



Steady Deterioration of the Rights to Freedom of Association and Peaceful Assembly, Absence of the Rule of Law:

Conclusions of the Fact-finding and Advocacy Mission Conducted by the EMHRN and the Observatory for the Protection of Human Rights Defenders in Egypt One Year after the Revolution

One year after the popular uprising in Egypt, which resulted in at least 840 Egyptians killed according to official sources¹ and led to the resignation of President Hosni Mubarak, the Euro-Mediterranean Human Rights Network (EMHRN) and the Observatory for the Protection of Human Rights Defenders – a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT) – along with the Tunisian League for Human Rights (*Ligue Tunisienne des Droits de l'Homme* - LTDH), a member organisation of EMHRN, FIDH and OMCT, conducted a fact-finding mission on the status of the right to freedom of association and the situation of civil society organisations in Egypt, which took place between February 11 and 14, 2012.

During the mission, the delegation met Egyptian human rights organisations, representatives of the Egyptian government, political parties, and members of Parliament as well as representatives of the European Union (EU), of EU Member States and other European countries, and of the United States.

The EMHRN and the Observatory found that the conditions required for the enjoyment of freedom of association and peaceful demonstration have deteriorated, and collected testimonies of violations of public freedoms and human rights. They reminded the Egyptian authorities of their responsibilities to protect rights and freedoms, and of the need to undertake a genuine process of democratic transition. They also called upon Western governments to strongly condemn all violations and to encourage the democratic reforms that were at the heart of the demands of those movements which led to the Egyptian revolution.

The economic crisis, the burden imposed by the dictatorship of President Hosni Mubarak over three decades, coupled with the example of the victorious popular uprising in Tunisia led the Egyptian people to revolt in January 2011. This resulted in the President resigning on February 11. The Supreme Council of the Armed Forces (SCAF) subsequently took power, and promised a transition to a democratic civilian regime. The Constitution was suspended, and instead a Constitutional declaration prepared by the SCAF was adopted by referendum on March 19, 2011. The trial of former President Mubarak, his two sons and former Interior Minister Habib Al Adly began on August 3. Legislative elections were held between November 2011 and January 2012 and gave an overwhelming majority to the Islamist parties in the lower House of Parliament, with the Freedom and Justice Party (FJP - Muslim Brotherhood) obtaining 41 per cent of the votes and the Al-Nour Party (Salafi), 12 per cent.

¹ At least 846, according to the FIDH report "The Price of Hope: Human rights abuses during the Egyptian revolution", May 2011.



Throughout 2011 and early 2012, however, social movements continued in the country, especially in the capital Cairo. On numerous occasions, protesters gathered to demand a democratic transition, the transfer of power to a civilian government and the end of the state of emergency and of arbitrary arrests. These demonstrations were violently crushed (see below). Large numbers of protesters, bloggers, human rights defenders and journalists were arbitrarily detained, and thousands of people were prosecuted in military tribunals.

Thus the political and social situation in Egypt remains tense one year after the revolution, and the underlying demands remain unmet. The situation of human rights and public freedoms has on the contrary deteriorated, according to several human rights organisations met during the mission.

1. Obstacles to Freedom of Association and Attacks against Human Rights Organisations

The enjoyment of the right to freedom of association remains severely restricted, and has even clearly deteriorated since the revolution. Civil society organisations, and especially human rights organisations, have been threatened with being subjected to judicial proceedings since the summer of 2011, and have been the targets of a defamation campaign by the authorities and the official media in an attempt to tarnish their image in the eyes of public opinion. A number of government entities have threatened to prosecute Egyptian human rights NGOs, and accused them of being subservient to foreign interests and of encouraging disruptions in the country. Recently elected Islamist members of Parliament have joined in these attacks, disparaging these organisations as part of an intensive media campaign aimed at depicting them as agents of foreign powers and of the division of Egypt. It is worth pointing out that since the revolution of February 2011, these organisations have consistently denounced abuses by the military authorities, and especially the violent crackdowns on demonstrations that have resulted in the death of a number of demonstrators, as well as the on-going attacks against the rights to freedom of expression, peaceful demonstration and association. The accusations that present foreign-funded NGOs as responsible for the uprising and demonstrations that have taken place in 2011 and early 2012 reflect the inability of the Egyptian authorities to understand the root causes of the revolution and the escalation of social unrest that has occurred since then.

