

AMNESTY INTERNATIONAL

MEMORANDUM: EGYPT'S DRAFT LAW ON ASSOCIATIONS

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Amnesty International is greatly concerned by aspects of the draft law on associations which would replace current law no 84/2002. The draft law was prepared by Egypt's Ministry of Social Solidarity (MOSS), formerly known as Ministry of Insurances and Social Affairs (MISA). MOSS made it available to civil society groups in June 2014. If the draft were to be enacted in its present form, it would undermine rights guarantees contained in the recently adopted Egyptian Constitution and put Egypt in breach of obligations it entered into freely when it ratified the International Covenant on Civil and Political Rights (ICCPR) and other international human rights treaties.

In its present form, the draft law contains provisions imposing restrictions on the exercise of key human rights, notably the right of every individual to enjoy freedom of expression and freedom of association that would violate international law. It would require civil society groups to seek and obtain government authorisation via an onerous and potentially protracted bureaucratic process open to interference by government security agencies before they can operate legally. Moreover, organizations that applied successfully for government approval to operate would be required to allow government inspection of their records, activities, income and sources of funding. They would also be liable to suspension or dissolution, and the confiscation of their assets, if the authorities should consider that they have breached any of the draft law's provisions. If passed in its present form, the draft law would make it all but impossible for independent civil society organizations to exist and operate, let alone flourish, in Egypt.

The new draft law is far more restrictive than the existing NGO law, Law 84/2002, and any of the previous draft laws on associations that Amnesty International has seen since the Egyptian uprising in January 2011. It would establish a Co-ordinating Committee composed of officials that would be empowered to veto the legal registration, funding and activities in Egypt of foreign organizations, and to do so without giving reasons. It would also require organizations to seek and obtain the government's approval before conducting any field research in Egypt. The draft law also imposes harsher penalties than existing law, including prison terms of up to three years. As well, the draft law provides that all monies held by civil society organizations would be considered public funds, opening them to inspection by the government the prospect of harsher penalties in any case of misuse or embezzlement.

The publication of the draft law on associations comes at a pivotal moment in Egypt. A new President has recently assumed office while two former presidents, Hosni Mubarak and Mohamed Morsi, each remain on trial for crimes that they are alleged to have committed when they were in power. Interim government rule has seen thousands of people arrested, including leaders and members of the newly banned Muslim Brotherhood and their supporters, bloggers, human rights defenders and others, with thousands sentenced to jail terms and hundreds sentenced to death after grossly unfair trials. The government has summarily banned more than 1,000 associations that it accuses of having links to the Muslim Brotherhood and now it has produced a new draft law that threatens to eliminate independent civil society organizations from the Egyptian political and social landscape.

What becomes of the draft law, therefore, will be crucial for the future of civil society in Egypt. If it is enacted in anything like its present form, the activities of civil society organizations, not only human rights organizations but also those working in other socially important areas such as the

environment, development, and public health, will be so circumscribed that they will be unable to operate freely and contribute to building a vibrant civil society.

The government should withdraw this draft law and replace it with legislation that protects and facilitates exercise of the rights to freedom of expression and association in conformity with international law and Egypt's obligations as a state party to the International Covenant on Civil and Political Rights (ICCPR) and other international human rights treaties.

In this Memorandum, Amnesty International sets out its main areas of concern in relation to the draft law on associations for consideration by the Egyptian government. It does so based on its careful review and assessment of the provisions of the draft law, its long experience of research and advocacy in support of human rights in Egypt, and its knowledge of other situations around the world in which state authorities have sought to restrict the activities of civil society.

Amnesty International's recommendations to the government of Egypt are listed in the final section of this Memorandum.

INTERNATIONAL LAW AND STANDARDS

Egypt is obligated to protect the rights to freedom of expression and association under international treaties to which it is party, including the ICCPR, which has been ratified by a large majority of states globally and which Egypt ratified in 1982. ICCPR Article 19(2) provides: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Article 22(1) of the same treaty provides: "Everyone shall have the right to freedom of association with others."

Egypt has also been a state party, since 1984, to the African Charter on Human and Peoples' Rights, which guarantees the rights to freedom of information and expression and to freedom of association in its Articles 9 and 10 respectively. Article 9 of which provides: "Every individual shall have the right to receive information," and "every individual shall have the right to express and disseminate his opinions within the law." Article 10 of the African Charter provides: "Every individual shall have the right to free association provided that he abides by the law."

