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Signing new NGO bill would be a “death warrant” for Egyptian rights groups

Egyptian president al-Sisi must not sign a new draconian bill on associations, which, if enacted, will give the government extraordinary powers over NGOs and eradicate independent civil society in Egypt, Amnesty International said today. The parliament approved bill was sent three days ago for legal review by the State Council, after which it will go to the president for sign off.

The bill is the most repressive of multiple drafts seen by Amnesty International since 2011 and is far more restrictive than the current Mubarak-era NGO law on associations no 84 of 2002, which itself contravenes the 2014 constitution and Egypt’s obligations under international human rights law. The bill comes at a time when human rights organizations have been subjected to asset freezes, travel bans and interrogations as part of a criminal investigation that could result in life sentences for NGO leaders and staff members.

The bill, which has 89-articles, was formally proposed by Member of Parliament Abdel Hady el-Qasby, debated and approved by parliament in just two days. In his presentation of the draft law to the parliament, el-Qasby said that the existing Law no. 84 of 2002 had “shortcomings that did not ensure the necessary balance to ensure national security.”¹

Among the most draconian elements of the bill are provisions which: punish conducting field research and surveys without government permission with up to five years in prison; require that the work of NGOs be aligned to government priorities and plans; and give the authorities wide powers to dissolve NGOs and subject their staff to criminal prosecution based on vague and broad terms including “harming national unity and disturbing public order.”

The bill was discussed in closed session in one parliamentary committee but there was no consultation with stakeholders, including civil society organizations; nor was there any public debate about this bill, despite the fact that its enactment would have a widespread, devastating impact on civil society. The bill will affect – according to the government’s own numbers– over 47,000 NGOs providing essential social services at a time of great economic

¹ *Al-Manasa*, “diary of a parliamentarian journalist: another new round of Sadat battle under the dome”, 13 November 2016, available at <https://almanassa.com/ar/story/3260>.

hardship, as well as a handful of human rights NGOs which are among the few remaining critical voices in Egyptian public life.

Since 2011, the government has proposed successive repressive draft NGO laws, which Egyptian civil society, with support from international NGOs, has successfully lobbied against every time. MP el-Qasby also said to parliament: “The state has tried since 2012 to propose laws that would ensure this balance but unfortunately all these attempts failed because of internal and external pressure.”

Amnesty International urges President Abdel Fattah al-Sisi to scrap this bill which is completely at odds with Egypt’s Constitution and violates its international human rights obligations.

The 2014 Egyptian Constitution, guarantees the right to freedom of association in Article 75,² which 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 bill also violates the obligations Egypt entered into freely when it ratified the International Covenant on Civil and Political Rights (ICCPR)³ and other international human rights treaties⁴ which are also incorporated as a source of law in the Egyptian Constitution.⁵ In its 2014 Universal Periodic Review by the UN Human Rights Council, Egypt accepted at least 13 recommendations urging the government to revise existing Law 84 of 2002 to bring it in line with international law and standards. Yet the bill passed by parliament this week is significantly more repressive than that Mubarak-era law and would result in the decimation of Egypt’s already besieged civil society.

Executive interference:

The bill provides for massive governmental interference in and control of the work of NGOs. It requires NGOs, whether domestic or international, to seek the authorities’ permission to register, undertake activities and to seek funding. For example, the bill states that NGOs must obtain the approval of a national security body that includes members from different intelligence services before accepting foreign or local funds or raising funds locally. It also

² Article 75 of the 2014 Constitution states “All citizens shall have the right to form non-governmental associations and foundations on democratic basis, which shall acquire legal personality upon notification. Such associations and foundations 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.”

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

⁴ African Charter on Human and Peoples’ Rights, Article 10; Arab Charter on Human Rights, Article 28.

⁵ 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.”

requires local NGOs to contribute 1% of its funds to a state authority called the NGOs and Associations Fund.

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.”⁶

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.”⁷

The bill further imposes harsh penalties of up to five years imprisonment and fine of one million EGP (\$65,000) on staff members of NGOs found to have conducted acts in violation of the provisions of this law. This includes: receiving foreign or local funding or raising funds locally without the permission of the authorities; carrying out research and surveys and publishing their findings without the authorities’ approval; carrying out joint activities with foreign NGOs without the authorities’ permission; and carrying out activities that are deemed to “harm national unity or disturb public order”.

The bill essentially gives the government the tools to control NGOs by granting it the authority to suspend NGOs’ activities at any time; and gives it the powers to dissolve NGOs merely for carrying out their legitimate work. Further, the the bill states that all activities of NGOs must be in compliance with the government priority plans thereby fundamentally undermining the role of human rights organizations in documenting violations and holding the authorities to account.