The Law 84 of 2002 on Associations allows the government to interfere with the creation, the internal management and the activities of NGOs and violates of the right of Egyptians to associate freely. Article 42 of the Law confers very broad powers to the Social Justice and Solidarity Ministry to dissolve associations and to request the imprisonment of NGO members for activities that would normally be considered legitimate, such as receiving foreign funds or joining foreign organisations without prior authorisation, carrying out advocacy policy activities, or for violating “public order or public morality”.

In July 2011, the government set up a committee to investigate the foreign funds received by dozens of Egyptian and international NGOs, and threatened their employees with prosecution under the pretext that foreign funding constitutes a violation of Egyptian sovereignty. In December 2011, heavily armed security forces conducted raids in the offices of several Egyptian and international NGOs.

About a dozen of employees of American and German NGOs were forbidden to leave Egypt, and in early February, 43 employees of American NGOs and a German foundation were summoned to a court hearing



to answer accusations of illegal foreign funding and opening offices of foreign associations in Egypt without authorisation. The trial began on February 26. The travel ban against the foreign NGO employees who were being prosecuted was lifted after protracted negotiations between the United States and Egypt, and these employees were allowed to leave Egypt on March 1. At a new hearing held on March 8, however, the judge requested that the 13 American citizens accused return to Egypt and that the others be present as well at the next hearing, scheduled for April 10. As of today, charges are still pending and hard bargaining is expected to take place, with the renewal of U.S. financial aid to Egypt being at stake in a climate marked by tensions between some elements in the government and the SCAF, on the one hand, and on the other, Parliament and the judges, who accuse them of bending to U.S. pressure.

It is important to point out that the foundations involved – the International Republican Institute, the National Democratic Institute and the Konrad Adenauer Foundation – are directly affiliated with political parties in their countries of origin. Freedom House is not connected to any party, but it does receive significant amounts of money from the U.S. Congress. As a result, all four organisations are accused of pursuing ‘foreign agendas’. The same allegation is however used to also attack Egyptian NGOs, in particular human rights organisations that finance their activities with assistance from foreign subsidies (e.g. European or American). Thus, Egyptian human rights NGOs and, more generally, civil society organisations that challenge government policies and denounce violations of public freedoms on behalf of citizens are being targeted by a defamation campaign seeking to represent them as ‘foreign agents’ that threaten the security and the integrity of the country. And while the prosecution of the American and German NGOs appears to be heading towards a negotiated solution, the judges in charge of investigating foreign financial support have announced several times that they plan to broaden the field of their investigation to include other Egyptian and international NGOs.

In meetings with an official of the Social Justice and Solidarity Ministry or with the Minister of International Cooperation, both made it clear that the government intended to support ‘the true civil society – that is, the civil society that does not get involved in politics’ – and that they viewed government control of the creation, activities and funding of associations as a matter of ‘national sovereignty’.

Against this background, it is not surprising that the government announced once again in late 2011 that it was planning to proceed with a revision of the Law on Associations, and released in the media in January 2012 a virtually unchanged draft law that had originally been prepared in 2009 under Mubarak. The proposed legislation seeks to further tighten the government’s already heavy control on civil society organisations. Already in 2009, some Egyptian associations had issued public condemnations of this freedom-curtailing legislation and had sent an alternative draft to the authorities, which remained unanswered. Again, in November 2011, a coalition of 39 Egyptian NGOs submitted an alternative legislative proposal, which was once more ignored.

