

Egypt

ARTICLE 19 and the Justice Initiative Submission to the UN Universal Periodic Review

Seventh Session of the UPR Working Group, Early 2010

1. ARTICLE 19 is an international, non-governmental human rights organisation established in 1986 that works around the world to protect and promote the right to freedom of expression and information, including by making submissions to IGOs such as the UN on country performance in implementing established freedom of expression standards. ARTICLE 19 has observer status with ECOSOC.
2. Open Society Justice Initiative, an operational programme of the Open Society Institute (OSI), pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative focuses on anticorruption, equality and citizenship, freedom of information and expression, international justice, and national criminal justice.

Executive Summary

3. This submission outlines ARTICLE 19 and Justice Initiative's concerns with the following freedom of expression and related issues in Egypt:
 - (a) Use of the **criminal law** to restrict freedom of expression.
 - (b) The absence of protection for the **right to information**.
 - (c) A highly restrictive system of **media regulation**.
 - (d) Restrictions on the **freedom of association**, particularly as pertains to NGOs.
 - (e) Restrictions on the **right to peaceful assembly**.

Our concerns are based on Egypt's obligations under international law, including the *International Covenant on Civil and Political Rights* (ICCPR), which Egypt ratified on 14 January 1982, and the *African Charter on Human and Peoples' Rights*, which Egypt ratified on 20 March 1984. Key concerns are the prevalence of unduly vague and harsh restrictions on the rights to expression, association and assembly, unwarranted limitations on media freedom, the absence of practical guarantees for the right to information and excessive scope for government interference with the media.

Use of the Criminal Law to Unduly Limit Freedom of Expression

4. Egyptian law, including the Penal Code, as applied in conjunction with the Emergency Law, No. 162 of 1958, is frequently used to limit legitimate forms of expression, in a trend that appears to be increasing in recent years. Restrictions on freedom of expression are permitted pursuant to Article 19 of the ICCPR only where necessary to protect the overriding interests listed therein.
5. One example is the case of Egyptian blogger Abdel Kareem Suliman Amer, who was sentenced in February 2007 to four years' imprisonment for the peaceful expression

of his political views. Determined by Amnesty International to be a ‘prisoner of conscience’, Amer was charged with “spreading information disruptive of public order and damaging to the country’s interest”, “incitement to hate Islam” and “defaming the President of the Republic” under articles 102bis, 176 and 179 of the Penal Code. On 23 March 2009, the United Nations Working Group on Arbitrary Detention determined that Amer’s detention was arbitrary and in violation of international legal standards.¹

6. A second example is that of Egyptian blogger Wael Abbas who was detained by State security officers at Cairo International Airport detained on 6 June 2009 as he returned from Sweden. The officers confiscated Abbas’ passport and computer, inspected his personal belongings and detained him for five hours before releasing him.

Criminal Defamation

7. Defamation remains a criminal offence in Egypt and is frequently and widely used to limit freedom of expression. A recent example of the use of criminal defamation is the case of Yaser Barakat, editor-in-chief of *Al-Mogaz* newspaper, who was sentenced to six months’ imprisonment and an LE20,000 fine (approximately USD3,500) on 23 June 2009. The case was brought by a member of parliament, Mostafa Al-Bakry, following *Al-Mogaz*’s publication of an article by Barakat which Al-Bakry claimed was insulting.
8. In another example, Mounir Saad Hanna was arrested in 2008 when an unpublished poem he wrote fell into the hands of Egyptian security agents. Hanna was tried without a defence lawyer and sentenced to three years in jail and a fine of LE100,000 (approximately USD18,000). Hanna’s ‘crime’ was that his poem allegedly defamed the Egyptian president. Hanna was acquitted on appeal after his case had been profiled by local human rights NGOs and the independent press. The case highlights the fact that Egyptian law provides special protection for the reputation of the president, contrary to international standards which require public figures to tolerate a greater degree of criticism than ordinary citizens.
9. The imposition of criminal penalties for acts of defamation creates a chilling effect on expression and leads to self-censorship both by the media and by private individuals. Criminal defamation laws are unnecessary since civil defamation laws provide adequate protection for reputation, as evidenced by the increasing number of countries that have abolished criminal defamation rules.

