only after obtaining a permit from the Central Unit, which is issued upon approval from the competent minister, could local associations join, affiliate to, participate in or deal with a foreign association, in Egypt or abroad (art. 19 NGO Law). The by-law makes participation conditional on activities not endangering Egypt's national security, and on foreign organisation not being listed as a terrorist organisation locally or internationally. (art. 32 of the by-law).

The fact that collaboration between organisations is subject to reporting and approval by the authorities can create an environment that discourages NGOs from collaborating to avoid further reporting and approval.

### *Registration issues*

The NGO Law and the by-law distinguish between the registrations of domestic and foreign NGOs. Any NGO that engages in any activity without prior registration is subject to a penalty, including, substantial fines that could amount to 1 Million Egyptian Pounds- LE (63,000 USD) as well as the closure of their offices, the seizure of assets, and a ban on any activity for up to one year (art. 94 and 97 NGO Law).

For national NGOs, the Central Unit must also approve the association's office based on a physical survey to ensure that it meets the law's conditions for appropriate premises (art. 15 by-law). And only after the Central Unit issues a letter to a bank under the Central Bank's oversight can an association open a bank account (art. 10 NGO Law and art. 39 by-law). This means that any association undergoing the approval process cannot engage in any real activity as it needs to go through a long process to have a physical office to operate from and would lack the ability to directly open a bank account.

The establishment of an office or chapter of an international organisation in Egypt is subject to receiving a license, which requires prior approval from the Foreign Ministry. Engaging in any activity before receiving the necessary license is prohibited (Articles 65 and 66 of the NGO Law). Neither the Law nor its regulations set a deadline for the Ministry's consideration of the application. In fact, the Foreign Ministry is not even required to formally acknowledge the filing of the application and supporting documentation with a receipt, leaving NGOs uncertain as to when they can start activities or by when their application will be treated.

The law requires foreign organisations to pay a fee of up to LE 50,000 (about \$3,000 USD), which increases by twenty percent upon renewal of the license (art. 67 of the NGO Law).

The NGO Law gives the competent minister authority to suspend or revoke the NGO's license if the organisation violates the Law or acts outside of the activities for which the license was granted. However, neither the NGO Law nor the by-law specify which authority is competent. The license may also be revoked administratively based on ill-defined grounds such as a threat to national security or public peace or infringement of the public order (art. 74 of the NGO Law). The by-law requires that prior to the suspension, the Central Unit must notify the offending organisation of the violation. If the NGO fails to rectify the situation, "the competent Minister, after obtaining the approval of the relevant authorities, shall issue a decision justifying the reason of suspending the activity deemed as a violation or the cancellation of the permit of conducting the activity" (art. 115 of the by-law). In the latter case, the organisation's assets are to be liquidated within thirty working days (Ibid). Any suspension or termination of activities can be appealed through the respective justice system (article 9 of the NGO Law). Moreover, licenses are

subject to renewal (article 111 of the by-law). However, both regulations do not establish the duration of the licenses, leaving NGOs in uncertainty as to how long they ask to perform their activities.

#### *Funding issues.*

The Law requests NGOs to notify the Central Unit about the receipt of funds, whether the source is a natural or legal Egyptian person or foreign NGO licensed to operate in the country. This means that NGOs need to report to the government each time they receive funds and they have to justify how the funds will be used according to the status of the NGO (art. 24 NGO Law). They cannot have more than 5 million LE (about 300'000 USD) in their accounts, otherwise they have to apply for a license to open another bank account (art. 39 by-law).

Concerning funds received from abroad, the Law and its regulations require a government permission prior to the disbursement of funds received from abroad. The Central Unit must be notified within 30 working days of the receipt of funds, which may approve or deny the funds within 60 working days. Neither the Law nor the by-law enumerate the grounds for denial of funds (art. 27 NGO Law and art. 43 by-law). With a denial from the authority, the association has to return the funds to the donor within five days of the notice (art. 44 by-law) and the banks are obliged to return the funds within five working days of the receipt of a letter to return the funds (art. 45 by-law).

