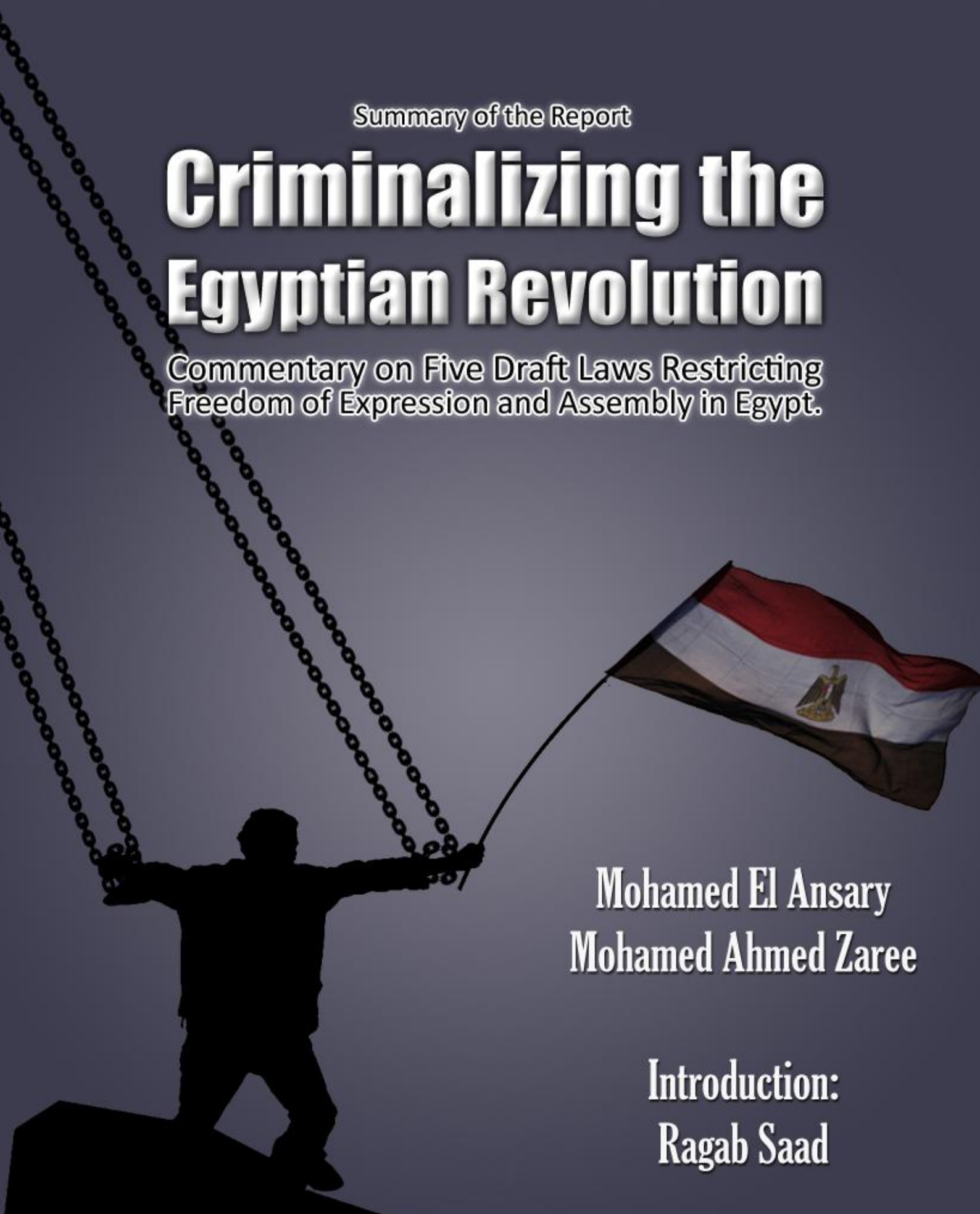
CAIRO INSTITUTE
FOR HUMAN RIGHTS STUDIES

Summary of the Report

Criminalizing the Egyptian Revolution

Commentary on Five Draft Laws Restricting Freedom of Expression and Assembly in Egypt.



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Summary of the Report: Criminalizing the Egyptian Revolution
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Report introduction: sacrificing both human rights and security[1]

Interior Ministry draft laws seek to criminalize and bury the revolution by law

The draft laws proposed by the Egyptian Interior Ministry reveal a lack of the readiness and political will needed to relinquish the statutory tools of repression that the former regime used systematically over the last few decades in the face of political and social protests opposed to the regime's policies.

