



Human Rights Council Membership Requires Steps to Address Violations

**A Briefing Paper by the Egyptian Initiative for Personal Rights (EIPR)
and Human Rights Watch (HRW)**

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Introduction

On 17 May 2007, the United Nations General Assembly (GA) elected 14 new members to the world's top official rights body, the Human Rights Council (the Council). When UN Member States established the Council in April 2006 to replace the Commission on Human Rights, they decided that members of the Council "shall uphold the highest standards in the promotion and protection of human rights" and that they must "fully cooperate with the Council." The EIPR and HRW believe that the Egyptian government does not meet these criteria. The General Assembly also committed itself to "take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto."¹

Four of the 14 seats have been allocated to African states, and Egypt was elected to one of them. The EIPR and HRW regret that only four African nations submitted their candidacies for membership to the Council, thereby eliminating any real competition between them and depriving the GA member states of the opportunity to elect members with the best human rights records from among the continent's 54 states.

The EIPR and HRW are also dismayed that governments with poor human rights records are currently members of the Council, and that other governments with similarly dismal records – including Egypt – sought membership this year. However, the EIPR and HRW applaud the government of Egypt's willingness to submit itself to the frank review of its record of serious and continuing human rights violations required by the General Assembly resolution establishing the Council, especially given the government's history of denying access to United Nations experts seeking to provide an independent assessment of fundamental rights in Egypt.²

¹ GA resolution 60/251, paras 8 and 9. Available at http://www.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf

² Ibid, para. 9.

This briefing paper provides an analysis of some of the pledges circulated by the Egyptian Government to GA member states prior to the elections, which include voluntary commitments in the field of human rights domestically and internationally and to which Egypt should now be held accountable.³

I. At the international and regional levels

1. Commitment to the Human Rights Council's Effectiveness

The Egyptian government pledged to work "to make the Human Rights Council a strong, effective and efficient body, capable of promoting and protecting human rights and fundamental freedoms for all."⁴ The EIPR and HRW welcome this commitment, especially in light of the Egyptian government's attempts to weaken the Council's powers and even prevent its creation in the negotiations that led to the Council's establishment.⁵

Many of Egypt's positions during the first year in the Council's life cast serious doubt on the sincerity of its commitment to the Council's effectiveness in promoting and protecting human rights. For example, during the Council's fourth session, held in March and April of 2007, Egypt, together with other Arab and Asian states, attempted to use procedural ploys to prevent the discussion of a report on the ongoing human rights atrocities in Darfur that a Council-appointed High-Level Mission prepared. Other African states took a more principled position, including Ghana, Nigeria, Zambia, Mauritius, Senegal and Cameroon.⁶

The EIPR and HRW call on the Egyptian government to show its real commitment to human rights by making the lives of victims its foremost consideration.

³ Egypt's pledges are available at <http://www.un.org/ga/61/elect/hrc>.

⁴ Egypt's pledges, para. A 1.

⁵ For a full documentation of the role Egypt played in the negotiations leading up to the establishment of the Council, see the Egyptian Initiative for Personal Rights, "Egypt's Positions regarding the Proposed UN Human Rights Council", 17 August 2005, available at: http://www.eipr.org/reports/commission_05/commission_contents.htm

⁶ See Human Rights Watch, "Human Rights Council: Act Now on Darfur", 22 March 2007, available at <http://hrw.org/english/docs/2007/03/22/darfur15542.htm>

2. Cooperation with the UN Rights Mechanisms

In its pledges, the Egyptian government claimed that its national human rights strategy is based on "providing an objective and credible response to... requests received from international and regional human rights mechanisms and cooperating with them in the fulfillment of their mandate."⁷ In fact, Egypt has never allowed any of the special rapporteurs of the Council, or its preceding body, to visit the country in order to report on human rights violations and propose recommendations aimed at curbing them.

Egypt has not responded to the Special Rapporteur on torture's repeated requests for an invitation since 1996. Requests for visits from the Special Rapporteur on human rights and counter terrorism, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on freedom of religion or belief, and the Special Representative of the UN Secretary General on human rights defenders are also pending.⁸

The Egyptian government pledged support for the United Nations treaty bodies, which are charged with monitoring the implementation by states of their obligations under human rights treaties, and to "periodically examine the state of the implementation of human rights instruments to which Egypt is a party."⁹ In practice, however, Egypt is currently late in submitting a total of ten mandatory periodic reports to six out of seven UN treaty bodies. Egypt's periodic report to the Committee on Economic, Social and Cultural Rights, for example, is more than ten years overdue.¹⁰

⁷ Egypt's pledges, para. B 2(4).

