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**Re: The campaign by the Government of Egypt and the Supreme Council of the Armed Forces against civil society organizations and human rights defenders in Egypt<sup>1</sup>**

The undersigned organizations wish to draw your attention to the organized campaign by the Government of Egypt (GoE) against Egyptian civil society organizations.<sup>2</sup> The aim of the campaign is to discredit these groups by branding them as foreign agents allied with foreign states, because of the foreign funding which they receive.

These accusations are a direct response to the role played by Egyptian civil society, particularly human rights defenders, in exposing abuses committed by the Supreme Council of the Armed Forces (SCAF). Recently, civil society groups have raised several rights issues related to transitional justice and the democratic transition in Egypt. It has also publicly exposed several abuses perpetrated by the military police, including the practice of forced virginity tests on female protesters arrested in Tahrir Square and detained in military police facilities in April 2011; the use of excessive force against demonstrators to end a sit-in in Tahrir Square, as well as a sit-in by students at the Faculty of mass communication at Cairo University on 8 April 2011; and, the prosecution of civilians in military trials that lacks due process. Civil society organizations have also worked with the families of those killed and injured during the 25 January Revolution to claim their rights.

The GoE has adopted a set of increasingly harsh measures against Egyptian civil society. The government has attempted to amend legislation to create new obstacles to their work. A governmental fact-finding commission, headed by the Minister of Justice, is looking into the funding of civil society organizations, and the government has requested from the Central Bank to monitor all their bank transactions. Finally, it was reported in the press that the Supreme State Security Prosecution<sup>3</sup> has launched investigations into the receipt of foreign funding by several civil society groups, and specified that these groups would face charges of high treason, conspiracy against the state, and of compromising national security through the implementation of

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<sup>1</sup> After former president Mohammed Hosni Mubarak stepped down on February 11, 2011, the Supreme Council of the Armed Forces assumed responsibility for the administration of the country's affairs. It is comprised of Defense Minister Field Marshall Mohammed Hussein Tantawi and the high leadership of the armed forces.

<sup>2</sup> Egyptian civil society takes two legal forms. The first are Non Governmental Organizations and civic associations regulated by Law 84/2002. These organizations are subject to authoritarian oversight by the state, represented by the Ministry of Social Solidarity. The second type is civic companies and legal firms. Civil society and human rights activists in Egypt began to organize under this type of legal umbrella because of the state's refusal to approve their applications to form NGOs under Law 84/2002 or in order to evade the oversight of the Ministry of Social Solidarity, which obstructs the activities of NGOs. Funding sources for civic and legal firms are still subject to state oversight under the Egyptian Tax Authority.

<sup>3</sup> The Supreme State Security Prosecution is part of the exceptional judicial system in Egypt. It was established under emergency law (Law 162/1958).

foreign agendas. This is in addition to the intensive and organized campaign launched by the state-owned press to discredit Egyptian civil society, particularly rights groups.

### 1. Legislative amendments announced by the GoE to regulate NGO funding

The existing non-governmental organizations (NGO) law 84/2002 puts civic associations under the control of the state and the security apparatus.<sup>4</sup> Under Article 6 of this law, civic associations can only be formed upon the approval of the Ministry of Social Solidarity. The article stipulates that:

“If within 60 days the administrative authority finds that any of the association’s purposes include an activity prohibited under Article 11 of this law, it must reject the application with cause and inform a representative of the founding group by registered mail, within the aforementioned 60-day period.”

Article 8 of the law states the following:

“Without prejudice to paragraph 3 of Article 6 of this law, the administrative body may object to perceived violations of the law in the association’s articles of incorporation or in relation to the founders. This does not preclude its duty to register the association within the period elaborated in Article 6 of this law. If the administrative body has any objection, it must inform the association of the reason for its objection in writing in a registered letter. If the association does not address cause of the objection within the period determined by the administrative body, the dispute shall be referred to the committee named in the foregoing article.”

These two articles demonstrate the degree of control the administrative authority has over the registration and establishment of NGOs in Egypt. The law also gives the Ministry of Social Solidarity and the security apparatus the right to object to board elections within civic associations and to disqualify candidates for the board. Article 34 of the same law states that:

“The administrative authority and all competent bodies may inform the association within the seven days following the draft of the list or its declaration, depending on the case, of those it wishes to disqualify due to the failure to meet candidacy conditions. If his candidacy is not withdrawn within seven days following the notice, the administrative body and all competent bodies may bring the matter before the committee named in Article 7 of this law, and this within seven days following the final deadline.”