Prior to the revolution, the Interior Ministry guarded the regime's interests while failing abjectly to perform its principal role: maintaining security without infringing on human rights and dignity. Police became accustomed to working in an exceptional legal environment that was not only inconsistent with international human rights norms and professional police standards, but was actively inimical to them. The law granted protection and virtual immunity to security personnel who violated citizens' rights through loopholes that permitted police to act with impunity.

As a result of decades of police work under the emergency law, human rights were trampled daily in police stations, prisons, and detention facilities all over Egypt—practices consistently exposed and condemned by Egyptian and international human rights groups. The January 25 revolution came to demolish the pillars of the despotic police state. The revolution erupted on the national day to honor the police and, shortly after removing Mubarak, demonstrators stormed several State Security Investigations headquarters, the symbol of authoritarianism and the repression and abuse of citizens.

It was thus natural that one of the most important demands of the revolution was the reform of the Interior Ministry, the restructuring of the security apparatus, and calling security leaders responsible for grave human rights violations to account. But the Supreme Council of the Armed Forces (SCAF), which assumed legal and political control of the country after the revolution, did not possess the political will needed to take these steps, failing to do its duty and respond to demands for security reform.

The post-revolution parliament was not sympathetic to ongoing peaceful political and social protests and strikes in public squares and factories. Indeed, the Freedom and Justice Party (FJP) submitted a law restricting the right to peaceful protest and assembly. During preparations to lift the state of emergency in late May, the Interior Ministry, under the SCAF, submitted a set of bills to parliament for approval,[2] claiming that these laws would help end the security vacuum and rampant

[1] This is a brief English summary of a report published by CIHRS on October 2012 in Arabic. To read the whole comprehensive report in Arabic *see* http://goo.gl/rBi9l

2 According to Gen. Ahmed Gamal al-Din, the current interior minister, in a meeting at his office in the ministry with

thuggery and plug the gap left by the emergency law. But political events intervened as a court order was issued that dissolved the People's Assembly before it could adopt the laws.

The current Interior Ministry has again adopted these draft laws and now seeks the approval of the Cabinet and President Mohamed Morsy, the latter now holding both executive and legislative authority.

The bills, which will be subjected to a legal analysis in this report, indicate that the Interior Ministry has still not internalized the fact that the police's gross human rights violations, their habitual use of excessive force, and their repression of public and private liberties was the major impetus for the protests of January 25, 2011, which turned into a revolution. In short, the practices of the Egyptian police sparked a popular revolution for human rights.

The proposed laws indicate that the Interior Ministry still does not realize that the preservation of security and social stability will not be achieved if policies continue that restrict citizens' exercise of their rights and basic liberties, upheld by established constitutional principles and international human rights conventions ratified by Egypt.

The Interior Ministry states that it will eliminate violence, thuggery, and the security vacuum with the following proposed laws:

1. The bill to protect society from dangerous persons;
2. The bill to regulate demonstrations on public thoroughfares;
3. The bill to amend Article 1 of Law 34/2011 criminalizing assaults on the freedom to work and the destruction of workplaces.
4. The bill to amend some provisions of Law 113/2008 protecting the sanctity of houses of worship.
5. The bill to amend some provisions of the Penal Code (Law 58/1937).

In fact, the Egyptian legal and statutory system has no need of these legal changes; the current system is sufficient to confront the various dangers that threaten security. However, it is in need of changes of a different nature—changes that would purge excessive punitive provisions and articles that criminalize acts not criminalized by international law, to bring the current Egyptian penal statutory law in line with international human rights systems.

In some of the most notorious crimes committed before the revolution—that is, under the state of emergency in which police enjoyed exceptional powers and an enhanced "stature"—the police were unable to identify and apprehend the perpetrators. These include the bombing of the Two Saints Church in Alexandria and the Beni Mazar massacre, among others. This inability to apprehend perpetrators continued after the revolution, as police failed to identify those responsible for ordering

several representatives of Egyptian human rights groups. See <http://www.cihrs.org/?p=4518>.

the shooting of demonstrators during the revolution and after it. Addressing such fundamental problems requires drastic improvement in police capabilities, through training programs, rehabilitation programs restructuring of departments, holding human rights violators to account, and undertaking a serious reconciliation with the citizenry by exposing the truth, bringing justice to the victims, and offering compensation and apologies.

Unfortunately, the bills proposed by the Interior Ministry move in the opposite direction, aiming to revive the old tools of repression that were not codified as law but were protected under the state of emergency by a law that was in-itself incompatible with international human rights standards. These proposed draft laws also increase immunity for security personnel while offering no guarantees for the protection of human rights and liberties won by the people with precious sacrifices. Indeed, the proposed laws and amendments seek to codify repression by law and enshrine exceptional measures—unacceptable even under a state of emergency—into the ordinary legal code. This suggests that the Interior Ministry wishes to find a permanent alternative to the infamous emergency law.