Furthermore, the law treats the assets of associations like public funds (art. 23 NGO Law), which means that in criminal matters association officials are treated as public officials. In turn, they are subject to harsher penalties for financial malfeasance, which can lead to criminal penalties up to life imprisonment.

We are very concerned that the impact of the Law and the by-law would be in direct contradiction to its stated goal of genuinely serving the public interest and could be detrimental to civic space in Egypt. Instead of regulating CSOs according to international human rights obligations, it appears that it hinders their activity. We are worried that the NGO Law drastically narrows possible fields of action for NGOs, that registrations can be denied discretionally without a time limit, and makes it extremely difficult for NGOs to receive funds from foreign entities.

A further concern is raised about the close and expedited legislative process surrounding the adoption of the NGO Law and by-law. We would like to recall that a broad and participatory debate in parliament helps to improve legislative processes and texts and is an essential component of democratic legislative processes. Different relevant stakeholders, such as, international and regional human rights mechanisms, academics, and civil society can uncover gaps and missing information to safeguard the protection of public freedom (A/HRC/32/20. Paras. 58 - 60). With adequate transparency and broad participation of civil society organisations, academia and national and international organisations in the field, the limitations mentioned above could have been channeled and avoided.

Moreover, we are particularly concerned that registration can be easily denied when NGOs are perceived as not acting in line with state interests. The language

“social development, public order and morals, national unity, national security or the benefit of cooperation, the need of communities” may be used arbitrarily to restrict the activities of NGOs. Foreign NGOs are not only required to undergo bureaucratic procedures to obtain a license, but their authorisation is subject to the authority's discretion, which is not subject to fixed deadlines. Therefore, their activity can only start until the authority verifies that the NGO will act in accordance with the interests of Egypt. Moreover, we are concerned about the potential for NGOs or their members to be easily linked to terrorist groups.

We are seriously concerned that these provisions may restrict the ability for NGOs “to seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorisation or other undue impediments” (A/HRC/23/39). Article 13 of the Declaration on Human Rights Defenders also stresses 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 freedoms through peaceful means, in accordance with article 3 of the present Declaration.

We are concerned that although NGOs are allowed to receive funds, the government has a discretionary power to deny its use. We are particularly worried that the government has a large discretionary power to deny the funds of foreign civil society organizations, leaving them in uncertainty if and how they can receive funds. Blocking NGOs from receiving funding may leave them without resource to function needed to carry out their work in the interest of those who need them such as marginalised groups and victims of human rights violation.

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

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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on measures taken to ensure the compliance of the NGO Law and the by-law with Egypt's relevant obligations under international human rights law and standards.
3. Please provide information on how Egypt plans to ensure that the NGO law and its bylaws will be conducive to an environment where civil society organisations are able to operate freely until legal certainty.
4. Please provide information on the measures implemented by the Government to support NGOs in their regularisation process with NGO law and by-law.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government

will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting for your response, we would urge your Excellency's Government to undertake a review of NGO Law and the by-law to ensure that they are in accordance with Egypt's international human rights obligations. Furthermore, we urge you to engage in an inclusive consultation process, which provides sufficient opportunity for meaningful dialogue among all those concerned on this important issue to ensure that NGOs working with migrants can continue their important and meaningful work. We stand ready to provide your Excellency's Government with technical assistance in this regard.

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

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## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the rights to life and freedom of assembly and association as set forth in article 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982.

We would like to recall that the right to freedom of association, as set forth in article 22 of the ICCPR, ratified by Egypt on 14 January 1982, implies a wide range of positive and negative obligations for the State to ensure its enjoyment as it foresees that: "No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others".

Furthermore, article 75 of the Constitution of Egypt provides that "[c]itizens have the right to form non-governmental organisations and institutions on a democratic basis, which shall acquire legal personality upon notification. They shall be allowed to engage in activities freely. Administrative agencies shall not interfere in the affairs of such organisations, dissolve them, their board of directors, or their board of trustees except by a judicial ruling. The establishment or continuation of non-governmental organisations and institutions whose structure and activities are operated and conducted in secret, or which possess a military or quasi-military character are forbidden, as regulated by law".

