

Justice Adli Mansour

Interim President of the Arab Republic of Egypt

The Cairo Institute for Human Rights Studies (CIHRS) submits for your consideration a legal memorandum detailing objections to the two counterterrorism bills—the draft law amending some provisions of the Penal Code and the draft law on procedural provisions for counterterrorism and international judicial cooperation—that were referred to you by the Cabinet on April 3, 2014. The CIHRS urges you to refrain from issuing these bills because they constitute the most flagrant legislative assault on public freedoms and human rights initiated by the security apparatus in 37 years and would utterly undermine what limited rights and freedoms do exist in Egypt. Moreover, these two bills represent a gross breach of the constitution and a flagrant violation of rulings of the Supreme Constitutional Court (SCC), including rulings issued while you served as one of the judges sitting on the SCC. As such, these two bills show contempt for the Egyptian citizens who voted to approve the constitution less than 100 days ago.

This may explain the secrecy surrounding the drafting of these two bills and the Cabinet's reluctance to release them to the public. There is no better description of this process than that which was commonly used to describe the era of former President Hosni Mubarak: "This is not the kind of climate in which laws are drafted, but in which conspiracies are hatched against the people." Indeed, these two bills reveal the undemocratic nature in which legislation is passed in Egypt, including through blatant manipulation of public opinion. Your rejection of these two draft laws and a rebuke of their framers may help to dispel some fears of a return to the ways of the previous regime, or worse.

We regret to say that the two bills contain serious flaws which would be obvious to a beginning law student. The adoption of the bills into law will also indirectly help to support terrorist activity, not suppress it, as is claimed by the planned media campaigns which have greeted these bills.

In the attached memo, the CIHRS cites provisions of the constitution, established principles of criminal law, rulings issued by the Supreme Constitutional Court you presided over, and international human rights standards.

Mr. President,

The CIHRS realizes that terrorism is a grave danger to human rights, threatening the right to life, the right to personal security, and the right to bodily integrity. We know that the state must confront this danger pursuant to its national and international obligations, as established both in the Egyptian constitution and in international human rights conventions ratified by Egypt. However, the CIHRS stresses that countering increased terrorist activity does not require new laws or amendments to existing statutes, although we do grant the importance of instituting fundamental reforms to the Penal Code to bring it in line with modern criminal justice systems. Rather, successfully countering terrorism requires a serious, thorough consideration of the factors that led to heightened terrorist activity over the last two years, including a review of policies, legislation, practices, and the dominant religious discourse—including the official religious discourse—as well as far-reaching, fundamental structural reforms of policies and the security apparatus, which can no longer be put off. In the context of such policy review and security reform, the Sinai area requires

an even more fundamental reevaluation to put an end to the policies of marginalization and discrimination, and the tendency to constantly sacrifice its residents to the exigencies of occupation, liberation, or terrorism. The first step may be simply a sincere apology from the president to Egyptian citizens in Sinai on behalf of the successive governments which, over the decades since the liberation of the peninsula, have wronged these citizens.

Mr. President,

The CIHRS fears that the passage of these two bills will further undermine citizens' basic rights and the rule of law, continue to mislead citizens about the true causes for the failure of counterterrorism efforts, and distract them from the catastrophic performance of the security apparatus, which is the primary factor which has allowed for the ongoing success of terrorist attacks. At the same time, the passage of these bills will only reinforce the underlying causes of political violence and political and economic instability and further entrench the security apparatus' incompetence and failures, which will in turn promote terrorism and strengthen its social roots.

One of the most prominent factors that demonstrates the way the bills breach the constitution and SCC rulings is that the bill regarding amendments to provisions of the Penal Code would amend Article 96 to prescribe penalties for criminal agreement in terrorist crimes. In so doing, it revives provisions previously found in Article 48 of the Penal Code which were struck down as unconstitutional by a ruling of the SCC, which you, Mr. President, helped to write (case no. 114/21SCCY, ruling issued on June 2, 2001). The bill also adopts an overly broad, ambiguous definition of terrorism that violates the most basic rules of criminal legitimacy upheld by the SCC in numerous judgments, which emphasized the need for clear, unambiguous language in penal clauses.

