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EGYPT: DRAFT NEW NGO LAW RETAINS REPRESSIVE ESSENCE OF OLD ONE

Despite the Egyptian government's claims to the contrary, a draft new NGO law passed by parliament yesterday preserves the repressive essence of the law of 2017 currently in force and would help perpetuate the devastating crackdown on human rights defenders and independent civil society organizations, Amnesty International said today. Egypt's President Abdel Fattah al-Sisi should reject the draft law and order it to be amended to bring it into line with international human rights law and standards.¹

Responding to widespread criticism and following a request from the president, the ministry of social solidarity drafted a text to replace the current NGO law of 2017, formally known as Law No. 70 of 2017 on Associations. In May 2019, it submitted the bill to parliament, which approved it on 15 July. The president has 30 days from then to review the draft new law; if he does not reject it, the draft law will come into effect after that.

Amnesty International has analysed the text of the draft new law, which has 98 articles, and compared it with Law No. 70 of 2017. While the draft new law's explanatory memorandum claims that the drafters took into consideration the "shortcomings" of the 2017 law and ensured it was consistent with international standards, Amnesty International's assessment is that it overwhelmingly maintained the most draconian provisions of the 2017 law and that most changes are cosmetic.

An apparently significant change is the removal from the text of the explicit threat of prison sentences for NGO staff members who receive foreign funding without permission, among other activities. However, the draft new law makes reference to other legislative tools that can and have been used to prosecute and imprison human rights defenders on the basis of vague and overly broad charges, such as the deeply repressive counter-terrorism law.

Like the current law², the draft law violates Egypt's constitution of 2014 and the International Covenant on Civil and Political Rights³, the African Charter on Human and Peoples' Rights⁴ and the Arab Charter on Human Rights⁵, all of which are human rights treaties ratified by Egypt and incorporated as a source of law into the Egyptian constitution.⁶

SCOPE OF NGO ACTIVITIES

The draft new law does not explicitly require "the work of NGOs to be aligned to government priorities and plans", as the 2017 law does. However, it similarly appears designed to fundamentally limit the role of human rights organizations in documenting human rights abuses and holding the authorities to account. It unduly restricts NGOs' ability to determine their purpose and area of work and confines the permitted scope of their operations to "societal development".

¹ For recommendations on the kind of amendments that would need to be made, see Amnesty International, *Egypt: Open letter to the minister of foreign affairs on amending Law no. 70 of 2017* (Index: MDE 12/9404/2018), 14 November 2018, www.amnesty.org/en/documents/mde12/9404/2018/en/

² For an analysis of the 2017 law, see Amnesty International, *Egypt: Signing new NGO bill would be a "death warrant" for Egyptian rights groups* (Index: MDE 12/5171/2016), 18 November 2016, www.amnesty.org/en/documents/mde12/5171/2016/en/

³ International Covenant on Civil and Political Rights, Article 22, among others.

⁴ African Charter on Human and Peoples' Rights, Article 10, among others.

⁵ Arab Charter on Human Rights, Article 28, among others.

⁶ Article 93 of the 2014 constitution states: "The State shall be bound by the international human rights agreements, covenants and conventions ratified by Egypt, and which shall have the force of law after publication in accordance with the prescribed conditions."

The draft new law continues to ban NGOs from conducting research and publishing their findings without prior governmental permission. It grants the authorities wide powers to dissolve NGOs and subject their staff to criminal prosecution based on vague and broad charges such as “disturbing public order” and “harming national security”. A review of government discourse, as well as thousands of prosecutions show that, from their perspective, protesting peacefully, publishing articles critical of the government and conducting advocacy on human rights issues are examples of activities that disturb public order and harm national security.

FORMATION AND REGISTRATION

While Article 3 of the draft new law indicates that individuals wishing to register an organization only have to notify the authorities, Article 10 gives the government the right to object to the registration of NGOs within 60 days of the date of notification, if it determines that their proposed activities are criminalized under the Penal Code and other laws that criminalize and unduly restrict the legitimate exercise of the rights to freedom of expression, association and peaceful assembly. It also grants the authorities the power to reject the establishment of NGOs on overly broad grounds, such as concerns that they will “harm national unity” or “disturb public order”. In practice, Amnesty International is concerned that this amounts to citizens having to seek permission from the authorities to set up NGOs. Moreover, the draft new law requires the prime minister to pass executive regulations within six months, and NGOs to regulate their legal status in line with the draft law within one year or face penalties.