In addition, the proposals from the Interior Ministry coincide with the Minister of Justice's declaration that he is seeking amendments to the emergency law, which worries human rights organizations given the current government's stances on respect for human rights and public liberties.[3]

The proposed legal changes recall several notorious laws of the past that the Supreme Constitutional Court found unconstitutional, such as the bill for the protection of society from dangerous persons. The Interior Ministry derived that bill from the law on vagrants and suspicious persons, which was ruled unconstitutional. The draft legal amendments seek to grant security personnel exceptional powers that would permit them to assault citizens' individual liberties and rights to movement and residence. They would also empower security personnel to detain any citizen based on the suspicion that he might commit a crime. Moreover, the acts criminalized by the law are expansive and vague, as is the nature of authoritarian laws often drafted by regimes in Egypt to restrict citizens' liberties, rather than protect them.

The Interior Ministry also submitted amendments to Law 34/2011 criminalizing assaults on the freedom to work and the destruction of workplaces. This law was passed by the SCAF to confront peaceful labor protests and demands. The enforcement of that unjust law was conditional on an existing state of emergency; it clear that with the new draft law the Interior Ministry seeks to revive the law, frozen after the state of emergency was lifted. The proposed bill would enshrine the

3 See Appendix 1, which contains the text of a memorandum submitted to the Minister of Justice from the Forum of Independent Human Rights Organizations, titled "Maintaining security without infringing on human rights guarantees: no exceptional measures needed; existing law is enough."

emergency law's exceptional articles—inimical to human rights—and its punitive provisions in the ordinary legal code in order to suppress social protests and strikes, which are likely to increase given the growing economic crisis.

Claiming to regulate the exercise of the right to demonstrate and secure demonstrators, the Interior Ministry submitted a bill that sweeps away the right to freedom of expression and peaceful protest. If the bill is adopted, it will grant security personnel legal cover to repress demonstrations, disperse peaceful protests, detain citizens, and impose steep fines on those advocating demonstrations, participating in them, or even showing solidarity with them. In addition, the conditions set by the Interior Ministry to regulate notification procedures are extremely arbitrary. In the final analysis, the law would erode the right to freedom of assembly and threaten lawbreakers with liberty-depriving penalties. Under the guise of regulating the exercise of a right, the draft law confiscates it.

The Interior Ministry appears unable to understand how police could return to their mission of maintaining security without giving them even greater immunity that sets them above the citizenry. The Interior Ministry has proposed amendments to the Penal Code that would increase terms of imprisonment and double fines for anyone convicted of assaulting or insulting a public servant or police personnel. Essentially, any response from citizens to police constitutes an assault, while participating in a peaceful demonstration for example, will become a crime whereby the victim is punished while the assailant is protected.

The Interior Ministry also seeks to add an article to the Penal Code criminalizing the right to demonstrate and protest, by criminalizing acts that obstruct traffic on public roads and squares "with the goal of influencing the decisions of any state institution or harming its ability to do its constitutional and legal duties." Thus will peaceful protests, labor strikes, and strikes by other professional sectors demanding social justice be criminalized under the law. The draft amendments would also grant police a license to deal severely with protestors, use excessive force, and detain any suspicious citizen. In addition, it would grant police additional legal immunity that would help them confront any resistance to their abuse of power.

It is telling that the Interior Ministry's proposals are not interested in addressing the causes of the tattered relationship between the citizenry and the police, a relationship marked by citizens' suspicion that the police seek to take vengeance for the revolution, and frustration that police practices have not changed since the January 25 revolution.

These proposed bills constitute a serious test of President Morsy's stance on human rights and public liberties and his commitment to the major goals of the revolution. If these draft laws are adopted and enforced, it will only be after the president, who possesses legislative power, issues them via decree laws.

The Egyptian people rightly expected that the government formed by the elected president would make democratization, the realization of social justice, and respect for human rights a priority and would draft a concrete, detailed plan laying out objectives and steps to be taken. But what the government is proposing, through the Interior Ministry, indicates that it has a ready plan for repression, not democratization. The choice facing the president is either to refuse to issue these laws, or to issue them and inaugurate a new phase in the reconstitution of the police state, struck with a heavy blow by the January 25 revolution.

