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Association for Freedom of Thought and Expression



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**AFTE**, The Association for Freedom of Thought and Expression, is an Egyptian organization established in 2006 by a group of lawyers and researchers to defend freedom of expression by providing legal support to victims and documenting violations of freedom of expression in all its forms.

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## **SUMMARY**

1. In her June 2013 report entitled “The Right to Artistic Freedom and Creativity,” the United Nations Special Rapporteur in the field of cultural rights, Ms. Farida Shaheed, concluded that “the effects of art censorship or unjustified restrictions of the right to freedom of artistic expression and creativity are devastating.”<sup>i</sup>

2. During its previous UPR in 2010, Egypt accepted numerous recommendations relevant to artistic freedom. This submission is based on research conducted between September 2013 and January 2014 by a team of legal experts from the Association for Freedom of Thought and Expression (AFTE) who interviewed numerous artists in various fields and documented several cases from Egyptian courts.<sup>ii</sup> Our analysis focuses on Law 430/1955 on the prior censorship of artistic works; Cabinet Decree 162/1993 containing the executive regulations for the law; Minister of Culture Decree 222/1976 on censorship standards; Egyptian Penal Code (Law 58/1937) on criminally prohibited expression; and Law 35/1978 on the Federation of Artistic Syndicates.

3. The regulatory regime of prior censorship created by Egyptian national legislation contains numerous bureaucratic procedures that inhibit freedom of artistic creativity and production, forcing artists to deal with complicated administrative procedures designed to ensure state control over the content of works of art. The regulations also require the censorship authorities to deny permits to any works that contravene the vaguely formulated standards of spiritual, religious, and moral values and the public order.

4. The Egyptian Penal Code criminalizes numerous forms of artistic expression. According to the 2014 study by AFTE,<sup>iii</sup> most cases on artistic freedom before Egyptian courts involve the ostensible protection of public morals, religions, and the reputations of persons and institutions, and in particular, one of the three taboo subjects: religion, sex, and politics. Egypt's national legislation is inconsistent with international jurisprudence and best practices for differentiating legally permissible and impermissible expression.

5. The artistic professional syndicates, supported by the authority of national legislation in the form of Law 35/1978 on the Federation of Artistic Syndicates, also play a key role in the limitation of artistic expression in cinema, theater, television, and music. In this regard, the state under review breaches international labor agreements and international guarantees of freedom of association and assembly.

6. This submission concludes with several recommendations for the state under review on the need for legislative and institutional reform. In particular, we propose the replacement of the prior censorship apparatus by an age-based classification of artistic works, the repeal of Law 35/1978 on the Federation of Artistic Syndicates, and the reform of the Penal Code to bring it into conformity with international norms that employ the risk of immanent harm as a threshold for the criminalization of expression.

## **ARTISTIC FREEDOM OF EXPRESSION**

7. During its 2010 UPR, Egypt accepted numerous recommendations relevant to artistic freedom of expression. These include recommendations by Bangladesh<sup>iv</sup> and Switzerland<sup>v</sup> that Egypt continue its ongoing review of national legislation to ensure that it is in line with its international human rights law obligations; the recommendation by

Chile<sup>vi</sup> that it effectively guarantee the exercise of freedom of expression, association and peaceful assembly and the right to participate in public life and politics; the recommendation by the Netherlands<sup>vii</sup> that it abolish imprisonment penalties for publication offences; the recommendation by Sweden<sup>viii</sup> that Egypt take action to secure that the enjoyment of human rights extends to the Internet; and the recommendation by Germany<sup>ix</sup> that it adopt all necessary measures to provide for a free and independent media which reflects the religious, ethnic and political plurality of opinions in Egypt.