Formation and Registration:

Under this bill, registration of NGOs is not by notification, as specified by Article 75 of the Egyptian constitution, but rather requires advanced permission from the authorities. The bill gives the authorities the right to object to the registration of NGOs within 30 days, from the date of notification, if it sees that the activities of NGOs are criminalised under the Penal Code or any other laws, including the deeply repressive counter terrorism law.⁸ It also grants the authorities the power to reject the establishment of NGOs on overly broad grounds and terms like “harming national unity and disturbing public order”.

As noted above, these requirements and restrictions are contrary to the provisions of Egypt’s constitution, as well as Egypt’s obligations under international law. UN experts have criticized situations where government approval, rather than simple notification, is required

⁶ *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association* (UN Doc: A/HRC/20/27), 21 May 2012, para 68.

⁷ A/HRC/RES/22/6, para 9.

⁸ Amnesty International, *Memorandum: Egypt’s draft law on counter terrorism* (Index: MDE 12/2269/2015).

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 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.”⁹ 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

Overly broad vague terms and heavy penalties:

The bill uses overly broad and vague terms that could be used by the authorities to arbitrarily punish and dissolve NGOs that are critical of the government and outspoken about human rights violations. For example, the bill imposes penalties of up to five years imprisonment and a fine reaching up to one million EGP (\$65,000) if an NGO was found to have carried out activities that “harm national unity, disturb public order, or affect national security”. A review of government discourse as well as thousands of prosecutions show that, from the perspective of the Egyptian authorities, peaceful protests, publishing articles critical of the government, and conducting advocacy work are examples of activities the authorities have deemed to harm national unity and disturb public order.

A ban on field research without permission:

One of the most worrying provisions for human rights organizations is the prohibition of NGOs carrying out field research or surveys without first receiving the permission of the authorities for each field research or survey. Staff of an NGO that is found to have violated these terms will face up to five years imprisonment and the NGO could be dissolved. The same penalties will apply if an NGO conducts field research or surveys and publishes its findings and results without sharing these findings with the government first and receiving permission to publish them. These provisions completely undermine the role of independent human rights organizations whose role is to critically assess the human rights record of the authorities in order to recommend ways to improve the human rights situation in the country.

Prohibiting cooperation with foreign NGOs without permission:

The bill also states that local NGOs are not allowed to cooperate with or join foreign NGOs in carrying out civic activities without government permissions. Any NGO staff found to have violated these conditions will face up to five years prison term and fines reaching up to one million EGP (\$65,000) and dissolve of the NGO. The bill further states that the authorities can order an NGO to suspend its activities on the basis that it suspects the NGO has violated

⁹ A/HRC/20/27, para 58.

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.

these restrictions – that is, while the case is referred to an administrative court and until a verdict is issued.

Draconian restrictions on foreign NGOs

The bill establishes a committee called the National Body for the Regulation of the Work of Foreign Non-Governmental Organizations, which is a security committee composed of representatives from various intelligence and security services including from the Ministry of Defence, Ministry of Interior, the General Intelligence Services and the Administrative Control Authority. This body is mandated with granting permissions for the registration of foreign NGOs and renewing it every three years as well as granting permissions to their activities and funding.

This committee is also mandated to approve any foreign or local funding to local or foreign NGOs as well as approving any fundraising activities of local NGOs. The bill further states that the committee has 60 days to approve receipt of foreign funds. If it does not respond within the 60 days this will be considered a rejection. This is far more restrictive than previous drafts and the current law which considered the non-response of the authorities to be an approval.

The bill also sets additional restrictions on foreign NGOs by stipulating that foreign NGOs must obtain explicit permission of the authorities to operate and this authorisation must be renewed every three years. The bill imposes very high registration fees of 300,000 EGP (\$19,000), payable every three years and to be increased by 20% every five years. As with local NGOs, the bill requires that foreign NGOs contribute 1% of their funding to a state body called the Non-governmental Organizations and Associations Fund. Further, the bill states that foreign NGOs cannot carry out any activities without obtaining the necessary permissions from the authorities and that these activities have to be in line with the needs of the Egyptian society and government development plans.

The bill also states that foreign NGOs may not conduct any activities of “a political nature” or those that could “affect national security, public order, public morals or public health.” It also bans any foreign NGOs from carrying out cooperation activities with other NGOs without the authorities’ permission. As with local NGOs the bill requires that foreign NGOs obtain approval if they wish to conduct any field work or surveys and that they cannot publish the results of each research project without prior approval by the newly-established committee of security officials. The penalties for violating these provisions are up to five years in prison and fine reaching up to one million EGP (\$65,000) as well as dissolving the foreign NGO.

The bill also states that foreign NGOs cannot hire any foreign experts or employees or volunteers without obtaining government permissions. The Minister of Social Solidarity has the power to order the suspension of its activities or to cancel its registration, after consultation with the committee, if it determines that a foreign NGO has violated any of the provisions of the law.

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, the bill goes far beyond what is appropriate.

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.”¹¹ The bill’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].”¹²

¹¹ A/64/226, para122 and 126.

¹² A/HRC/20/27, para 59.