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**Legal and Constitutional Grounds for Objections to the Parliament's Bill on  
Civic Associations  
Legal Memorandum**

**1. The unconstitutionality of articles regulating the establishment of civic institutions**

In keeping with the best international practices on the freedom of association, Article 75 of the constitution states that civic associations and foundations shall acquire legal personhood simply upon notification. This requirement is reasonable, as these institutions represent a convergence of their founders' wills - a matter in which the administrative body has no interest except to recognize the association as an act following from notification. Intervention by the administrative body, either to approve, deny, or hinder the acquisition of legal personhood, renders the concept of notification meaningless. Yet, administrative intervention is precisely what the parliament has proposed in the articles regulating the establishment of civic associations.

Notification is the act of informing the competent administrative body of the intent to begin to engage in lawful activity. The objective is to enable subsequent oversight and regulation by the administrative body and various state agencies tasked with enforcing the law.<sup>1</sup> With the association's acquisition of legal personhood, it is fit to acquire attendant rights and duties.

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<sup>1</sup> The state sets general conditions that must be met for a group of persons or capital interests to acquire legal personhood. Personhood is established by meeting these conditions without subsequent interference by the state except in its role to oversee the necessary conditions. See Dr. Nabil Ibrahim

Given the above, and disregarding the use of the term ‘notification’ in the bill, Article 9/2 states, “If it becomes apparent to the administrative body within 60 days of notification that the purposes of the association include an activity prohibited or criminalized under the Penal Code or another law, or that the notification information and documentation are incomplete, it shall suspend certification with a decree stating cause, of which a representative of the founders shall be notified...” As is clear, this article creates a licensing system, deviating from the meaning of *notification* as set forth in the constitution.

Article 10/3 states, “The administrative body shall issue a letter to a bank subject to the oversight of the Egyptian Central Bank to open a bank account for the association under the name in which it was certified. The association or other entities subject to the provisions of the law may not open a bank account except by issuance of this letter.” The acquisition of legal personhood by civic institutions is thus not only dependent on a 60-day waiting period from the date of notification and the non-objection of the administrative body to its activity; associations do not acquire personhood until the administrative body issues a letter to a bank allowing them to open an account. This subverts the rules for acquisition of legal personhood by moral persons, by which they acquire rights and assume obligations.

Article 13/2 of the bill similarly contravenes the constitution. The article states, “Associations and other entities subject to the provisions of this law, which operate and engage in activities in border regions and which shall be defined by prime ministerial decree, must obtain a license to operate from the administrative body, after soliciting the opinion of the competent governor, prior to beginning operation.”

Excluding associations operating in border regions from establishment by notification is a flagrant departure from Article 75 of the constitution, which makes no distinctions between associations on the basis of geographic location. It also blatantly violates Articles 4 and 53 of the constitution. Article 4 states, “Sovereignty belongs to the people alone, who shall exercise and protect it. It is the source of powers and shall

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Saad, al-Madkhal ila-l-qanun: nazariyat al-haqq, Manshurat al-Halabi al-Huquqiya, Beirut, 2010, p. 201.

safeguard its national unity, based on the principles of equality, justice, and equal opportunity among all citizens, as set forth in the constitution.” Article 53 states, “Citizens are equal before the law, and they are equal in rights, liberties, and general duties, without discrimination on the basis of religion, belief, sex, origin, race, color, language, disability, social class, political or geographic affiliation, or any other grounds. Discrimination and incitement to hatred is a crime punishable by law.”

The Supreme Constitutional Court (SCC) has ruled, “Though the forms of unconstitutional discrimination cannot be exhaustively enumerated, at their core, they are any distinction, restriction, division, or exclusion which decisively undermines the rights or liberties guaranteed by the constitution or the law, by denying their existence or hindering or diminishing their impact in a way that prevents their exercise on fully equal footing with those legally entitled to them, in particular in political, social, economic, and cultural life...”<sup>2</sup>

## **2. The unconstitutionality of articles regulating the activities of associations**

The last paragraph of Article 75 of the constitution places a single limitation on the activities of associations, prohibiting only “the establishment or continuation of civic associations or foundations whose statutes or activities are secret or of a military or quasi-military nature.”