⁸ See Office of the High Commissioner for Human Rights:
<http://www.ohchr.org/english/bodies/chr/special/countryvisitsa-e.htm#egypt>.

⁹ Egypt's pledges, paras A 10 and B 13.

¹⁰ These are the 5th periodic report on the Convention Against Torture, the 4th periodic report on the International Covenant on Civil and Political Rights, the 6th periodic report on the Convention on the Elimination of All Forms of Discrimination against Women, the 17th and 18th periodic reports on the Convention on the Elimination of Racial Discrimination, the 2nd, 3rd and 4th periodic reports on the International Covenant on Economic, Social and Cultural Rights, the 3rd periodic report on the Convention on the Rights of the child (CRC), and the Initial report on the Optional Protocol to CRC on the sale of children, child prostitution and child pornography. See Office of the High Commissioner for Human Rights,
<http://www.ohchr.org/english/countries/eg/index.htm>.

As a member of the Human Rights Council, Egypt must now set an example in respecting its treaty reporting obligations and in fully cooperating with UN human rights independent experts.

3. Review and Reform of the Council's Mechanisms

During the first year, the Council dedicated a substantial portion of its time to institution-building and to reviewing the mandates and mechanisms inherited from its predecessor, the Commission on Human Rights. This process was open to all states and stakeholders and not just to Council members. The role that Egypt played during this year -- both individually and through regional groups in which it is a member -- calls into question its commitment to the strengthening of the Council and of its functions and mechanisms.

For example, during the review of the Council's system of appointing independent experts and rapporteurs to study certain themes or countries, known as special procedures, Egypt pushed for these experts to be elected by of the Council following nominations by regional groups. Under the current system, the Council's president appoints independent experts and rapporteurs following extensive consultations with all stakeholders. While the current procedure of appointment could be more open and transparent, replacing it with elections risks undermining the system by leading to the selection of experts on political grounds rather than on the basis of their relevant expertise and independence and could have a chilling effect on the experts ability to do their jobs effectively.¹¹

Egypt also worked to support the adoption of a 'Code of Conduct' drafted by the African Group to regulate the work of special procedures, instead of a manual of operation prepared by the mandate-holders. The current draft of the Code risks undermining the experts' independence and ability to fulfill their mandate of promoting and protecting human rights. For example, the Code places restrictions on the experts' right to identify their sources of information, to act upon the allegations

¹¹ "Special Procedures under discussion in HRC working groups", 19 April 2007, ReformtheUN.org, <http://www.reformtheun.org/index.php/eupdate/3131>.

they receive of human rights violations, and to communicate with the media about human rights concerns or preliminary findings of investigations.¹²

Moreover, contrary to its pledge to "promote the constructive role of NGOs and civil society at large in the promotion of human rights at all levels,"¹³ the public statements by Egyptian officials in the meetings of the Council and its working groups reveal the opposite approach: Egypt has sought to limit the role played by civil society at the Council. For example, Egypt stated its opposition to civil society playing a role in nominating experts for the new body that would provide expert advice to the Council or for Special Procedures.¹⁴

4. Ratification of International Human Rights Instruments

The EIPR and HRW welcome Egypt's commitment to ratifying the convention on Rights of Persons with Disabilities "as soon as possible and as a matter of priority," but are concerned that the government refrained from treating with the same urgency the ratification of the Convention on Enforced Disappearances, to which the pledges include a weaker reference.¹⁵

The organizations regret that no reference is made in the pledges to Egypt's intention to ratify the Rome Statute establishing the International Criminal Court, which Egypt signed in 2000. Similarly, Egypt has not indicated its intention to ratify any of the international instruments allowing individuals to submit complaints to UN bodies following the exhaustion of all available domestic remedies, such as the First Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. Egypt also has not ratified the Optional Protocol to the Convention Against Torture, which stipulates preventive visits to places of detention.

¹² Ibid.

¹³ Egypt's pledges, para A 5.

¹⁴ "Human Rights Council Working Group on Review of Mechanisms and Mandates, Discussions on the Expert Body," Council Monitor, International Service for Human Rights, 13- 24 November 2006, available at http://www.ishr.ch/hrm/council/wg/wg_reports/wg_review_expertadvice.pdf.