The Egyptian constitution of 2014 guarantees citizens the right to form NGOs and to merely notify the authorities of their establishment, rather than seek permission from them to do so. Article 75 states: “All citizens shall have the right to form non-governmental associations and foundations on democratic basis, which shall acquire legal personality upon 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 rights to freedom of peaceful assembly and association has said that a notification procedure – rather than one that requires prior government authorization – 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”.⁷ The UN Special Rapporteur on the situation of human rights defenders has commented that “it should be permissible for individuals to join together to engage in lawful activities without having to register as legal entities” and that registration should be required only if the individuals forming the organization wish to establish it as a separate corporate legal personality.⁸

EXECUTIVE INTERFERENCE

Similarly to the current law, the draft new law enables executive authorities to unduly interfere in the work of NGOs by granting them the power to suspend NGOs’ activities at any time and to dissolve NGOs on the basis of vaguely worded concerns. The draft new law also requires both national and international NGOs to obtain permission from the authorities to seek funding, whether from foreign or local sources.

The draft new law imposes penalties on NGO staff members found to have conducted acts violating these and other provisions. This includes activities protected by the right to freedom of association or expression such as: receiving foreign or local funding or raising funds locally without the permission of the authorities; carrying out research or surveys and publishing their findings without the authorities’ approval; and carrying out activities, including joint activities with foreign NGOs, without the authorities’ permission. The 2017 law provides for prison terms of up to five years. The draft new law does not, but it nonetheless imposes fines ranging between 200,000 and 1 million Egyptian pounds (US\$12,000-60,000) on those convicted of conducting them. In addition, the draft new law continues to make reference to other

⁷Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, UN Doc. A/HRC/20/27, para. 58.

⁸UN Special Rapporteur on the situation of human rights defenders, Report to the General Assembly, 4 August 2009, UN Doc. A/64/226, paras 59-66 and 103-104.

legislative tools that can and have been used to prosecute and imprison human rights defenders on the basis of vague and overly broad charges, such as the counter-terrorism law.

The current NGO law stipulated that a National Body for the Regulation of the Work of Foreign Non-Governmental Organizations should be established to assess whether organizations should be granted permission to receive foreign or local funds and should be composed of representatives from various intelligence and security services. However, to date, the proposed body has not been created. The draft new law provides for the establishment of a different body called the Central Unit for Associations and Civil Work. It does not specify whether this unit will include members of the intelligence or security services, but indicates that its composition will be clarified by its forthcoming implementing regulations. The unit will be mandated by the government to “monitor and supervise” local and foreign NGOs and to co-ordinate with relevant authorities if an NGO is suspected of financing terrorism. Though it is unclear how wide the unit’s powers will be, Amnesty International is concerned that the unit’s mandate would facilitate the interference of security and intelligence agencies in the work of NGOs.

Like the 2017 law, the draft new law also gives the Egyptian authorities the power to interfere in the composition of NGOs boards by preventing candidates running for elections to it if “they did not meet the necessary conditions”.

The Egyptian constitution of 2014 guarantees, in Article 75, the right to freedom of association and unequivocally states that NGOs “shall have the right to practice their activities freely, and administrative agencies may not interfere in their affairs or dissolve them, or dissolve their boards of directors or boards of trustees save by a court judgment.”

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has also emphasized the right of organizations to seek, receive and utilize funds from national, foreign and international sources without 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”.⁹

Further, the UN Human Rights Council has called on states, in a resolution on the protection of human rights defenders adopted on 21 March 2013, to “ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders.”¹⁰

BACKGROUND

Since 2011, the Egyptian government has proposed a series of repressive NGO laws. After Law No. 70 of 2017 on Associations was passed, Egyptian and international human rights organizations campaigned against it, voicing criticism that was echoed by the UN High Commissioner for Human Rights and influential governmental actors such as the European Union and US administration.¹¹ In November 2018, President al-Sisi stated that he recognized the need for a more “balanced NGO law”. The ministry of social solidarity reviewed the current law and proposed amendments based on a series of “national dialogue sessions”, purportedly designed to consult with civil society. However, there was no genuine consultation with independent human rights organizations.

The draft new law has been passed by parliament at a time when the authorities are pursuing a crackdown on independent human rights organizations. Investigative judges have imposed travel bans on at least 31 individuals and have frozen the assets of 10 individuals and seven NGOs as part of a criminal

⁹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, UN Doc. A/HRC/20/27, para. 68.

¹⁰ Report of the UN Human Rights Council on the protection of human rights defenders, 12 April 2013, UN Doc. A/HRC/RES/22/6, para. 9.

¹¹ See, for example, UN High Commissioner for Human Rights, *Repressive new NGO law deeply damaging for human rights in Egypt*, 1 June 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21678&LangID=E; European Union External Action Service, *Statement on the new NGO law in Egypt*, 31/05/2017, eas.europa.eu/headquarters/headquarters-homepage/27183/statement-new-ngo-law-egypt_en; Foreign Policy, *Trump blinks, and Egypt's Sisi Wins: by giving in on aid, Washington just lost its leverage in Cairo*, 10 August 2018, foreignpolicy.com/2018/08/10/trump-blinks-and-egypts-sisi-wins/

investigation into the foreign funding of NGOs, known as Case 173/2011. If referred to trial, the charges, which are all related to legitimate NGO activities, could result in sentences as high as life imprisonment for NGO directors and staff members.