Under international law and specifically Articles 19(3) and 22(2) of the ICCPR, governments may not impose any restrictions on the exercise of the rights to freedom of expression and association other than on certain specified grounds, such as protection of national security, public order or morals, or protection of the rights of others, and any such restrictions warranted on these grounds must be specified by law, and must conform to strict tests of necessity and proportionality. The UN Human Rights Committee, the body of independent experts established under the ICCPR to monitor its implementation by states parties, has underlined: "any restrictions on any ... rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right."¹ The current draft law proposes restrictions on the exercise of freedom of expression and association that greatly exceed those permitted under international law.

In reviewing the draft law, the Egyptian authorities should also take account of relevant international human rights standards, including the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (commonly known as the Declaration on Human Rights Defenders). Article 5 of the Declaration states that everyone has the right to form, join and participate in non-governmental organizations, associations or groups, as well as to communicate with non-governmental or intergovernmental organizations. Article 13 further notes 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 2009 the UN Special Rapporteur on the situation of human rights defenders

submitted a report to the General Assembly on the right to freedom of association, which included a number of specific recommendations with respect to national legislation affecting NGOs.² Some of these recommendations are highlighted below, although the report's entire findings and recommendations are relevant to the current debate over Egypt's draft law.

The Human Rights Committee and other United Nations bodies have previously commented on the ways in which existing legislation regulating associations in Egypt – in particular Law 84/2002- has violated the right to freedom of association. In 2002, the Human Rights Committee urged Egypt to "review its legislation and practice in order to enable non-governmental organizations to discharge their functions without impediments which are inconsistent with the provisions of article 22 of the Covenant, such as prior authorisation, funding controls and administrative dissolution."³

The Committee on the Rights of the Child in 2011,⁴ the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2007,⁵ and the Committee against Torture in 2002⁶ have also criticized Egypt's restrictive legislation and regulation of NGOs. The Egyptian government should use the debate over the draft law on associations to address these criticisms and concerns and take steps to ensure that the law that is finally enacted complies fully with Egypt's international human rights obligations.

Amnesty International also urges the Egyptian government to take account of the most recent international standards on protecting human rights defenders, set out in a Resolution adopted on 21 March 2013 by the UN Human Rights Council.⁷ The Resolution calls on: "States to create a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity"⁸. It also goes on to specify that legislation affecting the activities of human rights defenders and its application must be consistent with international human rights law, and "condemns the imposition of any limitations on the work and activities of human rights defenders enforced in contravention of international human rights law."⁹

REGISTRATION

The draft law maintains the current requirement that all Egyptian national organizations and associations obtain government authorisation before they can operate legally by imposing a series of burdensome bureaucratic hurdles on those seeking official registration, while allowing the MOSS wide latitude to reject applications on political grounds.

Article 6 of the draft law would require Egyptian organizations applying for registration to notify the MOSS of their establishment by registered letter and provide the Ministry with four copies of their statutes to be entered into the official register of organizations.

After receiving an organization's registration application and copies of its statute, the MOSS would have 60 days to decide whether the organization's activities would breach any of the list of prohibited activities contained in Article 11 of the draft law – that is, activities of a "military character", or that threaten national unity or violate public order or morals, or that entail working for members' profit, or that involve conducting field research without prior approval from the government.

If the MOSS should determine that the activities that the applicant organization aims to undertake would amount to a breach of the law, it must notify the organization's founders in writing about its objection to their proposed activities. Faced with such an objection, the organization's founders would have a right to challenge the decision of the MOSS in an administrative court within 60 days from the date of the objection but the organization would be prohibited from pursuing its activities both during this 60 day period and thereafter until the court had delivered its verdict. The draft law gives no clear time limit within which the court must issue its ruling on such cases.

According to the draft law, an organization that applies for registration would be able to consider itself officially registered if the MOSS fails to notify it of an objection within 60 days of receiving its registration application. In this respect, the draft law proposes to maintain the status quo, as law 84/2002, the current law on associations, contains similar provisions.

However, NGOs have told Amnesty International that in fact, if they do not receive notice of an objection from MOSS within this 60-day period, they still are not able to operate, because they have no documentary evidence confirming their official registration to show to banks in order to open accounts in the organization's name, or to show to others. NGOs have told Amnesty International that banks refuse to open accounts in an organization's name until the organization is able to provide documentation proving that MOSS does not object to its registration. To obtain such proof in practice, NGOs are required to file a case before the administrative court to obtain a judgment that the MOSS did not object.