The law also grants extensive authorities to the Minister of Social Solidarity to dissolve NGOs. Although justification must be given, the legal grounds are formulated in broad terms that ensure ample room for maneuver for the Minister. Article 42 of the law states:

"The Minister of Social Solidarity may dissolve an association by a decree with cause, after consultation with the General Federation and after summoning the association to take a statement, in the following cases:

1. ...
2. The receipt of funds from a foreign body or the sending of funds to a foreign body in violation of paragraph 2 of Article 17 of this law.
3. The commission of a grave violation of the law, public order, or morals."

Among the restrictions imposed by the existing law are restrictions on the receipt of donations or grants, whether domestic or foreign. The legislator requires the prior approval of the ministry for any grant to an association, whether local or from overseas. Article 17 states that:

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<sup>4</sup> For more information about the NGO law, see “Nahw qanun dimuqrati li-tahrir al-‘amal al-ahli: dirasa maydaniya wa qanuniya,” a study prepared by the CIHRS and the Egyptian Human Rights Organization.

“In all cases, no association may obtain funds from abroad, whether from an Egyptian national, a foreign national, or a foreign body or its domestic representative, nor may it send any such item to persons or organization abroad except with the permission of the Minister of Social Affairs.”

A recent example of the administrative body’s interference in the work of NGOs is the case of the New Woman Foundation. The Ministry of Social Solidarity rejected the Nelson Mandela Award, which the Foundation had received from the World Alliance for Citizens (CIVICUS). In an official letter dated 15 June 2011, the administrative body provided the following justification for its rejection:

“The objective of the project is to advocate for the issuance of an NGO law that conforms to international standards. The issuance of laws does not fall within the civil societies’ competencies or activities, but falls within the competencies of the legislative authority. However, the association may debate the law and submit an opinion and proposals as part of the consultations conducted on this matter.”

In the conclusion of the letter, the administrative body stressed the need for the association to “prepare a new proposal for [its] consideration, with logical activities that conform to the nature of the work of civic associations and brings genuine benefit to society.”

This letter illustrates the nature of the relationship between the administrative authority and NGOs. The administrative body acts according to a sovereign, authoritarian logic, dictating to NGOs, with the force of law, what they should or should not do. This is a clear violation of Article 22, paragraph 2, of the International Covenant on Civil and Political Rights, which states that:

“No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

It was expected that, after the revolution, the GoE would take measures, including legislative amendments, to free NGOs from the tight grip of the state. Instead, we have been dismayed by the tendency of the GoE and the SCAF to place additional restrictions on the work of NGOs. It is difficult to understand what new legal restrictions the government seeks to enshrine, as the current law already contains numerous restrictions, particularly on the receipt of foreign grants, which require prior government approval. Practical experience has shown that such laws regulating grants tend to be used to hinder the work of civic organizations, particularly if these organizations work to defend human rights and expose government abuses.

## 2. The creation of a fact-finding commission headed by the Minister of Justice to investigate funding of civil society organizations

In early July 2011, civil society groups were taken aback by statements made by the Minister of Planning and International Cooperation, Fayza Abu al-Naga.<sup>5</sup> The Minister stated that Prime Minister Essam Sharaf had formed a committee headed by the Minister of Justice, Mohammed al-Gindi, to investigate the foreign funding of civil society groups. According to the cabinet decision, the committee was to draft its report within three weeks. There is no doubt that this step is an escalation against civil society organizations: A fact-finding committee headed by the Ministry of Justice suggests that several organizations will be charged and prosecuted. Although the committee was due to submit its report in three weeks—that is, in late July—and even though on 28 July the Minister of Information affirmed that the committee would bring its report

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<sup>5</sup> “al-Hukuma tushakkil lajnat taqassi haqa’iq hawl tamwil munazzamat al-mujtama’ al-madani,” al-Masry al-Yom, July 12, 2011, <<http://www.almasryalyoum.com/node/476668>>.

within days before public opinion,<sup>6</sup> the report has not appeared to this date. Instead, the committee is being utilized as another tool in the media campaign against NGOs.