Some members of Parliament and political parties, ranging from the liberal Egyptian Bloc (‘El Qotla El Masriya’) to the Muslim Brotherhood, have indicated they were willing to revise the draft legislation and to study the proposal presented by the NGOs. The government, which officially denied the existence of a final draft, announced that civil society organisations would be invited to a consultative meeting on February 27, but the meeting did not take place as scheduled, and at this writing, none of the partner organisations of



the EMHRN and the Observatory have been consulted. A government committee was finally set up on March 1 to draft a new bill which, according to the legal advisor at the Ministry of Social Justice and Solidarity, Mr. Mohamed Demerdash, would draw upon the proposals of the NGOs and the Muslim Brotherhood. The goal appears to be to have a new law adopted as soon as possible, although its content remains unknown for now.

One can only hope that the new legislation will be significantly different from the January 2012 draft, which seemed to be tailor-made to assert total control over human rights organisations, many of these being registered as entities subject to less restrictive statutes than Law 84 on Associations (under corporate law, in particular). However, the January draft stipulated that organisations “carrying out association activities” without having registered as such would be dissolved and their leaders would be prosecuted at the criminal level.

The arguments put forward by the Egyptian government are related to the presumed need for close control on the activities and funds of NGOs in the name of State security and sovereignty. However, there are other means to guarantee the principles of transparency and good governance of associations which comply with international standards and democratic practices, and which do not require excessive interference in the internal affairs of associations and pre-emptive control by the State. These include management and financial transparency standards and controls that apply to both private and public sectors; the publication of activity reports and annual financial audits conducted by independent entities when budget resources reach a given threshold; a review of the eligibility of associations to public subsidies based on these audits and other documents showing evidence of proper management, etc. These practices are commonly used in democratic countries and in the granting of public and international subsidies.

The EMHRN and Observatory delegation highlighted these positive examples with all the interlocutors met during the mission, and also pointed to the Tunisian Law on Associations adopted by consensus in 2011 as a model. The Tunisian legislation is indeed consistent with international standards, in particular by providing for a simplified notification system for the registration of associations, and it does not impose any pre-emptive control over activities and sources of funding nor specific penalties and sanctions when its provisions are breached. With these examples, the delegation was able to explain that the goal of an associations law is to set out their legal status and the rights and obligations attached to the latter, and shall not be a comprehensive instrument that repeats provisions already present in other laws and standards (e.g. management standards, laws to combat fraud, civil code, criminal code, etc.). The application of specific criminal sanctions against individuals forming an association may well duplicate sanctions already in place in legislation applying to all citizens - the criminal code, for example - and would thus be unfair because it would add criminal responsibility over and above what applies to other citizens.

Moreover, these sanctions apply to activities that are protected by international law (the right to establish an association even without registering it, to join an international organisation, etc.). The International Covenant on Civil and Political Rights (ICCPR), which was ratified by Egypt in 1982, states in its Article 22 dealing with the right to freedom of association 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’.

Article 4.1 of the ICCPR makes it clear that *‘in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant’.* However, for 30 years, Egypt has been under an emergency law that is still being applied in part, which is completely contrary to that provision of the Covenant. It is difficult to understand why such measures as imposing prior restrictions on the field of activities or funding sources of associations or forcing them to join a federation controlled by the Social Justice and Solidarity Ministry are measures needed to ensure the survival of the nation or to safeguard public order.

The EMHRN-Observatory delegation raised all of these matters with the representatives of the European Union and various European countries (see the list of persons met at the end of this report). In November 2011, the EMHRN and the Observatory had written to the EU High Representative, Ms. Ashton, as well as to the European Commissioner for Enlargement and European Neighbourhood Policy, Mr. Füle, to draw their attention to the attacks against Egyptian civil society. In response, both had described the policies adopted by the EU in support of civil society and human rights defenders in Egypt. In addition, Ms. Ashton, the European Parliament and the EU Foreign Affairs Council recently issued statements or resolutions dealing with this issue².

One must recognise, however, that statements of principle have had only a limited impact on the ground, and human rights NGOs in Egypt are expecting support from the EU that is more active and more visible. Accordingly, the EU and its Member States were asked to express a strong position in favour of freedom of association in Egypt through their representations on the ground, and to urgently implement policies of support to civil society and in particular to human rights defenders. This request is in keeping with the logic underlying the statements of intent and documents issued by the EU since the wave of Arab revolutions began in 2011, in particular the new European Neighbourhood Policy and the Partnership for Democracy and Shared Prosperity with the Southern Mediterranean, as well as the EU Guidelines on Human Rights Defenders.