In making the formation of organizations subject to government approval in this way, the draft law would appear to clearly violate Article 75 of Egypt's Constitution, adopted in January 2014, which guarantees the right to form associations and to acquire legal personality simply by notification.

UN experts have criticized situations where government approval, rather than simple notification, is required to form organizations. For example, the UN Special Rapporteur on the situation of human rights defenders has commented: "it should be permissible for individuals to join together to engage in lawful activities without having to register as legal entities", and said that registration should be required only if the individuals forming the organization wish to establish it as a separate corporate legal personality.¹⁰ The UN Special Rapporteur on the rights to freedom of peaceful assembly and association has said that a notification procedure – rather than one that requires prior government authorisation – more fully complies with international human rights law, and that states should implement such a procedure in order that "associations are automatically granted legal personality as soon as the authorities are notified by the founders that an organization was created."¹¹

Article 2 of the draft law makes any entity that practises any of the activities of national associations and foundations subject to its provisions, thereby denying NGOs the right to freely choose the legal form that they consider most appropriate for the activities they aim to undertake. For instance, law firms that engage in defending workers' rights would fall within the ambit of the proposed new law on associations and would be bound by its provisions; in other words, they would be required to obtain official approval before engaging in litigation and other activities related to the rights of workers.

Article 2 of the draft law would also bar anyone from exercising their right to form an association if they have been sentenced in a final verdict to imprisonment for "offences related to honour and honesty", unless they have been "rehabilitated". However, the draft law does not define "offences related to honour and honesty", which is a vague term that will be open to wide interpretation and allow the authorities excessive discretion in determining who may or may not form an association. In particular, it appears that this provision could be used against individuals who have been convicted under Egyptian criminal law of acts that constitute the legitimate exercise of the right to freedom of expression or of other human rights, and that it may be used to hamper or prevent the existence of Egyptian human rights NGOs. As Amnesty International and others have documented, Egyptian courts under the current and previous Egyptian governments have sentenced scores of human rights defenders, political activists, bloggers and others to prison terms after convicting them on "insult", defamation or "debauchery" charges that arise from excessive and unlawful state restrictions on freedom of expression and other rights.

POTENTIAL FOR GOVERNMENT INTERFERENCE IN CIVIL SOCIETY ACTIVITIES

Article 11 of the draft law lists a series of activities from which associations are prohibited, using vague terminology that, in practice, would allow the government to block or terminate the operation of NGOs on political grounds. Article 11(b), for example, would prohibit organizations from undertaking any activities deemed by the government to "threaten national unity" or "violate public order or morals"; Article 11(c) would prohibit NGOs from engaging in "political activities"; and Article 11(e) would prohibit organizations from conducting "field research or surveys" without obtaining authorisation in advance from the government's Central Agency for Public Mobilization and Statistics.

These broad and vaguely-worded prohibitions reflect, but also expand upon, prohibitions contained in the existing Law on Associations, Law 84 of 2002, which prohibits activities by associations that are deemed to involve "Threatening national unity, violating public order or morality". In practice, the Egyptian authorities have applied this and other provisions of Law 84/2002 to prevent the registration of Egyptian NGOs.

Further, Article 11 is replete with problems from a human rights perspective. For example, the prohibition on engaging in political activities contained in Article 11(c) does not clearly define the meaning of "political activities", leaving it open to broad interpretation by the authorities, and creating conditions in which organizations that, for example, advocate for greater democracy or for better protection of the rights of women or of ethnic or religious minorities, may cease to do so for fear that the authorities will take action against them for breaching this prohibition. The same article would also prohibit civil society organizations from engaging in the activities of trades unions – for example, with a view to promoting workers' rights and enhancing their working conditions.

The prohibition on the conduct of "field research, opinion polls, or projects in the field of societal activities", without advance approval from the Central Agency for Public Mobilization and Statistics, appears designed to hamper research and fact-finding of the type that human rights NGOs and those with a mandate to expose official corruption or maladministration have traditionally undertaken. If enacted, this provision would unduly restrict the activities of human rights organizations and other organizations pursuing a socially-important agenda, such as environmental groups whose advocacy is based upon data obtained at least partly through field research and independent fact-finding studies.