The Emergency Law

10. The Emergency Law, which has remained in effect since 1981 and was most recently renewed in April 2008 for an additional two years, confers upon the Egyptian government, via the Ministry of Interior, extensive powers to suspend basic rights including by prohibiting demonstrations, censoring newspapers, monitoring personal communications and detaining people indefinitely without charge. This is contrary to the rule under international law that emergency restrictions on rights must be limited to situations of threats to the life of the nation and be strictly necessary. The Egyptian authorities have made extensive use of the Emergency Law, in combination with

¹ See: <http://www.article19.org/pdfs/press/article-19-applauds-un-experts-decision-on-arbitrary-detention-of-egyptian-b.pdf>.

provisions of the Penal Code including Articles 80(d), 98bis(b), 98(f), 102, 102bis, 171, 178, 179, 181, 188, 201 and 308, to limit freedom of expression.

Censorship Powers

11. The Penal Code grants the Egyptian authorities excessive powers to censor expression, including by seizing copies of publications. In April 2008, Egyptian police broke into the Malamih publishing house and confiscated all copies of the graphic novel Metro, and removed the book from bookstores. In response, Malamih notified the Department of Public Prosecutions, which in turn accused the author and publisher of the book of violating Articles 178 and 198 of the Penal Code, which punish “publications contrary to public decency”. The confiscation order was upheld by the courts in April 2009 and again in June 2009; the verdict in the criminal case against the publisher and the author has been adjourned until 3 October 2009. International law permits such forms of prior censorship of publications only in the very most serious circumstances. Censorship of the mass media is prohibited by Article 48 of the Egyptian Constitution, except when a state of emergency is in place.

Lack of Right to Information (RTI) Legislation

12. Egypt currently provides no protection for the right to access information held by public bodies (RTI) either its Constitution or in law. It is now widely recognised that the right to information is an integral part of the right to freedom of expression.²

Media Regulation

13. Egypt has numerous laws and practices which unduly limit freedom of the media, including restrictions on freedom of journalists, the print media and broadcasters.

Journalists

14. The Journalists’ Syndicate Law, No. 76 of 1970, as amended, establishes the Journalists’ Syndicate, which plays a key role in overseeing the Code of Honour developed by the Higher Press Council (pursuant to the Press Authority Law, No. 96 of 1996), a body which is subject to substantial government influence and whose head is the head of the Shura Council (Egypt’s upper house). Breach of the Code can lead to various disciplinary consequences, including being barred from practising as a journalist. The right to freedom of expression under international law rules out barring individuals from practising as journalists, outside of very extreme cases.

Print Media

15. The Press Authority Law, No. 96 of 1996, along with the Publications Law, No. 20 of 1936, impose a number of restrictions on the print media. These laws require those aspiring to publish a newspaper to obtain permission to do so from the Higher Press Council (mentioned in para. 14), a form of licensing. Only corporations, not individuals, may initiate newspapers and only after making high deposit fees, leading many newspapers to register outside the country, often in Cyprus. The laws also impose often vague restrictions on what newspapers may publish, breach of which may lead to seizure of an edition, or revocation of the permission to publish.

² See, for example, Principle 4 of the Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission on Human and Peoples’ Rights as an elaboration of Article 9 of the African Charter, which guarantees freedom of expression.

International law envisages only limited technical registration for newspapers, overseen by bodies which are independent of government. Vague restrictions on content breach the right to freedom of expression as they give the authorities undue discretion concerning implementation.