Chapter one: the bill on the protection of society from dangerous persons

Comment on Bill /2012 on the protection of society from dangerous persons[4]

Introduction

The Interior Ministry has submitted a bill entitled, 'On the protection of society from dangerous persons.' This bill is essentially a reformulation of Law 98/1945 on vagrancy and suspicion together with its amendments. Article 5 of that law was ruled unconstitutional in 1993,[5] and Articles 6, 13, and 15 also struck down in consequence. Unfortunately, however, the draft law submitted by the Interior Ministry is inspired by the same philosophy that underpinned the unconstitutional articles of the vagrancy law. As will be explained in detail, it punishes a crime that involves no material act of conduct, in violation of all constitutional and legal principles.

It is established in jurisprudence that sanctions are imposed as a result of the commission or omission of a specific, clearly defined act. But the bill in question mandates punishment based on mere suspicions of the security apparatus, due to a person engaging in conduct that "suggests" the commission of a crime that infringes on the public order, or if his past criminal record indicates that he has committed a crime. In other words, the bill prescribes penalties based on the discretionary authority of the police using their own self-defined criteria if they believe that some conduct suggests the commission of any crime enumerated in Article 2 of the bill; it is not necessary that the person commit or attempt to commit a material criminal act. The bill may also punish a person for past criminal actions, which would allow a person to be punished twice for the same crime, although prior criminal actions are not considered evidence for the commission of a crime.

The bill also includes in the scope of criminal activities it potentially regulates criminal provisions which are themselves in violation of human rights. In particular, the bill cites Law 34/2011, issued by the Supreme Council of the Armed Forces (SCAF) in April 2011 to strikes and sit-ins. While Article 1 of Law 34/2011 conditions its enforcement on a declared state of emergency, by citing it in the bill on the protection of society from dangerous persons, and through the amendments to the law itself sought by the Interior Ministry, the draft law will be in force even in the absence of a state of emergency,[6] thus criminalizing citizens' right to strike and engage in sit-ins at all times.

Article 4 of the bill on the protection of society from dangerous persons provides for the formation of a court in the capital of each governorate authorized to adjudicate cases filed under the provisions of the law. The Court will comprise one judge supported by two experts, one of them from the

4 See also a statement on the law issued by 13 human rights groups, Sep. 13, 2012, <www.cihrs.org/?p=3956#>.
5 Appeal 3/19JY, in the session convened on Jan. 2, 1993.
6 See the CIHRS commentary on the Interior Ministry's proposed amendments to Law 34/2011 criminalizing assaults on the freedom to work.

Interior Ministry and the other from the Ministry of Social Affairs. This provision is similar to that in Article 7 of Law 98/1945 on vagrancy and suspicion, which was amended by the legislator with Law 196/1983 because the formation of the court affected the speed of litigation and the adjudication of cases, which impinged on citizens' rights and liberties,[7] as will be discussed below.

The explanatory memo accompanying the bill for the protection of society from dangerous persons reflects the philosophy of the Interior Ministry, the bill's sponsor, in its approach to security crises. Ostensibly seeking to protect the gains of the January 25 revolution, the ministry claims to issue the law on the grounds of defending freedom of opinion and expression "without infringing on security and assaults on public and private facilities and property and [while] apprehending dangerous criminal elements planted among demonstrators." In fact, if this law is issued, it will undermine all the gains and struggles for human rights and a nation of law fought and won both before and after the January 25 revolution. The bill gives police forces broad powers by using overly general and expansive legal terms. As noted in the CIHRS comment on the bill to criminalize assaults on the freedom of work and the destruction of workplaces *supra*, the use of broad terms is inconsistent with established jurisprudence and rulings of the Supreme Constitutional Court (SCC), which hold that acts criminalized by law must be unambiguously defined to prevent confusion and that laws must clearly and lucidly define the narrow limits of their proscriptions because opacity or ambiguity means that those to whom the law is addressed will not have a clear idea of the acts that they must avoid. [8] The presumed aim of the constitution is to give every citizen the full opportunity to exercise his liberties within the regulatory parameters. Statutory restrictions on liberty must be unambiguously defined because they compel their audience to comply with them in order to defend their right to life and their liberties.[9]

The explanatory memo of the bill states, "As these acts—the acts criminalized in the bill—are not exhaustively enumerated, the text is general to permit the law to be applied to all dangerous acts that threaten citizens." This language is used although a lack of specificity and clarity was the reason the SCC ruled some provisions of the vagrancy law unconstitutional in 1993, as will be discussed below.