The draft law would also impose other restrictions on organizations. For example, Article 16 would make it unlawful for organizations to "co-operate, join, affiliate or engage in the practice of an activity... with a foreign association, body or organization" without first notifying the MOSS and allowing the MOSS 60 days within which to decide whether to object to the proposed activity or not.

According to the draft law, any person convicted of engaging in any of the "prohibited activities" would be liable to imprisonment for not less than one year and not more than three years, and/or to pay a fine of not less than LE100,000 (US\$14,800).

Under article 23 of the draft law, the MOSS would also be empowered to interfere in the activities of organizations, and to require the organization to stop a particular activity within 10 days or face the prospect that the MOSS would issue a notice cancelling it either permanently or until the organization successfully challenges the MOSS's decision before the administrative court.

Article 21 bis of the draft law would subject civil society to constant scrutiny by the MOSS, whose representatives would have the authority to enter an organization's premises at any time to monitor its activities and review its records on administrative, technical and financial aspects to ensure that they are compliant with the provisions of the draft law. This would expose organizations, such as NGOs who criticize the government's human rights record, to the possibility of politically-motivated state interference in and disruption of their work through harassing intrusions and investigations by officials seeking to find administrative or other faults that could result in their suspension or dissolution.

Under article 42 of the draft law, the MOSS would be empowered to apply for an administrative court order to dismiss an organization's board of directors on various grounds, including "Committing a serious violation of the law such as...breaching public order or morals" or preventing ("not enabling") the MOSS from "monitoring" the organization, and to appoint an Administrative Board representative to run the organization pending the election of a new board of directors. Those ousted directors would then be prohibited from membership of any other national organization for a period of four years if they are proven to have some personal responsibility for the matters which led to the dissolution of the organization's board. This could mean, for example, that human rights defenders who attended a peaceful sit-in deemed to have breached public order, or journalists whose

media reporting or bloggers whose writings were deemed by the authorities to have offended “public morals,” could lose their rights to freedom of association for four years.

Article 42 bis of the draft law concerns the dissolution of organizations, which can be ordered by an administrative court, acting on the basis of a request from the MOSS. Various grounds for dissolution are listed, including that an organization’s “real purposes” are deemed to include one or more “prohibited activities” or that it has received funding from abroad without permission or “joins, subscribes to or affiliates” with a foreign organization without the prior approval of the Egyptian authorities. Once the administrative court issues an order for dissolution, a financial liquidator is to be appointed to wind up the organization’s financial affairs and dispose of its assets.

These restrictions run directly counter to Egypt’s obligations as a state party to the ICCPR, Article 22(2) of which declares: “No restrictions may be placed on the exercise of this right [of 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.” As noted above, the UN Human Rights Committee has underlined that states must demonstrate the necessity and proportionality of any restrictions on the exercise of rights protected under the ICCPR, and in no case may restrictions be applied in a manner that would impair the essence of those rights.

RESTRICTIONS ON NGO FUNDING

The draft law would allow the government to control the funding of all Egyptian NGOs by giving the authorities full power to bar organizations from receiving funding from abroad – a crucial lifeline for Egypt’s civil society sector – and even to restrict their ability to raise funds locally, by means of the threat of state confiscation of their assets and income if they are found to have breached the law in any way.

Specifically, article 17 bis of the draft law would require all Egyptian organizations to obtain government approval before they could receive funding from outside Egypt, including from charitable organizations and foundations concerned with development or environmental issues or the promotion of human rights, or from the representatives within Egypt of such agencies. It would create a new body, the Co-ordinating Committee, to decide on anything related to the activities, registration and funding of foreign NGOs in Egypt and external funding. The Committee would be composed entirely of government officials, including representatives from the Interior Ministry and four other government ministries; one representative each from the State Council and the Central Bank; and a representative of Homeland Security within the General Intelligence Services (likely to be a senior security or intelligence official), and it would be supported by a permanent secretariat. Egyptian organizations wishing to receive funds from abroad would be required to notify the Committee in advance and seek its approval; the Committee would then have 60 days to respond.

The proposed restrictions on receipt of foreign funds by Egyptian organizations build on current law and practice, whereby Egyptian organizations are barred by Article 17 of Law 84 of 2002 from either accepting money from abroad or transferring funds abroad without the prior approval of the Minister of Insurance and Social Affairs (MISA). In practice, successive Egyptian governments have used these restrictive provisions on foreign funding to stifle the development of Egyptian human rights organizations and obstruct and undermine the work of international organizations in Egypt, thereby impeding the development of a vibrant civil society within Egypt.