### 3. Government requests the Central Bank to monitor all bank transactions

On 7 August 2011, the Minister of Social Solidarity announced that he had requested the Egyptian Central Bank to keep him informed of all bank transactions on accounts held by NGOs, including withdrawals and deposits.<sup>7</sup> This is a flagrant breach of account confidentiality as upheld by Law 88/2033 on the Central Bank, Banking System, and Money. Section four of that law regulates account confidentiality in Articles 97-101 and explicitly states that bank clients' accounts, deposits, trusts, and transactions are confidential and cannot be accessed, and that no information can be provided about them directly or indirectly, except with the written authorization of the account holder. Article 98 of the law states that clients' account information may be disclosed pursuant to a court order on the condition that this measure is taken in a criminal or misdemeanor case before the courts where serious evidence suggests a crime has been committed.

It is important to highlight that the abovementioned law explicitly guarantees the confidentiality of accounts and places conditions on disclosure to state institutions. As such, the Minister of Social Solidarity's actions constitute an illegal measure. At time of writing, no criminal charge had been brought against any civic association, and this is the only case in which it is permissible to breach account confidentiality. It is in all cases prohibited to disclose account information by an administrative executive order.

In this context, on 14 August 2011, Negad al-Borai, rights activist and the Director of the United Group-Lawyers and Legal Consultants, received a phone call from his bank, the Commercial International Bank (CIB), in which bank officials inquired into the details of a grant he received from USAID, the contracts under the grant, and the project activities. They stated they were monitoring the funds received by civil society groups pursuant to directives from the Central Bank.

### 4. Reports of investigations by the Supreme State Security Prosecution into the receipt of foreign funds by several civil society organizations, and possible charges of high treason, conspiracy against the state of Egypt, and the compromise of national security through the implementation of 'foreign agendas'

On 8 August 2011, a news article was published with the title "State Security Prosecution starts investigation into receipt of foreign funding by civil society organizations."<sup>8</sup> The article reported that the Supreme State Security Prosecution had launched an investigation into foreign funds received by several civil society groups, noting that they would face charges of high treason, conspiracy against Egypt, and the compromise of national security through the implementation of 'foreign agendas'. It added that the prosecutor had begun examining several complaints filed by executive bodies and numerous lawyers against these organizations.

It is noteworthy that the Supreme State Security Prosecution is part of the exceptional judiciary in Egypt. It oversees investigations referred to the Supreme State Security Court, which was created under the Emergency Law. The court, formed by presidential decree (Article 7 of Law 162/1958 on the state of emergency) - in this case by the SCAF - lacks neutrality and its verdicts cannot be challenged on appeal, as per Article 12 of the same law.<sup>9</sup>

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<sup>6</sup> "Haykal: i'lan tafasil al-tamwil al-ajjabi li-l-munazzamat wa-l-jama'iyat al-ahliya khilal ayyam," al-Ahram online, July 28, 2011, <<http://bit.ly/riiLBB>>.

<sup>7</sup> "al-Markazi yatlub min al-bunuk iblaghahu bi-l-ta'amulat al-masrafiya li-munazzamat al-mujtama' al-madani," al-Ahram online, Aug. 4, 2011, <<http://bit.ly/ozua96>>.

<sup>8</sup> "Niyabat amn al-dawla tuhaqqiq fi husul ba'd al-munazzamat al-ahliya 'ala tamwil khariji," Akhbar al-Yom online, July 31, 2011, <<http://bit.ly/peCgMG>>, and "Niyabat amn al-dawla tabda' al-tahqiq fi talaqqi munazzamat mujtama' madani tamwilat min al-kharij," al-Ahram online, Aug. 8, 2011, <<http://bit.ly/q6X1Hd>>.

<sup>9</sup> For more information on the Supreme State Security Court, see report by Martin Scheinin, the special rapporteur on the promotion and protection of human rights and fundamental liberties while countering terrorism, of Oct. 14, 2009, pp. 12-13.

Moreover, the charges listed in the article, if brought before the Supreme State Security Prosecution, are punishable by up to 15 years in prison under Article 77(d), paragraph 1, of the Egyptian Penal Code. In addition, the stigma resulting from the accusation of high treason against the state is not to be underestimated.

#### 5. Incitement to hatred and violence

As mentioned, there is undoubtedly an organized state campaign to discredit civil society groups, particularly those working in human rights. The constant talk of investigations and measures against these organizations, the investigations against them by the Supreme State Security Prosecution, and talk of charges of conspiracy and treason, all serve to make Egyptian society wary of these groups and suspicious of their objectives, and ultimately, to undermine their work in exposing human rights violations. Indeed, it makes the very message of such groups— respect for human rights—subject to doubt, due to developing societal belief that these groups are implementing foreign agendas. This incitement to hatred against civil society associations carries the threat of some form of violence in the future, as a result of such provocative allegations. It also makes society predisposed to reject the ideas advanced by the groups, from peaceful coexistence to the respect for human rights.