8. Egypt has made no progress in implementing these recommendations. Its national legislation continues to violate its international obligations in numerous areas affecting artistic freedom. The legal framework is provided by Law 430/1955 on the censorship of artistic works, Cabinet Decree 162/1993 containing the executive regulations for the law, Minister of Culture Decree 222/1976 on censorship standards, and the Egyptian Penal Code (Law 58/1937). The 2014 constitution did not remove the system of censorship. On the contrary, it gave the public prosecutor the right to bring criminal charges against artists and permitted liberty-depriving penalties for allegedly defamatory artworks.

#### *Mechanisms of prior censorship*

9. Law 430/1955, amended by Law 38/1992, invests the Ministry of Culture with the authority to censor audio and audiovisual works. It prohibits recording, filming, copying, or adapting audio or audiovisual works, as well as screening, performing, or broadcasting them in a public place without a permit from the Ministry.<sup>x</sup> Decree 162/1993 contains regulations for the implementation of state censorship, setting forth the competencies of the General Directorate for the Censorship of Artistic Works and the procedures governing permit application, permit processing, and appeals. In this way, Egyptian law establishes a regime of so-called prior censorship, in which artworks must be examined and approved by state authorities before they can reach the public.

10. Permits are temporary, expiring one year from the date of issuance in the case of filming or recording and ten years from the date of issuance in the case of screening, performance, or broadcast. The fee for the permit must be paid by the creator of the work; however, the law does not define the value or the method by which it is calculated.

Permits are revocable by the censorship authorities. Furthermore, the law imposes oversight not just on the creation of a work of art, but also on any future development or change by its creator. Thus, it creates a permanent bond between the censorship apparatus and the artwork that is revived when the permit expires.

11. Persons who violate Law 430/1955, Article 2 by producing artworks without a permit from the relevant authority are subject to up to two years in prison or a fine of at least EGP 5,000 and no more than EGP 10,000, or both. Those who make a change, addition or deletion to the licensed work or use segments targeted by the censorship authority in promotional material are liable to receive a sentence of one year in prison or a fine of at least EGP 1,000 and no more than EGP 2,000, or both. If an artist is convicted of violating the law, the permit is revoked; the same penalties are applicable if the artist fails to post the permit number and date on licensed works.

12. According to Article 17, once the violation has been established and the necessary police report filed, the filming, recording, screening, performance, broadcast, or sale of the work may be suspended by administrative means and the work itself confiscated. Furthermore, any public place used for the screening, broadcast, or performance of the offending work shall be closed down for no less than one week and no more than one month, and all the equipment used shall be confiscated.

13. Law 430/1955 also establishes a system for the appeal of permit refusals and revocations, referring them to a committee formed by order of the minister of culture and including representatives of the State Council, the State Information Service, the Supreme Council for Culture, the Academy of Arts, and the relevant syndicate. The law allows the committee to consult experts as it deems fit but does not give them a vote. Within one week of being informed of a permit decision, the petitioner must file an appeal by registered letter and accompanied by supporting documentation and evidence.

14. This appeals process burdens petitioners, particularly financially. They must pay a non-refundable insurance fee—not specified by the law but determined by decree of the minister of culture—in order to have an appeal formally accepted. Petitioners must also

pay costs associated with any experts consulted by the committee. Such costs are not specified beforehand but are assessed by the committee.

### *Standards of prior censorship*

15. Article 1 of the Law 430/1955 states that the objective of censorship is to protect the public order, public morals, and the higher interests of the state. The law does not provide a precise definition of these three protected categories. Minister of Culture Decree 220/1976 elaborates standards to be used in the censorship of artworks. Article 1 of the decree stipulates that the goals of censorship are the protection of public morals, the protection of public order, and the protection of children from “deviance.” In accordance with these goals, the General Directorate for the Censorship of Artistic Works may not license the exhibition, production, or promotion of a work that contains any of the following (among various other alleged characteristics):

- the disparagement of Abrahamic religions and religious beliefs;
- depictions of the image or voice of the Prophet;
- undue emphasis on vice in the plot or the depiction of vice in such a way as to encourage emulation;
- provocative sexual scenes or homosexual scenes and gestures or phrases suggestive of them;
- depictions of drunkenness, drinking, or drugs as something normal or laudable
- false or distorted depictions of historical facts, particularly those related to national figures;
- disparagement of a foreign state or people that enjoys friendly relations with the Arab Republic of Egypt and the Egyptian people if it is not necessary to present a historical analysis required by the context of the topic;
- depiction of social problems in a way that promotes despair and despondency, provokes or creates ideas of class or sectarian divisions, or undermines national unity.