The procedures which Egyptian organizations would need to negotiate in order to apply for Co-ordinating Committee approval for them to receive funds from abroad, and to appeal against a negative decision of the Committee, are not set out in the draft law. The draft states only that they will be defined in “executive regulations” that the MOSS will issue six months after the law has been finalised and enforced and that these regulations will set out the requirements of the procedure “in terms of data and information.”

Various other aspects of its implementation are also left vague in the draft law. This is a particularly worrying dimension. In essence, it means that the Egyptian parliament will be asked to adopt legislation despite the absence of key details as to its operation, and to leave it to the executive authorities to prescribe how the law may operate in practice, although the impact will be felt across the whole of Egyptian civil society.

Egyptian organizations would be entitled to accept funds within Egypt from Egyptian sources but they would have to notify the MOSS, which would have 60 days within which to lodge an objection. Organizations would be required to act transparently and to declare publicly their sources of funding. The draft law would also require civil society organizations to obtain permission from the MOSS before they could collect any donations nationally, but it does not set out the procedure for seeking and obtaining such permission, or the conditions that they might be required to meet. Instead, the draft law states only that implementing regulations, which may be expected to cover such matters, are to be published within six months of the enactment of the draft law. This too is highly unsatisfactory, as it leaves open a crucial element of the law to be determined by the executive authority rather than Egypt's legislators.

The draft law would impose significantly heavier penalties against individuals found to have breached any of its provisions on funding than those contained in existing legislation, which provides maximum penalties of one year in prison and/or a fine of not more than 10,000 LE (approximately US\$1,400). Under the draft law, the penalties would be increased to between one and three years in prison and/or a fine of not less than 100,000 LE (approximately US\$14,000).

The controls proposed by the draft law are, to a large extent, already in place under the existing law on associations, Law 84 of 2002, which the authorities strictly enforce. Article 42 of Law 84 empowers the authorities to close down any NGO found to have obtained funds from a foreign party without official permission; Article 76(2) prescribes a penalty of up to six months in prison and a fine for any person found responsible for receiving foreign funds without government approval.

The authorities have used these powers to restrict the activities of Egyptian human rights organizations. For example, the Egyptian Organization for Human Rights (EOHR) told Amnesty International in March 2013 that the MISA had consistently blocked EOHR's ability to access foreign funding during the previous two years, preventing it from undertaking planned work relevant to furthering the realisation of human rights in Egypt.

The restrictive approach of the Egyptian government, as set out under existing law and in the draft law on associations, runs directly counter to the position expressed by the UN Special Rapporteur on the situation of human rights defenders. According to the special rapporteur: "Governments must allow access by NGOs to foreign funding, and such access may only be restricted in the interest of transparency, and in compliance with generally applicable foreign exchange and customs laws. Restrictions on foreign funding may limit the independence and effectiveness of NGOs. States should therefore review existing laws in order to facilitate access to funding... States should not require prior governmental authorisation to apply for or receive funding from abroad."¹²

The UN Special Rapporteur on the rights to freedom of peaceful assembly and association has also emphasized the right of organizations to seek and receive financial support without such impediment or constraint: "Any association, 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."¹³

Further, the Human Rights Council resolution on protecting human rights defenders adopted on 21 March 2013 calls on states: "to ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders." (Paragraph 9).¹⁴

FOREIGN NGOS AND THEIR RELATIONSHIP TO EGYPTIAN NATIONAL BODIES

Over the years international NGOs operating in Egypt, including in the area of human rights and refugee law have played an active part in Egyptian society. If it were to be enacted in its present form, the draft law would critically undermine the ability of international NGOs to function effectively in Egypt and to continue their contribution to Egyptian society. Indeed, the nature of the restrictions that the draft law would place on the work of international NGOs in Egypt would enable the government, if it wished, to bar international human rights organizations that criticize the government from operating in Egypt at all.