The bill contains other phrases that recall the unconstitutional vagrancy law and give the Interior Ministry broad prerogatives. It is apparent that the drafters of the bill sought to reformulate the

7 For more details, see the explanatory memo of Law 195/1983 amending some provisions of the law on vagrancy and suspicion.
8 SCC, case no. 114/21JY, session of June 2, 2001.
9 *ibid*

vagrancy law to allow the use of repressive police measures, thus making the law an insidious alternative to the declaration of a state of emergency.

The next section attempts to highlight the most significant dangers and flaws of the bill on the protection of society from dangerous persons. The core issue is not discrete flaws in certain articles, however, but the fact that the law as a whole is based on a flawed premise, making it an exceptional law that threatens the rights and liberties of citizens. As such, the only rights and law respecting approach is not to amend the bill to minimize its inherent dangers, but rather to shelve it completely.

Chapter two: the bill for the regulation of demonstrations on public thoroughfares

Comment on Bill /2012 on the regulation of demonstrations on public thoroughfares

"Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically...and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment. This is all the more relevant in the case of spontaneous assemblies where the organizers are unable to comply with the requisite notification requirements, or where there is no existing or identifiable organizer."[10]

Introduction

The right to peaceful assembly is a fundamental right by which the citizenry can express their opinions, directly and collectively, with the objective of drawing the attention of society and government to specific issues of public interest. International human rights conventions, ratified by Egypt, uphold this right, such as Article 21 of the International Covenant on Civil and Political Rights, which affirms the right and prohibits restrictions on its exercise except those dictated by law in a democratic society and only as necessary to preserve national security.[11]

Numerous constitutions around the world, including in Egypt, enshrine the right to assembly and peaceful protest. Article 16 of the current Egyptian Constitutional Declaration issued on March 30, 2011 states, "Citizens have the right to private, peaceful, unarmed private meetings without the need for prior notification. Security personnel may not attend their private assemblies. Public meetings, processions, and assemblies are permitted within the bounds of the law."

The tactic of granting a right while deferring to statute for its regulation has been used by the constitutional legislator since the 1923 constitution, which upholds the right to demonstrate while referring to the law for its regulation. In turn, the law effectively undermines the right and restricts its exercise.

More than one law regulates the right to peaceful assembly and protest, including Law 10/1914 on assembly, one of the oldest existing laws in Egypt, and Law 14/1923, which establishes provisions for public assemblies and demonstrations on public thoroughfares. These two laws are supported by the Penal Code, which addresses the right to peaceful assembly and protest in various sections,

10 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Human Rights Council, A/HRC/20/27, paragraph 29, 20th session, May 21, 2012.

11 Article 21 of the covenant states, "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the 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."

including Articles 98a (*bis*)[12] and 98b (*bis*).[13]

The objectives of these laws regulating the right to protest and peaceful assembly, prepared under pressure from the British occupation, is to hem in the right on all sides, thus emptying the constitutional right of any real meaning. The philosophy underlying these repressive laws prescribes heavy sanctions for offenders, by consistently adding the phrase "without prejudice to any harsher penalty in the Penal Code or any other law." The philosophy of these laws is first and foremost aimed at criminalization and punishment, placing a heavy price on the exercise of the right in question while failing to uphold and permit citizens to exercise the right. This is a fundamental characteristic of repressive laws applied in despotic states.

The January 25 revolution offered one image of peaceful protest and assembly. When numerous citizens assembled calling for bread, freedom, and social justice and chanting, "The people want to topple the regime," these slogans and chants were met with excessive force by security forces, which led to the deaths of hundreds and the injury and disappearance of thousands. It was imagined that after the success of the revolution, which ushered in the first democratically elected civilian president, that laws restricting the right to protest and peaceful assembly would be repealed, in recognition of the key role those rights played in the revolution itself, and of the importance of peaceful demonstrations as a mean by which citizens may make their points of view known and force attention and change relative to society's most pressing needs. Instead, the Interior Ministry has proposed a law to regulate demonstrations on public thoroughfares that would operate in tandem with existing laws to restrict the right to peaceful assembly.

At first glance, it may seem that the bill aims to regulate the right to protest in order to secure demonstrators, but a review of its articles reveals that it is governed by the same repressive philosophy adopted by Law 14/1923 on public assemblies and demonstrations. It also appears that the sponsors of the bill actively detest the political and social ferment that accompanied the January

12 Article 198 (*bis*) of the Penal Code states, "A term of imprisonment and a fine of no less than LE100 and no more than LE1,000 shall be levied on any person who establishes, organizes, or administers an association, body, organization, or group whose purpose is to advocate by any means against the fundamental principles upon which the socialist regime in the state is founded, or to incite to its hatred or defamation, advocate against the alliance of the people's working forces, incite to the resistance of the public authorities, or promote or commend something of the kind. The penalty shall be prison with hard labor and a fine of no less than LE500 and no more than LE2,000 if the use of force, violence, or terrorism is marked in this. A term of imprisonment of no more than five years and a fine no less than LE50 and no more than LE500 shall be levied against any person who joins or participates in any way in one of these associations, bodies, organizations, or groups with knowledge of the purpose for which it advocates."