Broadcasting

16. Law No. 13 of 1979, as amended by Law No. 223 of 1989, formally establishes a State monopoly over terrestrial broadcasting in Egypt, exercised by a national agency, the Egyptian Radio and Television Union (ERTU), which is subject to extensive government influence. Public terrestrial broadcasting monopolies unduly limit the right of viewers and listeners to receive a diversity of information and ideas and cannot be justified as a restriction on freedom of expression. Pursuant to international law, the media, as well as media regulatory bodies, should be independent.
17. In July 2008, the Egyptian authorities released a new draft Broadcast Law.³ The draft calls for a new oversight body, the National Audiovisual Broadcasting Regulation Authority, which would be subject to government control rather than being independent. The draft law provides for allocation of broadcasting licenses on the basis of the highest bidder, rather than requiring some consideration of the public interest, and it fails to recognise community broadcasting. The draft law also provides for excessive restrictions on broadcasting content.

Freedom of Association

18. Article 55 of the Constitution of Egypt states: “Citizens shall have the right to association as defined in the law.” Egyptian law allows for extensive restrictions on this right contrary to Article 22 of the ICCPR, which only permits restrictions that are necessary to protect the overriding interests listed in that article.
19. The Law on Associations, No. 84 of 2002, imposes wide-ranging restrictions on Egyptian civil society, effectively permitting the authorities to control and even dissolve NGOs. This law has been used, or threatened to be used, extensively in attempts to control civil society, including human rights organisations. In 2009, for example, the Egyptian Ministry of Social Solidarity threatened to disband the Egyptian Organization for Human Rights (EOHR) due to its receipt of foreign funding without authorisation, a violation of Article 17 of the Law of Associations. The Ministry refrained from taking this action, but the incident demonstrates the excessive government powers created by the Law of Associations. In November 2002, shortly after the law was enacted, the UN Human Rights Committee called on the Egyptian authorities to review it.

Right to peaceful assembly

20. Article 54 of the Constitution of Egypt states: “Citizens shall have the right to peaceable and unarmed private assembly, without the need for prior notice.” As with the rights to freedom of expression and association, restrictions on this right are permitted pursuant to Article 21 of the ICCPR only as necessary to protect an overriding interest. Despite the constitutional guarantee, however, this right is frequently breached by the government. A complex set of laws – including the Illegal

³ For comments on this see: <http://www.article19.org/pdfs/press/egypt-concerns-with-draft-broadcast-law.pdf>.

Assembly Law No. 10 of 1914, the Meetings and Demonstrations Law No. 14 of 1923, and the Emergency Law No. 162 of 1958 – underpin these breaches. On 4 May 2009, for example, the Egyptian authorities arrested a number of individuals who had gathered peacefully to protest a court verdict allowing exportation of gas to Israel. Although the protesters were released a few hours later, the action sends a clear message to others who wish to protest official decisions.

Recommendations

21. ARTICLE 19 urges the Egyptian government to review all criminal restrictions on the content of what may be published or broadcast with a view to bringing them into line with international standards and, in particular, ensuring that are necessary to protect one of the overriding interests recognised in Article 19 of the ICCPR. All criminal defamation provisions, including those providing special protection to the president, should be repealed and replaced with appropriate civil defamation rules. The Emergency Law should be repealed or amended so as not to allow for restrictions on rights.
22. Egypt should adopt comprehensive right to information legislation through a process of consultation with interested stakeholders.
23. ARTICLE 19 calls on the Egyptian authorities to substantially amend the whole system of media regulation to bring it into line with international standards. Journalists should be free to organise themselves into associations and membership of an association should not be a pre-condition for working as a journalist. The print media should not be subject to a system of licensing and any registration requirement should be overseen by an independent body. Vague content restrictions for both the print and broadcast media should be removed. The public monopoly on terrestrial broadcasting should be done away with and an independent agency should be established to license broadcasters, including community broadcasters, in the public interest. The media should be given the opportunity to establish a system of self-regulation. Should this fail, the authorities might consider an independent system of regulation applied to media outlets, as opposed to individual journalists.
24. The Egyptian authorities should review the Law on Associations, in consultation with Egyptian civil society, to bring it into line with international standards on the right to associate. In the meantime, the Ministry of Social Solidarity should suspend the enforcement of any disciplinary actions against NGOs.
25. The legal framework for assemblies should be reviewed and brought into line with international standards in this area. The authorities should not interfere in practice with the right to peaceful assembly.