The draft law would establish a special regime for the registration of international NGOs which differs from that applicable to Egyptian organizations. It would require the establishment of a Co-ordinating Committee composed of government officials, which would have extensive powers to regulate the registration, activities and sources of funding of international NGOs, and even such NGOs' capacity to rent premises in Egypt from which to conduct their activities.¹⁵

The proposal to establish a Co-ordinating Committee is not new. It appeared first in a draft law on associations proposed in 2013 by the government of President Mohamed Morsi. At that time, the UN High Commissioner for Human Rights strongly criticized the proposed law and said that it risked "placing civil society under the thumb of security ministries which have a history of abusing human rights and an interest in minimizing scrutiny."¹⁶

The tasks of the Co-ordinating Committee, according to the draft law, would include vetting applications for registration submitted by international organizations, as formerly occurred during the long presidency of Hosni Mubarak prior to his ousting in February 2011. The Committee would also determine what activities international NGOs can carry out in Egypt, since these NGOs would have to obtain a licence from the Committee approving any activities that they wish to carry out, and they would not be able to carry out any activities in Egypt without the Committee's permission. Again, the specific procedures that international NGOs would need to follow in order to submit their licence applications are not included in the draft law but would be specified in subsequent executive regulations issued by the government once the draft law has been enacted. The draft law requires that in all cases the activities of international organizations are in line with the needs of Egyptian Society and in accordance with priorities of development plans, and respect public order and morals.

The Co-ordinating Committee would also oversee all movement or transfers of funding, including donations, from abroad for use by international NGOs operating within Egypt, and such NGOs would need to obtain specific approvals from the Co-ordinating Committee before they could either receive funds or donations from abroad or send monies out of Egypt.

Once officially licensed, international organizations would be required to submit twice-yearly reports on their activities to the Co-ordinating Committee, an annual financial report, and such other documents that the Co-ordinating Committee requests.

If the foreign organization should act in a way that the authorities determine falls outside the scope of its licence, the Minister of Social Solidarity would have the power, after the approval of the Co-ordinating Committee, to cease the activity or cancel its permission to operate in Egypt, which decision the Minister would have to communicate to the Ministry of Foreign Affairs within 15 days. The draft law makes no reference to any mechanism of appeal in such cases that would enable the foreign organization (which might have considerable assets in Egypt and which might employ many Egyptian nationals) to challenge the government decision to terminate its operations in Egypt.

International non-governmental organizations (NGOs) which, either directly or indirectly, receive government funding to support their work would not be permitted to operate in Egypt if the draft law is adopted in its present form. Nor would international organizations whose activities are deemed by the Egyptian authorities to promote specific political views or orientations, or to breach national sovereignty, be given authorisation to operate in Egypt under the terms of the draft law.

The draft law, if it were adopted in its present form, would impose a more elaborate system of control than the existing law which, in practice, already places virtually insuperable obstacles in the

way of international organizations seeking to extend their operations into Egypt, although many such organizations contribute significantly to Egyptian society in fields as diverse as human rights, the environment and public health.

Currently, international NGOs wishing to undertake activities in Egypt are required to submit a formal request to the Ministry of Foreign Affairs,¹⁷ which is legally required (under Articles 5-7 of the implementing regulations of Law 84 of 2002) to respond to the request within 60 days and to notify the MISA, which then has a further 15 days, if the response is positive, within which to permit the international NGO to commence its activities.

In practice, however, international NGOs that have sought official authorisation to operate in Egypt under this system report that the relevant Egyptian authorities fail to respond to their applications, despite the obligation that Egyptian law places on them to do so. As a result, such international NGOs have been put in a position where they can operate in Egypt only under a form of legal limbo – they do not have official approval to operate in Egypt, but nor have they received any official rejection of their application for such approval. This policy or practice of the Egyptian authorities creates major difficulties for international NGOs, and creates among them a sense that they are allowed to operate in Egypt only “on probation” and could be expelled at any time if they are deemed to have criticized the government, although the current law on associations does not provide for any such “probation” period.

In July 2011, Egyptian authorities embarked on an investigation into the foreign funding of NGOs which saw them carry out raids on five international NGOs and two Egyptian human rights organizations in December 2011.¹⁸ Subsequently 43 staff members of international organizations were tried and convicted on charges of operating without official registration and obtaining foreign funding without the authorities’ permission. They received sentences of between one and five years’ imprisonment, none of the NGO staff are in prison.

Clearly, the Egyptian authorities are entitled to impose regulations on foreign-based organizations to ensure financial transparency and compliance with banking and currency regulations, and to guard against money-laundering and the like, and to pass legislation accordingly. However, both the current law and the draft law go far beyond what is appropriate as a regulatory system that takes account, on the one side, of the need to ensure that foreign-based organizations operate transparently, with probity, and respect the law, and, on the other side, the importance of the rights of freedom of expression and association and Egypt’s obligations under international law to both protect and promote these rights and other human rights.