16. Article 3 of Decree 220/1976 states that censors may not grant permits that allow minors under the age of 16 to see a work that contains excessive violence, crime, or sex

that might give rise to doubts or fears, induce emulation, shake their faith in social values, or spread a spirit of despair and pessimism. The article also prohibits the granting of permits that would allow children under the age of 12 to view films containing scenes of violence or sex.

17. Decree 222/1976 also regulates censorship for works produced by the Egyptian Radio and Television Union (ERTU). It states that competent bodies in the ERTU must comply with the minimum guidelines laid out in its articles when licensing any work for television or broadcast and when showing any promotion for these works. These bodies must pay special attention in choosing what to broadcast in order to empower social and higher artistic values and avoid vulgarity. They must also recognize that because their programs reach individuals of all ages, they bear a special responsibility to protect children. Research conducted in 2013 by the Association for Freedom of Thought and Expression documented many cases of censorship involving works produced by ERTU.<sup>xi</sup>

#### *Criminalization of expression*

18. The Egyptian Penal Code carries liberty-depriving penalties and mandates fines for several actions that fall within the scope of artistic expression. For example, any person who incites one or more persons to commit a felony or misdemeanor using public words, utterances, or gestures, or writing, drawing, images, photographs, symbols, or any other public means shall be considered a partner in the act and given the same penalty if this incitement led to the actual commission of the felony or misdemeanor.

19. The Penal Code also prescribes a jail term of no more than five years and a fine of at least EGP 5,000 and no more than EGP 10,000 for any person who incites others to overthrow the Egyptian government or promotes ideologies that seek to change basic principles of the constitution or the basic social order by force or terrorism. A fine of at least EGP 10,000 and no more than EGP 30,000 is the penalty for any person who publishes, manufactures, or possesses with intent to sell, distribute, rent, post, or exhibit inaccurate images likely to harm the country's reputation. The same penalty applies to any person who deliberately imports, exports, transports, advertizes, or displays for sale or rent such material, even if not publicly.

20. The crime of insulting the president creates another general restriction on free expression. Article 179 of the Penal Code levies a fine of at least EGP 10,000 and no more than EGP 30,000 for any person who insults the president. Article 184 criminalizes insulting certain institutions, prescribing a jail term or a fine of at least EGP 5,000 and no more than EGP 10,000, or both, for any person who insults or libels the People's Assembly, the Shura Council, or any other regularly constituted body, or the army, courts, or public authorities or agencies.

21. The Penal Code prohibits the circulation of any content liable to violate public decency, setting a penalty of no more than two years imprisonment or a fine of at least EGP 5,000 and no more than EGP 10,000. Public decency encompasses all sexual materials that show the body or address socially unacceptable sexual relationships, such as homosexual relations, or even traditional sexual relationships, in a way that contravenes prevailing morals. The Penal Code also imposes numerous limitations on expression pertaining to matters of religion and belief, as will be discussed in the following section.

## **ARTISTIC FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION**

22. During its previous UPR in 2010, Egypt accepted numerous recommendations relevant to its citizens' freedom of thought, conscience, and religion as manifested in their artistic works and performances. These include the aforementioned recommendations by Bangladesh<sup>xii</sup> and Switzerland<sup>xiii</sup>; the recommendation to create a conducive environment for the enjoyment of freedom of religion and belief including through introduction of further measures for promoting equal rights and social harmony among followers of different religions (Armenia<sup>xiv</sup>); the recommendation to further promote identity and culture of different communities and to raise awareness in the society about their historic presence in Egypt and contribution to society (Armenia<sup>xv</sup>); the recommendation to guarantee freedom of religion and belief to all groups and minorities, including in relevant legislation, without discrimination (Finland<sup>xvi</sup> and Chile<sup>xvii</sup>); and to

increase efforts to end discrimination and violence against religious minorities and prosecute those involved in incitement to religious hatred and violence (Austria<sup>xviii</sup>).