We would like to recall that "[the] exercise [of freedom of assembly] should not be subject to prior authorization by the authorities. State authorities may put in place a system of prior notification. Any notification procedure should not function as a de facto request for authorization or as a basis for content-based regulation. Failure to notify authorities of an assembly does not render an assembly unlawful, and consequently should not be used as a basis for dispersing the assembly. Where there has been a failure to properly notify, organizers, community or political leaders should not be subject to criminal or administrative sanctions resulting in fines or imprisonment" (A/HRC/31/66. Para. 21 and 23).

We would like to recall that the States' obligation to "create and maintain a safe and enabling environment in which civil society and human rights defenders can operate free from hindrance and insecurity" (A/HRC/RES/27/31). The Special Rapporteur on the right to freedom of peaceful assembly and association has reiterated that the use of onerous and bureaucratic reporting requirements can eventually obstruct the legitimate work carried out by association (A/HRC/38/34 paras. 28-30).

Regarding the registrations of NGOs, we wish to point out that failure to register should not automatically result in the organisation's dissolution, nor should it result in the criminalisation of its members. We underscore that individuals involved in unregistered associations should never be subject to criminal sanctions for failure to register their groups (A/HRC/20/27, para 56). Moreover, the Special Rapporteur on



the rights to freedom of peaceful assembly and association stated in his report that “the right to freedom of association equally protects associations that are not registered. Individuals involved in unregistered associations should indeed be free to carry out any activities. [...] This is particularly important when the procedure to establish an association is burdensome and subject to administrative discretion” (A/HRC/20/27 para. 56).

Furthermore, the registration procedure should be “simple, non-onerous or even free of charge” and not request all associations that were previously registered to re-register (A/HRC/20/27, paras. 57 and 62). This protects NGOs from arbitrary rejections or time gaps in the conduct of their activities. In the same vein, the United Nations Human Rights Council Resolution 22/6, calls upon States to ensure that procedures governing the registration of civil society organisations are transparent, accessible, non-discriminatory, expeditious and inexpensive, and avoid requiring re-registration and are in conformity with international human rights law.

While States may have a legitimate interest in establishing reporting requirements to registered associations to ensure their compliance with the law, these requirements “should not inhibit associations’ functional autonomy and operation” (A/HRC/RES/22/6) by adding costly and protracted burdens. The need to dedicate more time and resources to administrative requirements could be highly detrimental to the activities of many organisations, as they are particularly time-consuming, and may have a negative impact on their budgets and ability to carry out their mandates and activities, including humanitarian activities. The mandate of the Special Rapporteur on the rights to freedom of association and of peaceful assembly further noted that the use of “onerous and bureaucratic reporting requirements” can eventually “obstruct the legitimate work carried out by association” (A/HRC/23/39, para 38).

Regarding obstacles to receiving funds, we would like to recall that by giving absolute discretion to the government to authorise or deny any activities funded by foreign donors, seems to violate article 22 ICCPR, which clearly states that “no restrictions may be placed on the exercise of [the right to freedom of association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”. We underscore that NGOs pursuing objectives and employing means in accordance with international human rights law benefit from international legal protection. As a result, we recall that “members of associations should be free to determine their statutes, structure and activities and make decisions without State interference” (A/HRC/20/27 para. 64) so that they can effectively exercise their rights to freedom of association and of expression. In this context, we also underscore that the protection afforded by article 22 ICCPR extends to all activities of an association. Accordingly, funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with the right of freedom of assembly.

We would also like to recall article 13 of the Declaration on Human Rights Defenders (A/RES/53/144) which states 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 freedoms through peaceful means, in accordance with article 3 of the present Declaration.

We would also like to refer to article 1 of the Declaration, which states that ‘everyone has the right, individually and 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’. Article 2 (1) of the Declaration states 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. Art 2(2) states that each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

We would like to underscore that any restriction to the right to freedom of association should be provided by laws, which provides legal certainty, so that members of associations can understand what behaviour is permissible. Moreover, 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, para 75) and appeal recourses against decisions of such courts should be available.

Furthermore, we would 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 Recognised Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, article 16 and article 18 which highlight the responsibility and fundamental role NGOs play in protecting and promoting human rights and fundamental freedoms, and that the State must respect and enable a safe environment for NGOs to operate in.