This is a strictly enumerated limitation; therefore, the legislative authority cannot expand or analogize to it. When the constitution provided for the right to form associations, it referred their regulation to ordinary law in light of the restrictions set forth in the constitutional text itself, which cannot be expanded or scaled upwards by a lower law. In regulating rights, the rule is that the authority of the law is discretionary, provided that the constitution does not limit this discretionary power with rules and restrictions the law may not breach.

In fact, the prohibition set forth in the final paragraph of Article 75 of the constitution, is not a limitation on non-governmental associations alone, but on the legislative

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<sup>2</sup> SCC, appeal no. 17/14JY, session of Jan. 14, 1995, Technical Bureau 6, pt. 1, p. 440.

authority tasked with regulating this right. The SCC has said as much in several rulings. It has stated, for example, “The rule for the legislating authority in the matter of the regulation of rights is that it is a discretionary authority, provided that the constitution does not limit its exercise with rules that limit or circumscribe it; rules that cannot be breached or infringed. If the constitution defers to either the legislative or executive authority for the regulation of a specific matter, the legal rules issued by these authorities in this regard may not undermine the rights upheld by the constitution by contradicting or diminishing them. This would serve to erode or marginalize these constitutional rights; thus representing an assault on their fundamental essences.”<sup>3</sup>

Based on the foregoing, it is clear that Article 13/1 of the bill, by limiting the areas of operation for civic associations and foundations exclusively to “fields of social development” constitutes a restriction of the will of the constitutional framers, which allowed civic institutions to freely choose the fields of their work as they please and pursue activities based on their objectives. The constitution did so by narrowly defining proscribed areas. In fact, paragraph 2 of Article 75 explicitly states that civic institutions shall “practice their activities freely.” If the framers wanted to circumscribe the field of activity for associations, they would have explicitly set forth limitations.

Furthermore, Article 14 of the bill states that association activities must comport with “the state’s plan and its development needs and priorities,” in a flagrant infringement of the defined limits set down in Article 75 of the constitution. The same is true of the bill’s prohibition of “the conducting of opinion polls, publishing or making accessible their findings, the conducting of field research or the presentation of its findings prior to review by the authority to ensure its integrity and impartiality,”<sup>4</sup> and “concluding an agreement in any form with a foreign body in or out of the country prior to notifying the agency, as well as any amendment made to the agreement.”<sup>5</sup>

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<sup>3</sup> SCC, appeal no. 92/21JY, session of Jan. 6, 2001, Technical Bureau 9, pt. 1, p. 843.

<sup>4</sup> Article 14/g of the bill.

<sup>5</sup> Article 14/h of the bill.

The proposed law also prohibits civic institutions from engaging in any activity not enumerated in its articles of incorporation or the objectives of the association (Article 14), thereby prohibiting lawful activities if they are not explicitly identified as part of the association's objectives. For example, if an association were involved in literacy efforts, it would be prohibited from also offering social support to female heads of households if this were not defined as one of its objectives, even though it is a legitimate activity of benefit to the local community.

In addition, the prohibition on field research and opinion polls and the publication of their findings prior to review by the authority undermines the associations' ability to develop and refine their development-oriented work, which depends on measuring the impact of the services they offer and identifying the needs of the community in which they operate, to better serve it. This can only be accomplished through surveys and field research.

Article 13/3 of the bill uses overly broad terms to prohibit associations from engaging in activities "of a political nature or which harm national security, the public order, public morals, or public health." Article 14/b adds another proscribed activity: "the practice of activities that entail an infringement upon national unity."