The UN Special Rapporteur on the situation of human rights defenders has said that “no distinction regarding the types of permitted activities should be made between national and foreign organizations” and that “foreign NGOs carrying out human rights activities should be subject to the same set of rules that apply to national NGOs; separate registration and operational requirements should be avoided.”¹⁹ The draft law’s provisions applicable to international NGOs are also contrary to the best practices outlined by the UN Special Rapporteur on the right to freedom of peaceful assembly and association, who advises that “the formation of branches of associations, foreign association or unions or networks of associations, including at the international level, should be subject to the same notification procedure [as national associations].”²⁰

CRIMINAL PENALTIES AND DISSOLUTION

The draft law would impose severe penalties on organizations found to have breached one or more of its provisions, including suspension and even dissolution of the organization. The existence of such penalties is likely to have a “chilling effect” on NGOs that might make them unwilling to undertake proactive work that would be socially beneficial but which they could fear would put them at risk of being penalized by the Egyptian authorities.

Specifically, the draft law would punish members of organizations convicted of having engaged in any of the “prohibited activities” listed, such as conducting field research without government permission or “violating public order or morals”, by imprisonment for between one and three years

and a fine of up to LE100,000 (approximately US\$14,000) (Article 72). Anyone convicted of breaching the draft law's restrictive provisions on funding or co-operation with organizations abroad – for example, by accepting funds from abroad or engaging in an activity with a foreign organization without government permission would face similar penalty. Moreover, if an offence is also punishable under the Penal Code and the penalty under the Penal Code is greater, that penalty will be applied.

In addition to penalties against individuals convicted of breaching its terms, the draft law also prescribes penalties that could be applied to organizations that are deemed by the authorities to have breached the law – for example by accepting foreign funding in violation of the law, carrying out activities without permission including field research without permission, or proving to be unable to achieve the purposes for which the organization was established -- including dissolution and liquidation of their assets.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has recommended that suspension or dissolution of an association should only be authorised by an impartial and independent court in a case of a clear and imminent danger resulting in a flagrant violation of domestic laws, in accordance with international human rights law.²¹ The draft law would provide for suspension or dissolution of NGOs under conditions falling far short of this standard.

PUBLIC FUNDS

According to Article 3 of the draft law, funds held in Egypt by international NGOs would be designated officially as “public funds”. This would make them liable to inspection by the government's Central Auditing Agency and also make the penal code articles related to public funds applicable, including those relating to misuse and embezzlement, for which the penalty is imprisonment for up to 15 years according to penal code articles 112 to 117.²²

RECOMMENDATIONS

Amnesty International urges the Egyptian executive and legislative authorities to:

- Ensure that any legislation enacted to replace Law 84 of 2002 conforms fully with international law and standards, notably Articles 19 and 22 of the ICCPR, as well as Article 10 of the African Charter on Human and Peoples' Rights and the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (commonly known as the Declaration on Human Rights Defenders).
- In particular, ensure that the new legislation guarantees that, in line with the 2002 concluding observations of the UN Human Rights Committee, NGOs will be able to carry out their activities without impediments that are inconsistent with the provisions of Article 22 of the ICCPR, such as prior authorisation and funding controls.
- In line with the recommendations of the UN Special Rapporteur on the situation of human rights defenders, amend the draft law to clarify that persons forming associations are not required to register the association unless they wish to enjoy the benefits of a separate legal personality for the association.
- Ensure that individuals are in principle able to engage in association with one another in any activity that is lawful under Egyptian law and that the only restrictions on activities by associations are those which are generally applicable to anyone in Egypt carrying out those activities, and are consistent with human rights.
- Ensure that the law provides that in any attempt by the authorities to deny registration or restrict activities or funding of an organization, as well as any action to dissolve an organization, the onus is on the authorities to demonstrate that the proposed measure will be only such as is strictly necessary and proportionate for the pursuance of a specifically identified legitimate aim

which complies with international human rights law, and that any such measures are subject to review by an independent and impartial court which can reject the imposition of restrictions that cannot be justified by the government under international human rights law and standards.