2. Attacks against Freedom of Peaceful Assembly

Law 34 of 2011 ‘On Criminalising Attacks on Freedom to Work and the Destruction of Facilities’, which came into effect on April 12, 2011, imposes a prison sentence of one year or a fine of not less than 20,000 Egyptian pounds (2.500 €) and not more than 50,000 pounds (6.270 €) on anyone who, under the state of emergency, calls for or takes part in demonstrations, strikes, sit-ins or gatherings that lead ‘to prevention or stoppage of work in any of the state institutions [or] public authorities’.

²http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/128179.pdf
http://www.enpi-info.eu/mainmed.php?id_type=1&id=27593&lang_id=450&utm_source=4marketing.it%2C%204dem.it&utm_medium=Email%20Marketing&utm_content=Subscriber%231842&utm_campaign=Egypt%3A%20EU%20concern%20at%20raids%20on%20NGOs



Law 34 applies similar penalties to anyone who, in writings, speeches or any other form of public utterance, incites or calls upon others to stage a demonstration or a strike. The law also provides for a minimum prison sentence of one year for those who use violence during a demonstration or strike if the protest or strike leads to 'sabotage of any of the production means, or negatively influenc[es] the national unity, social peace, general system, or harming public or private money, building or properties'³.

Law 156 of 1964 authorises the Interior Ministry to fire live bullets in order to break up demonstrations.

In this context, movements demanding concrete democratic changes and the transfer of power to a civilian authority have been expressing themselves, for the past year, converging on Tahrir Square in Cairo and in other cities in the country. These demonstrators have almost systematically been confronted with violence, arrests, torture and ill treatment on the part of security forces. Bloggers and human rights activists have also faced pressures, arbitrary arrests and police harassment – among them Messrs. **Alaa Abdel-Fatah** and **Maikel Nabil**, two bloggers who were arrested for denouncing human rights violations, the former during the revolution and the latter at the time of the Maspero massacre (see below).

On March 9, 2011, during a demonstration on Tahrir Square, several protesters were arrested and subjected to ill treatment. Among them were seven women who endured degrading treatment and had to undergo forced 'virginity tests' conducted by male military doctors.

On October 9, Coptic demonstrators organised a march to Maspero, the building housing state television in Cairo, to protest the burning of a church in Aswan. They were met with harsh violence by the military, who fired live bullets to break up the demonstration and then charged with armoured troop vehicles, killing 24 people and injuring hundreds of others.

On November 19, more confrontations between protesters and security forces took place, following the violent break-up of a sit-in on Tahrir Square. These clashes lasted four days, with the police using lead bullets and live bullets against the demonstrators: 45 people were killed and thousands were injured.

On December 17, soldiers again used violence to disperse a gathering of demonstrators in front of the headquarters of the government Cabinet in Cairo, and arrested and detained a number of demonstrators who later stated that they had been ill-treated during their detention. Unprecedented violence was used against women protesters in these incidents. Soldiers hit demonstrators with truncheons, applied electric shocks, used live bullets and at times threw firebombs. This excessive use of force resulted in 17 demonstrators being killed, with hundreds suffering injuries.

At this writing, it is very difficult to know whether all those who were arrested during the demonstrations held in 2011 and 2012 have been released or whether they are being prosecuted. At the same time, despite the statements made by the SCAF in the spring of 2011, no investigation results have ever been made public about allegations of ill treatment inflicted when repressing demonstrations or in detention.

Furthermore, if the state of emergency, which had been in place since 1981, was partially suspended in January 2012 while remaining in force in cases of 'crimes of vandalism', its continuation by the interim

³ Unofficial translation.



authorities has allowed to prosecute most of the demonstrators who were arrested throughout the year that followed the initial uprising before special courts. Since the SCAF took over power on February 11, 2011, more than 12,000 civilians have been tried in military courts, thus being denied of their right to a fair trial. Civilians tried in these tribunals received their sentences after summary trials, without their attorneys being present and without any possibility of appealing the judgements against them. Military trials have often been used against opponents of the regime and human rights activists in an attempt to silence them.