These terms can be used to restrict the freedom of associations to choose their activities or as grounds to dissolve associations, since there is no precise, narrow definition of these terms. For example, the phrase "activity of a political nature" encompasses encouraging citizens to participate in public affairs, as set forth in Article 87 of the constitution.<sup>6</sup>

As for public order, the Court of Cassation has ruled, "The concept of the public order is relative. In determining its content, the judge is limited by the general prevailing

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<sup>6</sup> Article 71 of the UN Charter states, "The Economic and Social Council may make suitable arrangements for consultation with nongovernmental organizations which are concerned with matters within its competence." The Human Rights Committee General Comment 25 (1996) on the right to participate in public affairs, the right to vote, and the right of equal access to public positions states, "The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25." Cited in Human Rights Council, 20th session, report of the special rapporteur on the right of peaceful assembly and association, para. 73.

trend in his country in his time.”<sup>7</sup> The same is true of the concept of public morals, which refers to a set of ethical foundations on which society and its moral structure is based. In other words, public morals encompass baseline rules or ethical precepts, which are by their very nature relative, shifting according to time and place.

Legal rules are necessarily narrower and more precisely defined than ethics or morals arising from a given group’s conscience and values and are found in intangible general principles and trends.<sup>8</sup> Moreover, there is no fixed standard of public order and morals, which are flexible and relative, changing from one place and time to another and varying according to the social milieu. That which contravenes morals in rural society may not do so in urban society; an Eastern society may differ in its understanding from a European one. Similarly, the political and economic public order in a socialist society differs from that in a capitalist society.<sup>9</sup>

Confronted with the fluidity of concepts like the public order and morals, the judiciary has broad latitude to determine the content of each one in light of their unfixed, relative nature that varies from one time and place to another. In spite of this latitude, judges do not determine the content using a personal standard based on their own beliefs and opinions. They are limited by the prevalent trends in a given community, regardless of their personal sympathies and beliefs. That is, the standard of public order and morals is objective, not personal. The judge interprets this standard based not upon his own personal beliefs, but upon the conscience of the group, its tendencies, and the spirit of the legal order. The need for impartial, rather than subjective, interpretation is the rationale behind the Court of Cassation’s oversight of the judiciary.<sup>10</sup>

Based on the above, it is evident that the parliament abused its discretionary authority by limiting the field of operation for associations and violating the final paragraph of Article 75 of the constitution, which restricts the freedom to form associations only if their charters or activities are secret or of a military or quasi-military nature. It is our

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<sup>7</sup> Court of Cassation, appeal no. 10132/78JY, session of May 11, 2010.

<sup>8</sup> Dr. Mohammed Hussein Mansour, *al-Madkhal ila-l-qanun: al-qa’ida al-qanuniya*, Manshurat al-Halabi al-Huquqiya, Beirut, 2010, p. 36.

<sup>9</sup> *Ibid*, p. 96.

<sup>10</sup> *Ibid*, p. 97.

view that the parliament's regulation of this freedom is an encroachment upon the constitution and risks a ruling of unconstitutionality for Articles 13/1 and 14/g and h.

### **3. The bill deters civic and voluntary work**

In light of the economic hardships currently facing Egyptians, especially after the pound was floated and the subsequent price hikes, and given the lack of an effective social or health insurance system, civic associations are striving to fill the gap in state-provided services or services offered by the private sector at high prices. Given this deteriorating socioeconomic context, it would have been logical for the bill to encourage civic work and spur citizens to take the initiative in providing services and solutions to their communities. Unfortunately, a quick glance at the bill reveals that it achieves the opposite; the bill discourages civil work by making the formation of associations more difficult through the following requirements:

- Payment of a maximum fee of LE10,000 to certify the association's articles of incorporation (Article 8/f).
- A certified, official contract to occupy the premises of the association (Article 8/e).
- The criminal record and a financial statement from every founding member (Article 8/c).
- The association must have independent headquarters appropriate for its activities (Article 3).

These are onerous conditions for the establishment of an association, which may not be realizable by all citizens. In addition to a maximum fee of LE10,000, a citizen seeking to establish an association must also rent headquarters for it and furnish it "appropriately." This entails further expense, and all in order to engage in a voluntary, non-profit activity. And after expending this substantial amount of capital, the citizen's application for establishment still may be denied.