- Ensure that the law stipulates that MOSS, the Co-ordinating Committee, or any other government agency cannot reject the registration of an organization without providing, in writing, a specific and individualized description of the precise activities that would be unlawful and reasons why the measure is necessary and proportional, and that the law establishes an independent mechanism to which organizations whose registration is refused can appeal with provision for them ultimately to appeal to the courts.
- Amend the membership, powers and terms of reference of the Co-ordinating Committee to ensure that adequate safeguards are built in to ensure full transparency of its operations and that these are based on clear, specific and public criteria, and that the role and function of government security officials is narrowly defined and circumscribed to prevent their using their authority to curtail legitimate exercise of the rights to freedom of association and expression in Egypt and/or illegitimately hamper or suppress the work of civil society organizations in Egypt.

In line with the recommendations of the Special Rapporteur on the situation of human rights defenders, and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, amend the law to ensure that:

- foreign NGOs can operate in Egypt, and that Egyptian NGOs can affiliate with international NGOs and receive funding from foreign sources;
 - Foreign NGOs [carrying out human rights activities] are subject to the same set of rules that apply to national NGOs; separate registration and operational requirements should be avoided;
 - NGOs are not required to obtain prior governmental authorisation to apply for or receive funding from abroad;
 - the Ministry responsible for registering NGOs must respond to the registration applications of NGOs in a timely manner;
- Ensure that the process of enacting legislation to replace Law 84 of 2002 is transparent and includes meaningful consultation with civil society organizations including human rights organizations.

¹ UN Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, para. 6. See also General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, para. 22.

² UN Special Rapporteur on the situation of human rights defenders, Report to the General Assembly (UN Doc: A/64/226), 4 August 2009.

³ See *Concluding observations of the Human Rights Committee: Egypt. 28/11/2002* (UN Doc: CCPR/CO/76/EGY), 28 November 2002, para21.

⁴ See *Concluding observations: Egypt* (UN Doc: CRC/C/EGY/CO/3-4), 20 June 2011, paras31-32.

⁵ See *Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families* (UN Doc: CMW/C/EGY/CO/1), 25 May 2007, parag.

⁶ The Committee did not refer to specific legislation, but to "The legal and practical restrictions on the activities of non-governmental organizations engaged in human rights work". See *Conclusions and recommendations of the Committee against Torture: Egypt* (UN Doc: CAT/C/CR/29/4), 23 December 2002, para5(i).

⁷ A/HRC/22/L.13

⁸ A/HRC/RES/22/6, para2.

⁹ A/HRC/RES/22/6, para3.

¹⁰ UN Special Rapporteur on the situation of human rights defenders, Report to the General Assembly (UN Doc: A/64/226), 4 August 2009, paras 59-66 and 103-104.

¹¹ *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai* (UN Doc: A/HRC/20/27), 21 May 2012, para58.

¹² UN Special Rapporteur on the situation of human rights defenders, Report to the General Assembly (UN Doc: A/64/226), 4 August 2009, para123-124.

¹³ A/HRC/20/27, para68.

¹⁴ "Also calls upon States to ensure that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy, and that restrictions are not discriminatorily imposed on potential sources of funding aimed at supporting the work of human rights defenders other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the geographic origin of funding thereto"; A/HRC/RES/22/6, para 9.

¹⁵ International NGOs can effectively only rent buildings and other infrastructure to enable them to carry out their activities following permission by the Co-ordinating Committee.

¹⁶ UN High Commissioner for Human Rights, Navy Pillay, Statement on law on associations, Egypt risks drifting further away from human rights ideals that drove revolution, 8 May 2013.

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13306&LangID=E>

¹⁷ The process for INGO registration is detailed in the Implementing Regulations of Law 84 of 2002 (No. 178 of 2002).

¹⁸ Those raided included five international NGOs, the US-based National Democratic Institute (NDI), International Republican Institute (IRI), Freedom House (FH) and International Centre for Journalists (ICFJ), as well as the German-based Konrad Adenauer Stiftung (KAS). They also included at least two Egyptian human rights organizations, the Arab Centre for the Independence of the Judiciary and Legal Profession (ACIJLP) and the Budgetary and Human Rights Observatory (BAHRO).

¹⁹ UN Special Rapporteur on the situation of human rights defenders, Report to the General Assembly (UN Doc: A/64/226), 4 August 2009, para122 and 126.

²⁰ Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, 21 May 2012, UN Doc. A/HRC/20/27, para59.

²¹ Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, 21 May 2012, UN Doc. A/HRC/20/27, para100.

²² Egyptian Penal Code no 58/1937, please see articles 112 to 117.
<http://www1.umn.edu/humanrts/research/Egypt/criminal-code.pdf>