All of these abuses run counter to Egypt's international obligations, in particular the ICCPR, which protects the right to freedom of peaceful assembly and demonstration and imposes on states the duty to guarantee the enjoyment of those rights.

RECOMMENDATIONS

1. The Euro-Mediterranean Human Rights Network and the Observatory for the Protection of Human Rights Defenders call upon the Egyptian government, the Supreme Council of the Armed Forces and the recently elected Parliament to:

- Guarantee in all circumstances the physical and psychological integrity of all Egyptian human rights defenders;
- Immediately put an end to acts harassment – including at the judicial level – against human rights defenders and non-governmental organisations;
- Release all civilians convicted by military tribunals, or transfer them to civilian courts to receive a new trial;
- Conduct an in-depth revision of Law 84 on Associations in order to ensure its compliance with the ICCPR, in particular by:
 - Allowing associations to register by a simple declarative system, without restriction as to their purpose, their activities or their internal structure;
 - Allowing associations to secure funding nationally and internationally by adhering to financial transparency procedures that are in line with international law and best practices;
 - Ensuring that the unilateral dissolution of associations is submitted to an independent judicial control in limited circumstances that are strictly defined by law;
- Guarantee the full enjoyment of basic rights and freedoms of defenders, in compliance with the provisions of the regional and international human rights instruments ratified by Egypt and of the United Nations Declaration on Human Rights Defenders, adopted by the United Nations General Assembly on December 9, 1998, including the right to freedom of association and freedom of peaceful assembly and demonstration; and ensure that the use of law enforcement is strictly proportional to the need to ensure the safety of participants in these gatherings;



- Rescind Law 34 of 2011 banning demonstrations and strikes, and amend Law 156 of 1964 (authorising the Interior Ministry to fire live bullets to break up demonstrations);
- Order independent and impartial investigations into allegations of torture and other ill treatment suffered by detainees held by security forces, and into the excessive use of force that led to the deaths of demonstrators, in order to identify the perpetrators and to prosecute them before an independent, competent and impartial tribunal in conformity with international and regional human rights instruments, and apply them the criminal, civil and/or administrative sanctions provided for in the law;
- Entrench in the Constitution the principle that no civilian should be tried in special tribunals, in accordance with the March 8 decision rendered by the Court of Administrative Justice of the Council of State, which rescinded the decision by Chief of Staff Field Marshal Tantawi to prosecute civilians accused of 'vandalism' in military tribunals;
- Repeal the state of emergency in full, and put an end to all special tribunals;
- Accede as soon as possible to the request for permission to visit made by the Special Rapporteur of the United Nations on the Situation of Human Rights Defenders, in particular in light of the intervention of the Egyptian mission in the context of the interactive dialogue with the Special Rapporteur during the 19th session of the United Nations Human Rights Council;
- Accede as soon as possible to the request for permission to visit made by the Special Rapporteur of the United Nations on the rights to freedom of peaceful assembly and of association;
- Comply with the provisions of the United Nations Declaration on Human Rights Defenders, ations9, and more generally with the principles of the Universal Declaration of Human Rights and the provisions of regional and international human rights instruments ratified by Egypt.

2. The EMHRN and the Observatory for the Protection of Human Rights Defenders welcome the publication, by Ms. Ashton, the EU High Representative for Foreign Affairs and Security Policy, the European Parliament and the EU Foreign Affairs Council, of several press releases and resolutions in favour of human rights and freedom of association in Egypt.

Our organisations urge the European Union and its Member States to:

- Identify immediate and concrete measures to support the work of NGOs and human rights defenders in accordance with the EU Guidelines on Human Rights Defenders and the principles set out in recent statements by various EU institutions;
- Adopt as soon as possible a Human Rights Strategy for Egypt in consultation with independent Egyptian NGOs;
- Make any enhancement of cooperative relations with, and financial assistance to, the Egyptian authorities conditional upon genuine progress being achieved with regard to respect for human



rights and public freedoms, in with the light of the new European Neighbourhood Policy and the Partnership for Democracy and Shared Prosperity with the Southern Mediterranean.