If the application is approved and the association acquires legal personhood, the association is still threatened by the restrictions imposed on its activity and the legal hurdles to fundraising. A minor violation of the law—such as moving the

association's headquarters without notifying the administrative body—could earn the association director or founder a term of imprisonment of up to one year or a fine of up to LE500,000. The association could be dissolved in the event of a second offense (Article 88/c).

The bill also places arbitrary restrictions on associations' receipt of donations and funds in Egypt. The institution must notify the administrative body of the receipt of funds 30 working days in advance and freeze the bank transaction pending approval, while the bill does not identify the grounds on which the administrative body may choose to deny receipt of the funds (Article 23).

The conditions are even stricter for foreign funding. The funds must be deposited in the association's bank accounts for 30 working days from the notification date of the funds' receipt. The National Authority for the Regulation of Foreign Organizations has the right to object within 60 working days following notification; the association is unable to disburse the funds during this time.

The bill stipulates that if the 60 days elapse without a response from the authority, it is considered a denial (Article 24). The bill not only does not require the authority to state cause for the denial of funds, it does not even obligate it to respond.

This represents a genuine problem for associations, which goes beyond simply approval of foreign funds. Egyptian and foreign natural and legal persons will not contribute to civic organizations, fearing that the assets of the associations they fund will be seized, as in fact occurred with several advocacy organizations in recent months.

#### **4. The bill poses a genuine threat to investment in Egypt**

Article 4 of the bill states, "It is prohibited for any body or entity to engage in civic work or any activity falling within the remit of associations and other entities enumerated in the appended law without being subject to its provisions. It is prohibited for any body other than the competent administrative body under the appended law to grant—in any form and by any name—a license to pursue any civic

work or activity falling within the remit of associations and other entities enumerated in the appended law. Such license shall be null and void upon issuance.”

This article contains two prohibitions. The first proscribes engaging in activities of civic associations outside the parameters of this law. The second prohibits licensing activities that fall within the remit of associations. The standard used for prohibition is thus the activities of associations, not the non-profit nature of civic work, according to the definition in Article 1/1 of the law.<sup>11</sup> As such, Article 4 requires commercial enterprises—which by their nature are profit seeking—to reconcile their legal status under the law. It further prohibits licensing such companies, keeping in mind that all firms work to develop society economically and socially, as well as culturally.

This is best evidenced by Article 1 of Law 17/1997 on investment guarantees and incentives, which sets forth the areas of operation for firms, some of which are the activities of associations. For example, “infrastructure in potable water, sanitation, electricity, and communications methods” are activities in which development associations are involved in Egypt, albeit on a non-profit basis. In addition, laws regulating firms, among them Law 159/1981, do not prohibit commercial firms from working in the area of training or publishing, although these fall within the field of social development. The same applies to private schools operating in Egypt, which are engaged in social development in the field of education, although they are profit-oriented. Will the fact that they are for-profit enterprises exclude them from subordination to the association law?

The greatest threat is not that commercial firms may be compelled to bring their legal status in line with the law, but that they are subject to 1–5 years in prison and a fine of LE50,000–1 million under Article 87/g. According to Article 43, they may also be dissolved and their assets liquidated, and under Article 80/d, their assets may be directed to the Fund to Support Civic Associations and Foundations.

In addition to the penalties set forth in Article 87/g, the law prescribes a penalty of up to one year in prison and a fine of LE20,000–500,000 for any natural or legal person,

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<sup>11</sup> Article 1/1 states, “Civic work is any work that does not seek profit and is practiced with the purpose of developing society in one of the fields identified in the articles of incorporation of the entity.”

other than the competent administrative body, who licenses an entity to engage in an activity falling within the remit of associations (Article 88/a). This provision should and likely will give pause to government employees—at the General Authority for Investment or the Commercial Authority—or members of the board of the Lawyers Syndicate or other officials before they certify the formation of commercial companies or law firms. The article will make them more likely to refuse to register companies, particularly unknown small and medium enterprises, in order to avoid prison or a massive fine.