13 Article 98b (*bis*) of the Penal Code states, "A term of imprisonment of no more than five years and a fine of no less than LE50 and no more than LE500 shall be levied against any person who promotes in the Arab Republic of Egypt by any means a change in the fundamental principles of the constitution or the basic systems of the social body, the discrediting of a particular social class, the elimination of a social class, the overthrow of the basic social or economic systems of the state, or the destruction of any basic system of the social body when the use of force, terrorism, or any other unlawful means is marked. The same penalty shall be levied against any person who commends by any means the aforementioned actions.

25 revolution, as they have worked to criminalize it by law. The bill prohibits demonstrators from carrying signs that "inflame the sentiments of others," "undermine state institutions and their stature," or "constitute an insult or harm to state institutions," and prohibits "proclaiming phrases, anthems, or songs that provoke civil strife" (Article 8). Following the same mindset that guides other laws regulating citizens' rights, the bill prescribes stiff penalties for those in violation of Article 8, including imprisonment and a fine of no less than LE20,000 (Article 14), making violations of Article 8 felonies, not misdemeanors.

The bill contains another illegitimate restriction. Article 5(4) states, "The competent governor shall determine the sites where demonstrations may be organized and the times they will end." This provision essentially makes the competent governor a partner in the organization of the demonstration, allowing him to define its location and, consequently, the body to which the demonstration will address its demands or appeals. Using this right, the governor could assign a demonstration a locale in an uninhabited, remote area to avoid the possibility of broad public sympathy with the demonstrators. The governor of Beheira, for example, could use this provision to set the site of a demonstration in the Wadi al-Natron desert, as the law sets no restriction or condition on the governor's decisions.

Even more seriously, the proposed law gives the police a license to use firearms to disperse demonstrators on the grounds of "the right to legitimate defense and the performance of duty." The law allows police personnel to disperse demonstrators with increasing levels of force, up to and including the use of live ammunition, under Article 102(3) of the police law, if the demonstrators commit any act that endangers public security, prevents or obstructs the operation of a public facility, or even obstructs traffic.

In the analysis below, we address the articles of this bill, especially those that constitute a grave violation of human rights and infringe on Egypt's international commitments.

Chapter three: the bill to criminalize the assault on the freedom of work and the destruction of businesses

Comment on Bill /2012 amending paragraph 1 of Law 34/2011 criminalizing assaults on the freedom of work and the destruction of businesses

"The rule in punitive provisions is that they be narrowly tailored, defining the actions criminalized by the legislator and specifying their substance to avoid having their opacity be a cause for the infringement of citizens' rights upheld by the constitution, such as those related to the freedom to present opinions and their guaranteed circulation in their various sources, as well as the right to full character and to secure every individual against illegitimate arrest or detention. Although assessing sanctions and the circumstances in which they are levied fall under the discretionary authority of the legislator in the sphere of the regulation of rights, this authority is limited by the precepts of the constitution."[14]

Introduction

The SCAF on April 12, 2011 issued Law 34/2011 criminalizing assaults on the freedom of work, known as the law criminalizing strikes and sit-ins, to be applied solely under a state of emergency. Justifying the law, the preamble states, "The fact that the country is passing through a critical phase of its history requires the protection of its security and economy from intrigue, with the goal of overcoming the current crisis, although the SCAF understands all demands and affirms the right to stage peaceful protests and demonstrations." In fact, the law was the first attempt by the SCAF to issue arbitrary laws in the absence of parliamentary oversight, in order to suppress the democratic social and political ferment seen in the country in the wake of the January 25 revolution and criminalize the various post-revolution protests demanding freedom and social justice. The law was thus an expression of the SCAF's impatience with and hostility to freedom of opinion and expression and all forms of protest. This led the SCAF within two months of assuming control of the country to issue this law as part of a set of laws whose sole purpose was to reinforce the arsenal of repressive laws used by the Mubarak regime for decades to suppress democratization through healthy social and political action; by using illegitimate laws to fortify the pillars of the police state. Unfortunately, the drafters of the new law learned nothing from the failures of the repressive police system that had ruled Egypt. The primary objective of laws is to prevent injustice and unfairness, not to impose the ruling class's perspective of justice. The use of repressive laws and stiffer sanctions on the exercise of rights will not bear the desired fruit and will only increase the anger of

14 SCC, case no. 59/18JY, session of Jan. 1, 1997.

the sector targeted by this legislation.