¹⁵ Egypt's pledges, para. B 12.

5. Commitment to the African Human Rights System

The EIPR and HRW welcome Egypt's stated commitment to "upgrading the African human rights system and to the strengthening of the role of the African Commission on Human and Peoples' Rights."¹⁶ The EIPR and HRW note that the Egyptian government's continuing denial to grant the African Commission's Special Rapporteur on Prisons and Conditions of Detention in Africa's five-year-old request to conduct a mission to Egypt runs contrary to such a high-level commitment.

Furthermore, the Egyptian Government has not pledged to ratify the Optional Protocol on the Establishment of an African Court on Human and Peoples' Rights. It is also unclear whether the government intends to ratify the Optional Protocol on the Rights of Women in Africa during its term, despite the promise to "support regional and international processes that seek to advance the cause of women's rights, the empowerment of women and gender equality."¹⁷ Rather, in its pledges, the government only commits to "continue to engage in the examination" of these two milestone treaties.¹⁸

The EIPR and HRW urge the government to implement the recommendations of the African Commission on Human and Peoples' Rights, to fully cooperate with its special rapporteurs, and to take immediate steps to ratify the core African human rights instruments.

6. Hosting of North Africa Office of the High Commissioner for Human Rights

The Egyptian government states in its pledges that it "looks forward to hosting the new OHCHR regional office for North Africa in Cairo."¹⁹ While the EIPR and HRW welcome a permanent UN human rights presence in the sub-region, the EIPR and

¹⁶ Ibid, para. A 14.

¹⁷ Ibid, para. A 11. The pledges' reference to "the African Court *of Justice and Human Rights*" appears to indicate that the government intends to wait for the conclusion of negotiations on merging the African Court on Human and Peoples' Rights and the African Court of Justice, rather than following the example of the 23 African states that have joined the human rights court, which is expected to start its activities later in 2007.

¹⁸ Ibid.

¹⁹ Ibid. para. A 3.

HRW stress that the regional office must enjoy the full mandate of OHCHR for the promotion and protection of human rights in Egypt and the rest of North Africa. UN officers must be able to conduct their work independently and free from government interference, and to communicate and collaborate freely with all human rights NGOs active in the region.

II. At the Domestic Level

1. Recent Constitutional Amendments and Proposed Anti-Terrorism Law

The Egyptian government's pledges refer to current "historic steps in the direction of political reform" and commit "to lifting the current state of emergency upon the completion and adoption of a new anti-terrorism legislation," all in the framework of "the momentum of the preceding two years and the achievements realized."²⁰

Constitutional amendments that Parliament approved in a party-line vote on 21 March and that Egyptian voters approved in a March 26 referendum enshrined some of the worst aspects of emergency rule into the constitution.²¹ Judicial and civil-society monitors, including those from the ruling party's National Council on Human Rights, said that serious irregularities marred the polling, and that the real turnout was a fraction of the official rate of participation of 27 percent.

Changes to Article 179 of the constitution have effectively removed constitutional safeguards requiring the government to obtain judicial warrants before searching a citizen's home, correspondence, telephone calls, and other communications, when the government deems the activity being investigated is terrorist-related. In such cases the president will also be allowed to send cases to special "exceptional" courts or military tribunals which fall short of international and regional fair trial standards, including the stipulation that they be independent and impartial and that they should allow any party to the case to challenge their impartiality. The

²⁰ Egypt's pledges, paras. B 8, 9, 10.

²¹ See: "Personal Rights in Peril: The Counter-Terrorism Constitutional Amendment and its Impact on the Legal Protection of Freedoms in Egypt" *The Egyptian Initiative for Personal Rights* 18 March 2007. The report is available at: http://www.eipr.org/reports/179_07/contents%20ar.htm.

amendments also authorize the security forces to exercise powers of arrest that could lead to arbitrary, and potentially indefinite, detentions.

Another of the adopted amendments outlaws any political party or political activity “within any religious frame of reference or on any religious basis or on the basis of gender or origin.” The ICCPR prohibits such broadly worded bans on particular categories of political parties or political activity. Rather, it guarantees to citizens, in Article 25, the right to take part in the conduct of public affairs either directly or through freely chosen representatives and the right to vote and to be elected in periodic and fair elections. These rights entail participation in, and voting for, political parties, and may not be denied on the basis of race, religion or gender, among other distinctions. The present law violates the rights of supporters of a party that claims a religious basis for its program to associate together and to vote for representatives of their choice.