Moreover, such enterprises will be subject to the oversight of the administrative body according to Article 27/2 of the bill, which states, “Any activities practiced by other legal persons that fall within the purposes and remit of associations, regardless of their legal form and even if they are not established under the provisions of this law, are subject to the oversight of the administrative body.”

Article 4 also contravenes the constitution, which requires the state to encourage investment and provide an attractive environment for it. Article 27/2 of the constitution states, “The economic system shall adhere to the standards of transparency and good governance, support the pillars of competitiveness and encourage investment, promote balanced geographic, sectional, and environmental growth, and prohibit monopolistic practices, while showing due regard for fiscal and trade equilibrium and a fair tax system, regulating market instruments, guaranteeing various types of ownership, and balancing the interests of various parties, in order to maintain the rights of workers and protect the consumer.”

Article 28 of the constitution states, “Production, service, and information-related economic activities are fundamental components of the national economy. The state is obligated to protect them, increase their competitiveness, provide an attractive environment for investment, and work to increase production, encourage exports, and regulate imports. The state shall devote special attention to medium, small, and micro enterprises in all fields, and work to regulate and rehabilitate the informal sector.” Article 36 of the constitution states, “The state shall work to incentivize the private sector to assume its social responsibility in service of the national economy and society.”

In short, with this article of the bill, the framers sought to control civic work of all types and in all forms. However, this drive for control will jeopardize foreign and local investment projects whose activities are similar to those of civic associations and foundations, because the standard employed by the law is not whether the enterprise is non-profit, but the nature of its activities.

### **5. Absolute authority to interfere in the affairs of civic associations**

The bill grants the administrative body broad authorities to interfere in the operation of civic institutions, which constitutes a hindrance to their operation and flagrantly violates the standards of freedom of association. The bill requires prior approval for some fundraising activities, such as the receipt of funds domestically or from abroad, or when cooperating or affiliating with a foreign organization working in the same field. The administrative body may also intervene in or object to an association's internal organizational matters. For example, it can object to association resolutions and candidates for board elections.

The following are examples of the prerogatives granted:

- Article 19 requires a permit for an association to cooperate with, join, or participate with local or foreign associations in civic activities that are consistent with its purposes.
- Article 20 requires a permit from the competent minister to open a branch of an association abroad, while Article 21 requires written approval from the minister before opening up branches or branch offices in Egypt.
- Articles 23 and 24 require the approval of the minister and the National Authority for the Regulation of Non-Governmental Foreign Organizations for associations to receive funds from within Egypt or abroad.
- Article 34 allows the administrative body to object to and exclude candidates for association boards, while granting the candidate the right of judicial appeal.

All of these prerogatives granted to the administrative body contravene the terms of Article 75 of the constitution, which states that civic institutions have the right “to practice their activities freely, and administrative bodies may not interfere in their affairs.” The SCC upheld this same right when it ruled, “It is established that the right of citizens to form civic associations is a branch of freedom of association and that this right must coincide with free, willing conduct; absent of intervention by the administrative body. Indeed, it must be independent of it. This freedom is incarnated in a fundamental rule to which some states—including the Arab Republic of Egypt—grant constitutional status, to guarantee to every interested person the right to join the association that he believes is best able to express his interests and objectives and to select one or more of these associations, if there are multiple ones, to be a member of. This right is no less than an indivisible part of his personal freedom, which the constitution has elevated, considering it in Article 41 to be a natural right. Like other advanced constitutions, it enshrines and protects it from transgression, and it cannot be infringed by regulation.”<sup>12</sup>

As such, the state has a negative obligation not to impede, without justification, the exercise of the right to free association. Members of associations must enjoy the freedom to determine their articles of incorporation, their organizational structure, their activities, and their resolutions without state interference. Associations that achieve their objectives and use means available under international human rights law must enjoy international legal protection. Associations should enjoy rights, including the right to express their opinion, to publish information, and engage with the public; and to advocate with governments and international bodies in support of human rights, to maintain and preserve the culture of a minority group, or in support of legal change, including amendments to the constitution.<sup>13</sup> The authorities, too, must respect associations’ right to privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

In this context, the authorities should not have the right to impose conditions on the decisions or activities of associations, nullify the election of association

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<sup>12</sup> SCC, appeal no. 153/21JY, session of Jun. 3, 2000, Technical Bureau 9, pt. 1, p. 582.