The CIHRS also notes with regret that the bill on counterterrorism procedures and international judicial cooperation seeks to outright conspire against the constitution and deceive the public by effectively aiming to institute a permanent state of emergency without declaring it as such. It avoids the use of the word "emergency," thus trying to circumvent the constitution, which restricts the declaration of a state of emergency in Article 154 and requires the approval of a majority of all members of the House of Representatives. Under the constitution, renewal of the state of emergency is conditional on the approval of two-thirds of parliamentarians, and the duration of the emergency cannot exceed three months. With this bill, however, the security apparatus is striving to overcome all such constitutional and statutory restrictions and is working to do so behind the backs of citizens who voted overwhelmingly for the constitution. As such, the bill is formulated to permit the president to take "some counterterrorism measures"—which are nearly identical to measures prescribed in Emergency Law 162/1958—but without need for the parliamentary majority specified by the constitution. The draft laws require only a simple majority of MPs present to be passed. The bill also does not comply with the constitutional conditions for exceptional measures (essentially a state of emergency) and allows these measures to be taken for successive periods without needing a majority vote by all MPs.

In another flagrant violation of the constitution—this time of Article 54, which requires all arrested persons to be referred to the investigating authorities within 24 hours of arrest—the draft law gives security personnel the right to hold terrorist suspects for 72 hours without referral, which may be extended for an additional week. Hence suspects may be held for up

to ten days by the security apparatus without oversight or protection from potential torture.

The two bills run counter to the recommendations made by the UN special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in his report following an official visit to Egypt in 2009. The rapporteur stressed the need to adopt a strict definition of terrorism that is consistent with international standards and cautioned against any counterterrorism law that would entrench a permanent state of emergency—recommendations intentionally disregarded by the framers of these two bills.

Mr. President,

The CIHRS wishes to reiterate that these two bills are an insult to everyone who took part in the referendum on the 2014 amended constitution. You are obligated to defend established constitutional principles, not only in your capacity as the country's interim president—a president who oversaw the drafting of the constitution and its approval by citizens—but also as a judge who occupied the highest judicial position in the land, the chief justice of the SCC. You must defend constitutional provisions that you helped to formulate, championing the principle of criminal legitimacy and human rights.

The roadmap you announced after July 3rd includes a number of important steps, of which the drafting of and referendum on the constitution were central. Yet what occurred before and during the process of adopting the constitution, as well as what has led to the proposal of these counterterrorism bills, warns that the path that Egypt is on may lead to a failed state or to a police state even more repressive than that of Mubarak, where the need to “counter terrorism” is used to justify the worst of violations. Continued abuses by the state will only spur the spread of terrorism. It will thus be impossible to counter terrorism within the context of a police state – and the new counterterrorism bills are clear evidence that the police state in Egypt is alive and well and seeking to tighten its grip.

Mr. President, I hope that my letter will reach you before you issue these two bills as law, not only because I hope you will be convinced not to issue them, but also because this very letter and its attached memorandum would be evidence that I head what could be considered a “terrorist organization” under such legislation, condemning me along with all the others among opposition leaders, presidential candidates, intellectuals, writers, literary figures, media professionals, and human rights defenders who could be targeted under this law and even sentenced to death according to its provisions. According to Article 86 of the draft law, any person who establishes or organized or directs an association or body or organization or group whose purpose is “to call, by any means, for the disruption of the implementation of provisions of the constitution or the law” shall be sentenced to death. As such, this bill considers directing a human rights organization or leading a political party or other political group which calls for constitutional or legal amendments by peaceful means to be a crime on the same level as heading a terrorist group such as Al-Qaeda, imposing the death sentence in each case! This will only facilitate the police state and lead to further terrorism in Egypt.

The CIHRS therefore offers this legal brief and is fully prepared to engage in an institutional dialogue on policies and legislation related to human rights and counterterrorism procedures, including the requirements for security reform and reform of

religious discourse. We also urge you to take advantage of UN expertise in this field and turn to the UN special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for aid in taking effective counterterrorism measures that are consistent with international standards.

Most sincerely,

Bahey eldin Hassan

CIHRS Director