The stance of the current government in this regard is no different from that of previous governments in the era of former president Hosni Mubarak, and may even be more severe. Indeed, it is no exaggeration to say that one of the defining features of the former president's rule was human rights abuse; however, even Mubarak never accused human rights groups of high treason.

#### 6. The imminent threat

What suggests an imminent threat is the measures announced in the press by the Egyptian government, and the nature of the accusations arbitrarily made against human rights organizations, especially those involved in the defense of human rights. Recently, talk and rumors have increased about NGO treason, about their allegedly implementing foreign agendas with the goal of compromising state interests, and of their creation of a wedge between the people and the army. The SCAF has issued several communiqués on the matter. Communiqué no. 69 issued on July 23, 2011 explicitly accused the April 6th Youth Movement of attempting to drive a wedge between the people and the army, and of implementing a "special agenda," with the objective to sow strife.<sup>10</sup> This was followed by communiqué no. 70, issued the same day, in which the SCAF called on the Egyptian people, of all its parties and coalitions, to thwart all the plots of "agents and malevolent individuals" aimed at creating a rift between the people and the army.<sup>11</sup>

The following day, in a telephone interview to Al-Jazeera Egypt, General Hassan al-Roweini, the commander of the Central Military Zone and a member of the SCAF, accused the April 6<sup>th</sup> Youth Movement and several other unnamed organizations (which he alleged were under investigation) of attempting to sow strife between the people and the army. He added that these groups were making demands for the independence of universities, media reform, and the vetting of the judiciary, and described these demands as seditious. He also alleged that April 6th Movement and Kefaya were not Egyptian movements, and said they had received funding and training from abroad in order to create chaos.<sup>12</sup> Against this background, political activist Asmaa Mahfouz, a former leader of the April 6th Movement, was summoned for questioning by the Military Prosecution due to an opinion she published on her personal Facebook page. She was accused of joining the April 6<sup>th</sup> movement, inciting against the SCAF, and intentionally and publicly insulting it. She was released on a bail of 20,000 EGP (approximately 3,350 USD).

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<sup>10</sup> The communiqué can be found on the SCAF official Facebook page at <<http://on.fb.me/o852Q7>>.

<sup>11</sup> The communiqué can be found on the SCAF official Facebook page at <<http://on.fb.me/onRosh>>.

<sup>12</sup> General al-Roweini's intervention can be viewed at <<http://www.youtube.com/watch?v=Ix3gdtojYQA>>.

There is a risk that this state-led campaign against activists and civil society groups could inevitably lead to the launch of investigations and the imposition of charges against activists who criticize the abuses perpetrated by the armed forces against defenseless civilians and opponents of military trials for civilians. Should that occur, these activists would not receive a fair trial because, as mentioned, they will be referred to the Supreme State Security Court, an exceptional court whose rulings cannot be appealed. Such trials would serve only as a formality, the purpose of which would be to eliminate the Egyptian human rights movement. This risk has become imminent, as measures have already been taken to monitor the accounts of civil society groups, as noted above in the case of rights activist Negad al-Borai.

### Recommendations

The undersigned organizations condemn the assault of the GoE and the SCAF on civil society organizations, and request the Special Rapporteurs to call on the GoE to:

1. End the targeting and harassment of civil society groups, particularly those working in the sphere of human rights, and ensure an end to all forms of pressure, which has a negative impact on their work in defense of human rights and liberties.
2. Comply with its obligations under Article 22 of the UN Covenant on Civil and Political Rights. Paragraph 1 of that article states: "everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." Paragraph 2 of the same article states that "no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right."

The GoE should also be guided by the Declaration on Human Rights Defenders which stipulates in its Article 12 that a "state shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration."

3. End the vicious media campaign launched by the government and the SCAF, which aims to discredit civil society groups and stigmatize them with charges of foreign collaboration, high treason, and lack of patriotism.
4. Review relevant national legislation and revise the NGO law with the purpose of freeing civil society from the grip of the Egyptian state, which obstructs its activities, particularly for human rights groups, and to ensure that these laws are compliant with international law and treaties to which Egypt is a party.

We hope that this submission receives your attention and prompts you to take rapid action in the name of the right to freedom of association. We are prepared to provide you with information and updates on further developments in this regard.