3. Our organisations also call upon the Special Rapporteur of the United Nations on the Situation of Human Rights Defenders, the Special Rapporteur of the United Nations on the Rights to Freedom of Peaceful Assembly and of Association, and the Special Rapporteur on the Situation of Human Rights Defenders in Africa of the African Commission on Human and Peoples' Rights (ACHPR) to call upon the Egyptian authorities to:

- Guarantee the physical and psychological integrity of all human rights defenders in Egypt;
- Immediately put an end to all judicial proceedings and acts of harassment against human rights defenders and non-governmental organisations;
- Guarantee the full enjoyment of basic rights and freedoms of defenders, including the rights to freedom of association and to freedom of peaceful assembly.

4. Last, the EMHRN and the Observatory for the Protection of Human Rights Defenders call upon the African Commission on Human and Peoples' Rights (ACHPR) to:

- Call upon Egypt to take all necessary steps, including legislative and administrative measures, to respect and protect the rights of all defenders, to prevent and put an end to all violations of their rights, and to investigate all such violations and ensure that those responsible are prosecuted before courts;
- Inform the African Union about the human rights situation in Egypt, in particular that of human rights defenders, through its activity reports;
- Send, in accordance with its mandate, an official mission dedicated to the promotion of human rights in Egypt that would include in particular the Special Rapporteurs on the Situation of Human Rights Defenders in Africa, on Freedom of Expression and Access to Information, or on Conditions of Detention.



ANNEX: Composition of the Delegation; Individuals and Organisations Met

The delegation sent to Egypt by the Euro-Mediterranean Human Rights Network and the Observatory for the Protection of Human Rights Defenders was composed of:

- Mr. Kamel Jendoubi, EMHRN President and member of OMCT Executive Council
- Ms. Khadija Cherif, FIDH Secretary General, representing the Observatory
- Mr. Abdessatar Ben Moussa, President of the Tunisian League for Human Rights (LTDH)
- Mr. Raji Sourani, FIDH Vice-President and Director of the Palestinian Center for Human Rights
- Ms. Bérénice Michard, Freedom of Association Project Coordinator, EMHRN
- Ms. Stéphanie David, Head of FIDH Middle East and North Africa Desk

The delegation met the following individuals and organisations:

- Representatives of the following independent human rights NGOs:
 - Mr. Bahey Eddin Hassan, Ziad Abdel Tawab and Mohamed Zaree, Cairo Institute for Human Rights Studies (CIHRS);
 - Ms. Nawla Darwich, New Woman Foundation;
 - Ms. Azza Yaman, Center for Egyptian Women and Legal Aid (CEWLA);
 - Mr. Khaled Ali, Center for Economic and Social Rights;
 - Mr. Ahmed Fawzy, Egyptian Association for Community Participation Enhancement;
 - Ms. Rawda Ahmed, Arabic Network for Human Rights Information (ANHRI);
 - Mr. Mohsen Kamal, Al-Andalous Centre;
 - Mr. Tarek Khater, Human Rights Legal Aid Group;
 - Mr. Hussein Kamel, United Group, Attorney at Law and Legal Advisors;
- Mr. Mohamed El-Demerdash, legal advisor, Ministry of Social Justice and Solidarity;
- Representatives of the Social Democratic Party, a member of the Egyptian Bloc (Al-Qotla);
- Messrs. Mohamed Morsy, President of the Freedom and Justice Party of the Muslim Brotherhood and Asam Haddad, Foreign Relations Advisor of the Freedom and Justice Party;
- Ms. Faiza Abou Elnaga, Minister of International Cooperation;
- The Parliamentary Human Rights Committee, chaired by Mr. Mohamed El Sadate, with the presence of Ms. Laila Bahaeldin, Foreign Ministry ambassador;
- Representatives of the European Union Delegation and of the embassies of Bulgaria, Cyprus, the Czech Republic, Finland, France, Ireland, the Netherlands, Norway, Slovenia, Sweden, Switzerland, the United Kingdom and the United States.