The primary objective of the proposed amendment to this law is to make it applicable in the absence of a state of emergency. The amendment also stiffens the penalties for the criminalized action. Whereas assault on the freedom of work was previously a misdemeanor, the proposed amendment makes it a felony, which entails a doubling of consequent prison sentences. This is an indication of a punitive view of various forms of protest even more severe than that of the SCAF.

In the analysis below, we address the articles of this bill, especially those that constitute a grave violation of human rights and infringe on Egypt's international commitments.

Chapter four: the bill amending some articles of the Penal Code

Comment on Bill /2012 amending some provisions of the Penal Code issued with Law 58/1937

"The goal of clarity and certainty in criminal laws is to guarantee individual liberty in the face of arbitrary authority, proceeding from the belief of civilized nations in the sanctity of private life and in the burden of restraints that impinge on individual liberty, to ensure that every state—as it imposes sanctions to maintain the social order—exercises its delegated authority with due regard for the ultimate purposes of punitive laws, which preclude making the conviction of a defendant a goal in and of itself."[15]

Introduction

Egypt's Penal Code (Law 58/1937) is outdated, and must be substantially amended to come into line with modern punitive theories. The law was issued in 1937, and most amendments since then have made the code even more draconian. In addition, most of its statutory provisions tend to generalities, with the goal of expanding the sphere of criminalization and punishment based on actions that are not clearly and lucidly defined. The Penal Code has thus come to contain countless laws criminalizing citizens' exercise of their rights, to the extent that where other bills intended to restrict rights fall short, an article can usually be found in the Penal Code to address the activity in question. Moreover, the code is not consistent with the principles of criminal justice for necessity, proportionality, and coherent legal text.[16]

Instead of addressing these issues, the Interior Ministry has proposed a bill amending some articles of the Penal Code the primary purpose of which is to increase the severity of certain crimes against police personnel and forces, the judiciary, and police facilities. The bill seeks to amend some

15 SCC, case no. 3/10JY, session of Jan. 2, 1993.

16 A condition of sanctions, whether criminal, civil, or disciplinary, as established by SCC rulings, is "that they be commensurate with the actions criminalized, prohibited, or restricted by the legislator. The rule in punishment is that it be reasonable. It may only trespass to the degree necessary, avoiding the unjustified infliction of suffering that unnecessarily underscores its cruelty. In turn, its scope or the manner of execution may not conflict with the values approved by civilized nations, as an affirmation of their elevated sensibility and an expression of their advancement on the road of progress and their sound understanding of the standards of truth and justice, whose application does not conflict with what average people view as a conscious, moral evaluation of the various circumstances related to the crime. Although criminal law is similar to other laws that regulate some interpersonal relations or their society with the intent of ordering it, criminal law is different insofar as it takes sanctions as a tool to modify certain proscribed actions. As such, it must define, from a social perspective, that conduct which cannot be tolerated and control it with socially acceptable means. This means that punishment for their actions is only justified if it is socially beneficial. If it oversteps these limits to become unnecessary, it has violated the constitution. The meaning of the foregoing is that whenever a criminal sanction is odious or brutal, or connected to actions that may not be criminalized, or patently transgresses the limits of proportionality to the actions criminalized by the legislator, the sanction is unjustified, for the authority to criminalize possessed by the legislator is limited by the precepts of the constitution. The legislator may not criminalize actions without a social necessity and may not set penalties that exceed the scope of this necessity." (SCC, case no. 2/15JY, session of Jan. 4, 1997).

provisions of the Penal Code, including Articles 133/1, 136, 137, 142, 143, 144, 162, 162 (*bis*), 162 (*bis*)/1, 216 (*bis*)/2(a), 316 (*bis*)/2(b), 316 (*bis*)/3, and 375. The amendments also include the addition of a new article under Article 376 (*bis*). Most of the proposed amendments, according to the explanatory memo drafted by the Interior Ministry, seek to provide greater protection for police personnel[17] during the course of duty when confronting lawbreakers and dangerous criminals, in light of the increasing assaults on policemen which have led to several serious injuries, including injuries that have led to permanent disabilities. The explanatory memo goes on to explain that the amendments also seek to maintain the stature of the state and the principles of constitutional legitimacy by giving police personnel their full authorities when combating crime and its dangers, which have increased markedly in the recent period.[18]

Although CIHRS rejects all types of assaults on police personnel in the course of duty, the articles of the bill do not evince due regard for the principles of necessity and proportionality, which dictate that sanctions be commensurate with the gravity of the crime. The penalty should not be so severe as to be disproportionate to the interest undermined by the crime, for this serves no benefit to society and does not comport with a proper notion of justice.