23. The prior censorship standards elaborated by Minister of Culture Decree 220/1976 severely restrict artistic works that treat issues of religion and belief, whether concerned with spiritual orientations not recognized by the state and society such as agnosticism or non-Abrahamic faiths, representations of prophets, or critiques or unorthodox historical accounts of religion.

24. In a testimony given to AFTE in 2013, the film director Amir Ramsis stated: “theoretically, there is no authority above the censorship agency. Even the minister of culture himself doesn’t have the right to interfere with the censorship authority’s work. But in practice, this isn’t the case. Ultimately, the censorship authority is subservient to the head of the authority himself and his willingness to make deals and compromise. When a film is put before him, he isn’t required to consult al-Azhar—he has authority according to the law—but he doesn’t want any problems with a religious body. And, of course, there has always been a tendency to choose an agreeable head for the agency. I think this is the biggest problem with censorship.”<sup>xix</sup>

25. The Penal Code contains several provisions that restrict the manifestation of religion or belief in ways that bear directly on artistic freedom.<sup>xx</sup> The Penal Code levies liberty-depriving penalties for any expression containing an allegedly inappropriate treatment of the Abrahamic religions. For example, it prescribes a sentence of at least six months and no more than five years imprisonment or a fine of at least EGP 500 and no more than EGP 1,000 for any person who exploits religion to promote, orally, in writing, or by any other means, extremist ideas with the intent to provoke civil strife, show contempt for or disparage an Abrahamic religion or a confession thereof, or harm national unity. A jail term or a fine of at least EGP 100 and no more than EGP 500, or both, is the sentence for any defamation of a religion that performs its rites publicly by any of the means outlined in Article 171. The article covers the following:

1. The printing or publication of a book held sacred by the adherents of a religion that performs its rites publicly if a passage of the book is deliberately distorted to change its meaning.
2. The imitation of a religious festival in a public place or meeting with the intent of mocking it or to allow an audience to watch it.

26. Current best practices in international jurisprudence call for a high threshold for the criminalization of expression, including alleged incitement to religious hatred, discrimination, or violence. State authorities should give proper consideration to the context of the expression, the identity of the person responsible for it, the person's intention, the content and form of the expression, the extent of its dissemination, and the likelihood of actual harms resulting from it. Particularly careful consideration should be given to expression that is situated within the context of an academic, scientific, or artistic work.<sup>xxi</sup>

27. One representative case is case no. 8931/65 filed in 2011 with the Administrative Court by a group of lawyers naming the minister of information, the Egyptian Satellite Company, the Egyptian Company for Media Production City, the General Authority for Investment, the sheikh of al-Azhar, the mufti of the republic, and the director-general of the Islamic Research Academy. The petitioners sought an injunction and annulment of a decree permitting the broadcast of the Iranian series, "Youssef al-Siddiq" on all channels broadcast through NileSat. The petitioners stated that the series depicted two prophets: Youssef, portrayed as an adult by Iranian actor Mustafa Zamani and as a child by Iranian actor Hussein Jaafari, and Yaaqoub, played by Iranian actor Mahmoud Pakniyat, as well as the Archangel Gabriel, played by Iranian actor Ardalan Shoja Kaveh. The petitioners argued that this was a flagrant transgression of Muslim sacraments, citing several religious opinions (fatwas) prohibiting the depiction of prophets and angels. In July 2011, the Cairo Court of Expedited Matters issued an injunction against the screening of the series on Melody and other channels in Egypt.