<sup>13</sup> Report of the UN special rapporteur on the freedom of peaceful assembly and association, op. cit., para. 64.

administrative boards, make resolutions by boards conditional on the presence of a government representative during the board meeting, demand the repeal of an internal resolution, require advance annual reports from associations, or enter association offices without prior permission.<sup>14</sup>

In light of the foregoing, we can affirm - without exaggeration - that the bill manifestly contravenes the constitution and international standards for freedom of association. The bill is based on a philosophy geared to controlling and restricting civic activity, and viewing civic institutions as either suspects requiring rehabilitation or minor children in need of a custodian.

### **6. A security council administering civic associations**

The bill creates the National Authority for the Regulation of Foreign Non-Governmental Organizations, which is empowered to license the establishment and operation of foreign organizations in Egypt and license the receipt of funds from abroad, whether from Egyptian or foreign persons or bodies. It also ensures that association funds are disbursed for their designated purpose and issues orders to rectify any infractions. The bill gives the authority access to the bank accounts of all civic organizations without need for a court order (Article 71).

This authority consists of a dedicated chair at the level of minister and representative members of the Ministries of Foreign Affairs, Defense, Justice, Interior, and International Cooperation, as well as the ministry tasked with enforcement of the law, General Intelligence, the Central Bank, the Money Laundering Unit, and the Administrative Control Authority (Article 72). It may seek expertise from other relevant ministries, agencies, and bodies (Article 76).

### **7. Central Auditing Organization oversight of civic associations**

Article 15 of the bill states, “The presidents, members of administrative boards, and members of boards of trustees of associations and other entities regulated under the

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<sup>14</sup> Ibid, para. 65.

provisions of this law shall be subject to the oversight of the Central Auditing Organization.” We reject the notion that the assets of civic institutions are to be considered public funds, like those of labor unions, and thus subject to CAO oversight.

Affirming this, the SCC has ruled, “Looking at its purposes, and in light of its nature and composition, the labor organization is considered a private-law person, for it does not practice its activity at all except in accordance with the rules of this law, although the legislator has granted it some features and privileges of the public authority, like that giving it the right of administrative recourse to deter encroachments on its funds.

Some of the means of the public authority exercised by the labor organization nevertheless do not turn it into an administrative body in its composition, or make it an adjunct to or branch of the administrative body. Rather, the labor organization, even while enjoying some of the features of the public authority, maintains - at its core – elements of its private constitution. Thus, the labor organization’s constitution makes it erroneous to consider its assets public assets not in a specific sphere or realm related to the enforcement of penal provisions on public assets (such as deterring embezzlers of funds or wrongful appropriators of them or those who facilitate this for others). Its assets must be considered on the level of other legal provisions, which secure the protections required to ensure that the labor organization realizes its objectives through its assets.”<sup>15</sup>

In addition, Article 87 of the Civil Code defining public assets, states, “1–State assets shall be considered real estate or moveable property owned by the state or public legal persons designated for the public utility de facto or by a law, edict, or decree from the competent minister; 2–These assets may not disbursed, seized, or appropriated with the passage of time.”