When drafting punitive laws, the legislative authority bears the responsibility of balancing the harm arising from the crime with the penalty prescribed for the act. If sanctions are so severe that they are incommensurate with the harm, they become cruel, which violates constitutional principles and exceeds the necessity dictated by circumstances.

In fact, constitutional rules for crime and punishment are minimal and general, and open to interpretation. Hence, as it regulates criminalization and punishment, the SCC has always played a creative role, going beyond the narrow framework of the text to seek inspiration from its spirit as well as constitutional principles. In so doing, it has laid the foundations necessary for a sophisticated judiciary to address statutory deficiencies and established a protective wall around rights and liberties. It is no exaggeration to say that the SCC in Egypt plays a more prominent role than other similar courts in long-standing legal systems.[19]

It should be noted that the bill sponsored by the Interior Ministry entails no amendment to any of the articles related to body integrity, such as Article 126 of the Penal Code, which criminalizes the torture of a suspect only if the torture is to coerce a confession, although human rights defenders have long demanded a definition of torture consistent with that in the Convention Against Torture

17 Although the bill seeks to amend several articles that have no relation to the protection of security personnel, such as the theft of electricity and electrical cables, and the usurpation of potable and irrigation water, the primary objective is to stiffen the penalties for crimes against policemen.

18 See the explanatory memo of the bill.

19 Ashraf Tawfiq Shams al-Din, *al-Zawabit al-dusturiya li-nusus al-tajrim wa-l-'iqab fi qada' al-mahkama al-dusturiya al-'ulya*.

and Other Cruel, Inhuman, or Degrading Treatment or Punishment.[20] Nor do the amendments affect Article 129 that criminalizes the use of cruelty by public servants, which sets a penalty of no more than one-year imprisonment and a fine of no more than LE200. This reflects the philosophy of the Interior Ministry and its exclusive interest in police and their protection from any assault, even a verbal assault, combined with a lack of concern for the protection of citizens from police personnel. In the analysis below, we address the articles of this bill, especially those that constitute a grave violation of human rights and infringe on Egypt's international commitments.

20 Article 1 of the Convention Against Torture states, "For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Chapter five: the bill to maintain the sanctity of houses of worship

Comment on Bill /2012 on the maintenance of the sanctity of houses of worship

"*[UN member-states must] exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction.*"[21]

Introduction

The Interior Ministry has also submitted a bill amending some provisions of Law 113/2008 on the maintenance of the sanctity of houses of worship,[22] which stiffens the penalties prescribed by the law. According to the bill's explanatory memo, this is in order to achieve general and specific deterrence and to deal with all unlawful cases with the force necessary to prevent an exacerbation of events and their exploitation in a way that disparages Egypt and its great people.[23]

Article 2 of Law 113/2008 was issued to ban demonstrations inside houses of worship or any annex for any reason,[24] and set a penalty of a fine between LE500 and LE2,000 and/or imprisonment for no longer than six months for participants, and a fine between LE1,000 and LE5,000 and/or imprisonment for no longer than a year for advocates or organizers. Article 1 in the new bill proposed by the Interior Ministry would replace this article with one stipulating harsher punishments; it reads, "Without prejudice to any more severe penalty prescribed in another law, violations of the prohibition stipulated in Article 1 shall be punished with a term of imprisonment of no more than three years and a fine of no less than LE5,000 and no more than LE20,000 or either of these penalties separately if the offender advocates, organizes, or participates in the demonstration. The penalty shall be doubled if the advocate, organizer, or participant in the demonstration oversees religious affairs."

In addition, the bill does not address new forms of assault on houses of worship that violate their sanctity, such as the events seen during the dispersal of a sit-in on July 8, 2011, when state soldiers entered mosques to arrest and abuse demonstrators, an action which we believe should be criminalized and subject to punishment.

In the analysis below, we address the articles of this bill, especially those that constitute a grave violation of human rights and infringe on Egypt's international commitments.

21 UN Human Rights Council Resolution 6/37 on the elimination of all forms of intolerance and of discrimination based on religion or belief, sixth session, 2007.
22 Published in the Official Gazette, no. 14 (*bis*), Apr. 7, 2008.
23 See the explanatory memo of the bill.
24 Article 1 of the law.