28. A case against the novelist Karam Saber began on April 12, 2011 when several citizens in Beni Soueif filed a complaint (no. 600/2011) with the public prosecutor, accusing Saber of publishing a short-story collection titled *Where Is God* that contained

11 stories alleged to advocate atheism, defame the divinity, and incite civil strife and bloodshed. The prosecution investigated and sent a copy of the work to the Coptic bishopric of Beni Soueif and al-Azhar to solicit religious opinions as to whether the accusations leveled against the book were accurate. The bishopric said that the work contravened divine laws, mocked sacraments, and invented stories far removed from lofty, refined literature. For its part, al-Azhar held a similar opinion, saying that the work undermined the intellectual values of Egyptian society and rent the fabric of Egypt. Both institutions demanded that the book be taken out of circulation. Because of the controversy, al-Ahram and al-Akhbar refused to distribute the book to their vendors, forcing the author to distribute it himself through individual bookstores. The court sentenced Saber to five years in prison in absentia; the judgment was still under appeal at the time this submission was written.

## **ARTISTIC FREEDOM OF ASSOCIATION AND ASSEMBLY**

29. During its 2010 UPR, Egypt accepted several recommendations relevant to artistic freedoms of association and assembly. Particularly relevant is the recommendation, mentioned above, by Chile<sup>xxii</sup> that Egypt effectively guarantee the exercise of the freedom of association and peaceful assembly and the right to participate in public life and politics, along with the recommendations of Bangladesh and Switzerland mentioned above. A specific recommendation by the United States of America<sup>xxiii</sup>, to pass legislation allowing labor unions to operate without joining the Egyptian Trade Union Federation, did not enjoy the support of Egypt. Egypt has not made progress in implementing these recommendations.

30. The professional arts are regulated by several professional syndicates, among them the Acting Professions Syndicate, which includes all actors in cinema, theater, television, and radio, as well as theater direction, theater management, makeup, prompters, theater set and costume design, the popular arts and ballet, puppeteers and others identified in the syndicate's bylaws. The Film Professions Syndicate includes all professionals working in direction, screenwriting, cinematography, production management, editing, sets, makeup, and sound in both film and television. The Musical Professions Syndicate covers all those working in singing of various types, playing instruments of all types, composing, orchestrating, arranging, conducting, and researching music history.

Theater, film, and music critics may join the relevant syndicates, as may authors of theatrical, cinematic, and musical texts.

31. Law 35/1978 regulates the affairs of these syndicates. Article 3 states that the goal of their establishment is:

1. To advance the theatrical, cinematic, and musical arts.
2. To preserve and develop the human and national heritage of these arts, particularly the Egyptian and Arab heritage, in accordance with the exigencies of global progress, combining authenticity with contemporaneity.

One of the ways the artistic syndicates constrain artistic expression is by prohibiting non-members from working in the theater, cinema, or music. A syndicate board may grant a temporary permit for a specific work or for a defined period of time for non-members in order to facilitate the emergence of promising talents or the continuation of distinguished experienced artists, in consideration of joint productions, to promote cultural exchange between Egypt and other countries, or due to rarity and the lack of a practitioners among syndicate members. The permit does not give the applicant any of the rights or privileges reserved for working members of the syndicate, such the right to participate in the general assembly or the right to health and insurance benefits enjoyed by members.

32. The syndicate will monitor the implementation of the contract to ensure that the permit applicant's rights are upheld during the period of the contract. In exchange, the applicant pays a fee to the syndicate—assessed based on the type of work but not more than EGP 10,000; EGP 20,000 if the applicant is not Egyptian. The bylaws of each syndicate set these fees. It is prohibited to sign a contract with or employ a person who is neither a syndicate member nor the holder of a temporary permit.

33. This restriction severely limits the freedom of artistic expression in cinema, theater, television, and music. If the artist is not a member of a professional syndicate and does not hold a permit from one, producing, participating in, or disseminating artwork is tantamount to a crime, punishable by law. Law 35/1978 punishes offenders with at least

one month and no more than three months in prison or a fine of at least EGP 2,000 and no more than EGP 20,000, or both.