By viewing the assets of civic institutions in light of these provisions, it is clear that their assets are private ones. The state has not contributed to their capital, and they are not public legal persons—that is, they are not a public utility. We would further like

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<sup>15</sup> SCC, appeal no. 37/18JY, session of Apr. 4, 1998, Technical Bureau, pt. 8, p. 1260.

to draw attention to the ramifications for the CAO, which will be tasked with regulating more than 47,000 civic associations and foundations.<sup>16</sup> We must emphasize the impracticality of CAO being able to execute its regulatory functions while performing oversight for the assets of the following entities, which include: state and local administrative units; public service agencies and public economic agencies; political parties, syndicates and unions; public institutions, public sector agencies and their firms and facilities and the cooperatives subordinate to them; non-public sector companies in which a public person, or public sector company or bank owns at least 25 percent of its capital; national newspapers and partisan and syndicate papers; and bodies receiving assistance from the state or a guaranteed profit margin.

The bill's imposition of the Sisyphean task of regulating these numerous entities comes in addition to the CAO's other missions, which include monitoring the implementation of plans and assessing the performance of bodies subject to its oversight, legal oversight of decrees touching on financial infractions and irregularities, the examination of administrative and fiscal rules to determine their efficacy and propose corrections, and its right to directly contact fiscal officials in the bodies subject to its oversight.

## **8. Onerous financial requirements for the establishment of civic associations**

The bill adds further burdens to establishing a civic association or foundation. In setting the cost of LE10,000 for certification of the association's charter,<sup>17</sup> it increases the certification fee one-hundred fold, from the LE100 set by the implementing regulations of Law 84/2002.<sup>18</sup>

In addition to the LE 10,000 cost for the charter's certification, the bill requires capital of LE50,000 designated to achieve the purposes of civic foundations.<sup>19</sup> An unjustifiably extravagant amount, this requirement constitutes an obstacle not only for civic foundations that will be created after the law's adoption, but also for dozens of

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<sup>16</sup> Statement from the head of the Central Directorate for Civic Associations and Foundations, Apr. 2015, <http://www.albawabhnews.com/1242613>.

<sup>17</sup> Article 8/f.

<sup>18</sup> Article 20/6 of the Decree 178/2002 of the minister of social insurance and affairs on the implementing regulations for the law on civic associations and foundations.

<sup>19</sup> Article 54.

already existing, registered foundations, which will be required to reconcile their status under the law and thus increase their capital requirements. Law 84/2002 required only LE10,000 in capital for civic foundations.

At the same time, the bill sets forth arbitrary conditions for the establishment of foreign organizations in Egypt. Article 61 requires a fee of up to LE300,000 or the equivalent in US dollars from organizations applying for, renewing, or amending an operating license, with a set increase of 20 percent every five years. There is no discernable logic in regards to setting the same fee for both an initial license and a renewal of the license. It should be remembered as well that the administrative body has the right to set the currency in which the fee will be paid, meaning the body could demand the fee in a currency not traded globally, if it wished to be recalcitrant.

#### **9. The imposition of penalties without judicial mandate**

The bill allows the administrative body to suspend the offending activity of associations pending a court ruling. Article 44/2 states, “The administrative body, with a decree issued by it, may temporarily suspend the activity in violation, pending the issuance of a court ruling.” Such a suspension is tantamount to punishment without a judicial ruling, in violation of Article 95 of the constitution, which states, “Punishment is personal. There shall be no crime or punishment except pursuant to a law, and no punishment shall be levied except by judicial ruling. There shall be no punishment except for acts subsequent to the date of enforcement of the law.”

Giving the administrative body unilateral authority to suspend non-compliant activities also contravenes international standards for freedom of association, which strictly limit such decrees, insofar as they are tantamount to a death sentence for the association. Such determinations must therefore be made by a court.

#### **10. Citing national security to shut down the public sphere**

In restricting civic action, the parliament relied on national security justifications, citing Article 22 of the ICCPR as the basis, without an examination of relevant reports

from the UN Human Rights Committee or UN special rapporteurs on freedom of association.