34. In a testimony given to AFTE in 2013, the film director Ahmad Abdalla commented, “To film, you need a permit from the Interior Ministry and maybe from the army. If you’re standing near the sea—any sea—you need to consult with the army, even if you’re just filming a scene of a person standing on the beach. The Interior Ministry speaks to no body except the Film Professions Syndicate, which uses this as a source of strength. Permits for outdoor location filming are only given to syndicate members. If you aren’t a member, you have to pay a huge sum, which you can’t afford if you’re a film lover, for example, or a university student and you want to make a film with your friends. You can’t do it without the syndicate.”<sup>xxiv</sup>

## RECOMMENDATIONS

35. In the opinion of the Association for the Freedom of Thought and Expression and Freemuse, the state under review is failing to live up to its international commitments as they concern artistic freedom of expression, religion and belief, association and assembly. We therefore offer the following recommendations:

1. The Egyptian government should repeal all legislation that imposes prior censorship; in particular:
  - a. Law 430/1955 on the censorship of artistic works;
  - b. the implementing regulations for the censorship of artistic works, issued with Prime Ministerial Decree 162/1993; and
  - c. Minister of Culture Decree 222/1976 on standards for the censorship of artistic works.
2. The present censorship regime should be replaced with a system of age-based classification of artistic content that refrains from deleting or modifying content and accords due representation to artists in its administration.
3. The Egyptian government should amend its legislation criminalizing expression on the grounds of protecting public decency, public order, religion,

and the reputations of others. Any criminalization of expression should conform to the six-part threshold test that considers the context, speaker, intent, content and form, extent, and likelihood of harm.

4. The Egyptian government should repeal Law 35/1976 on the Federation of Artistic Syndicates, which criminalizes artistic work by non-members of the syndicate and those who practice without a permit.
  
5. The Egyptian government should allow artists to form trade unions, in accordance with International Labour Organization conventions binding on Egypt.

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<sup>i</sup> Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: The right to freedom of artistic expression and creativity, A/HRC/23/34, 13 March 2013, para. 86.

<sup>ii</sup> *Censors of creativity: A study of censorship of artistic expressions in Egypt* (Cairo: Association for Freedom of Thought and Expression & Freemuse, 2014).

<sup>iii</sup> Ibid.

<sup>iv</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, Egypt, A/HRC/11/29, 26 March 2010, para. 95(5).

<sup>v</sup> Ibid., para. 95(37).

<sup>vi</sup> Ibid., para. 95(102).

<sup>vii</sup> Ibid., para. 95(103).

<sup>viii</sup> Ibid., para. 95(105).

<sup>ix</sup> Ibid., para. 95(100).

<sup>x</sup> Article 2 states, "It is impermissible to undertake the following activities related to audio and audiovisual works without a permit from the Ministry of Culture: 1) filming, recording, copying, or adapting for use; 2) performing, screening, or broadcasting in a public place. The conditions and status of the public place shall be defined by decree of the prime minister; and 3) distributing, renting, circulating, selling, or displaying for sale."

<sup>xi</sup> *Censors of creativity*.

<sup>xii</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, Egypt, A/HRC/11/29, 26 March 2010, para. 95(5).

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xiii Ibid., para. 95(37).

xiv Ibid., para. 95(47).

xv Ibid., para. 95(109).

xvi Ibid., para. 95(96).

xvii Ibid., para. 95(98).

xviii Ibid., para. 95(90).

xix *Censors of creativity*, 71.

xx See Articles 98, 160, and 161 of the Penal Code (Law 58/1937)

xxi Rabat Plan of Action on the prohibition of advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence, A/HRC/22/17/Add.4, 11 January 2013.

xxii A/HRC/11/29, para. 95(102).

xxiii Ibid., para. 95(10).

xxiv *Censors of creativity*, 76.