The Human Rights Committee, which monitors the implementation of the ICCPR, has emphasized that when restrictions are placed, “states must explain their necessity and take measures commensurate with the desire to achieve legitimate goals in order to ensure ongoing, effective protection for the covenant’s rights. In no case, may restrictions be applied or enforced to infringe upon the core of one of the covenant’s rights.”<sup>20</sup>

In her 2009 report, the UN special on human rights defenders identified a set of conditions that must be met when restricting the right to form peaceful associations<sup>21</sup>:

- a. The restriction must be set forth in law—that is, in a law passed by parliament or an equivalent common rule in the general law. The restriction is impermissible if instituted by government decree or administrative order.
- b. It must be necessary in a democratic society to achieve its objectives. The state must show that the restrictions are necessary to avoid a genuine, not merely presumptive, danger to national security or the democratic order and that lesser interventions are inadequate to achieve this objective.
- c. The restriction may be imposed in the interest of national security or public safety, the public order, or to protect public health or morals or the rights and freedoms of others.<sup>22</sup>

In addition, laws that employ vague terms and contain overly broad definitions are liable to misinterpretation or abuse. The UN special rapporteur on human rights defenders explains while citing the case of *Lee vs The Republic of Korea* that the condition of “being necessary in a democratic society” requires guarantees for the operation of “the existence and functioning of a plurality of associations, including

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<sup>20</sup> UN Human Rights Committee, CCPR/C/21/Rev.1/Add , para. 6

<sup>21</sup> United Nations Special Rapporteur on the Situation of Human Rights Defenders, Report of the Special Report on the Situation of Human Rights Defenders (A/64/226 ), 4 August 2009

<sup>22</sup> *ibid* para 26

those which peacefully promote ideas not favourably received by the government or the majority of the population, is one of the foundations of a democratic society. Therefore, the existence of any reasonable and objective justification for limiting the freedom of association is not sufficient. The State Party must further demonstrate that the prohibition of the association and the criminal prosecution of individuals for membership in such organizations are in fact necessary to avert a real, and not only hypothetical danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose” 23

Thus restrictions are not permitted if they are not necessary, not proportionate, do not address a specific threat, and are not defined and set forth in law, or if they have a negative impact on the enjoyment of freedom of assembly and other rights.

The special rapporteur affirms that freedom of peaceful assembly and association is the general rule and restriction is the exception,<sup>24</sup> stressing that laws seeking to protect national order and security or combat terrorism remain the principal tool used by governments to suppress associations and their activities. The special rapporteur on the promotion and protection of human rights while countering terrorism stated, “This implies that it is permissible to take measures such as criminalizing preparatory acts of terror planned by groups, which in turn implies the need to take measures that interfere with the freedom of peaceful assembly and the freedom of association. States must not, however, abuse the necessity of combating terrorism by resorting to measures that are unnecessarily restrictive of human rights.”<sup>25</sup>

To demonstrate the parliament’s exploitation of the pretext of national security to restrict freedom of association, we inquire whether the following represent a threat to national security:

- An association undertaking actual activities and programs for one year after the date of establishment or the date of its last activity (Article 43/g).

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<sup>23</sup> *ibid* para 28

<sup>24</sup> Speech by the UN special rapporteur on the right of freedom assembly and association, to the 20th session of the Human Rights Council, Jun. 20, 2012.

<sup>25</sup> Report to the UN General Assembly, Aug. 16, 2006, para. 11, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/477/03/PDF/N0647703.pdf?OpenElement>.

- Civic associations and foundations sponsoring activities not listed in their articles of incorporation or objectives (Article 14).
- An association affiliating or participating with another local organization without a permit from the administrative body (Article 19).
- An association opening branch offices inside Egypt without the prior written approval of the competent minister (Article 21).
- An association issuing a resolution that the administrative body may see as in violation of the law or the association's articles of incorporation (Article 31).
- An association not meeting for its general assembly for two consecutive years (Articles 42/h and 43/d).
- Civic associations and foundations forming multiple regional and thematic federations.
- Regional and thematic federations not joining the General Federation of Civic Associations and Foundations (Article 85).

Undoubtedly, these and other innumerable provisions do not harm national security in the slightest. They do, however, demonstrate the parliament's arbitrary use of 'national security' as grounds to curb the freedom to form associations, exactly as UN special rapporteurs have cautioned against and denounced.