This amendment should properly be seen in the context of the government’s continuing crackdown on the Egyptian Muslim Brotherhood, which, despite having renounced violence for decades and despite being the largest opposition bloc in parliament, remains banned in Egypt. Over the course of the past year, the government has detained more than 1,000 members of the organization. Many were held as long as eight months without ever being charged or brought to trial. Others were first acquitted by civilian courts, promptly re-arrested, and detained again pending a trial before a military court, whose procedures fall short of international standards and whose decisions could not at the time be appealed.²² On May 9, Parliament voted to strip two Brotherhood-affiliated members of Parliament of their parliamentary immunity, days after the government briefly detained them in the Nile Delta province of Munufiyya while they attended a meeting to discuss the upcoming elections for the upper house of parliament.

²² Human Rights Watch, “Egypt: Muslim Brotherhood Detainees Face Military Trials,” February 15, 2007 <http://hrw.org/english/docs/2007/02/15/egypt15329.htm>.

2. Impunity for Human Rights Violations

The EIPR and HRW welcome the Egyptian government’s pledge to “further strengthen the national redress mechanisms available to all citizens with a view to enable them to report any complaints and to guard against impunity of any kind,”²³ particularly since torture in Egypt has become an epidemic, affecting large numbers of ordinary citizens who find themselves in police custody as suspects or in connection with criminal investigations. The Egyptian authorities do not investigate the great majority of allegations of torture despite their obligation to do so under Egyptian and international law. In the few cases where officers have been prosecuted for torture or ill-treatment, charges were often inappropriately lenient and penalties inadequate. This lack of effective public accountability and transparency has led to a culture of impunity.

Provisions of Egyptian law that allow for prolonged, incommunicado detention have in many cases made torture difficult to prove; by the time detainees are allowed access to lawyers or forensic doctors, the marks of torture are often so old that it is difficult to determine when they occurred.

Torture prosecutions have also been hampered by legal definitions of the crime. Under article 126 of Egypt’s Penal Code, torture is limited to physical abuse, occurs only when the victim is “an accused,” and only when torture is being used in order to coerce a confession. This narrow definition improperly excludes cases of mental or psychological abuse, and cases where the torture is committed against someone other than “an accused” or for purposes other than securing a confession. The result has been that officers, in the rare cases when they are convicted of abusing detainees, receive light sentences. Opposition Egyptian lawmakers have repeatedly and unsuccessfully submitted draft legislation to the People’s Assembly that would change the law to fit international definitions of torture.

3. Freedom of Association and Role of Civil Society

The EIPR and HRW also welcome the Egyptian government’s pledge to “encourage the efforts of civil society, NGOs and the media to contribute as partners towards the

²³ Egypt’s pledges, para 4 B.

protection and promotion of human rights within the applicable national legislations.”²⁴ The EIPR and HRW hope that toward this end, the government will rescind its order to close offices of the Center for Trade Union and Workers Services (CTUWS). Security officers on April 25 closed the headquarters of the CTUWS, which offers legal aid to Egyptian factory workers, educates them as to their rights, and reports on labor-rights issues in the country. The Ministry of Social Solidarity has blamed the CTUWS for inciting labor unrest around the country.²⁵

The government’s closure of the CTUWS headquarters was the latest step in its crackdown on the organization. On April 11, approximately 100 police officers arrived at the CTUWS office in the Nile Delta town of al-Mahalla al-Kubra to deliver an administrative decision ordering its closure. This came after General al-Sharbini Hashish, head of the local council in the southern industrial town of Naga` Hammidi, issued an administrative decision on March 29 ordering the closure of the CTUWS branch there, on the grounds that it violated Egypt’s law on associations, though the order did not specify how.²⁶

The EIPR and HRW further hope that the government’s pledge to “encourage civil society groups...to contribute as partners towards the protection and promotion of human rights within the applicable national legislations”²⁷ indicates a willingness to remove legal restrictions on those groups. Although Egypt's Constitution guarantees the right to freedom of association, Egyptian NGOs operate in an extremely restrictive legal and policy environment. The NGO Law (number 84 of the year 2002) enables the government to interfere with the registration, governance and operation of NGOs in several ways. The law allows for associations to be dissolved by an administrative order of the Ministry of Social Solidarity and restricts the right of NGOs to seek and receive foreign funding to support their activities. It imposes prison penalties on NGO members and activists for offences related to their activities. In short, the law

²⁴ Egypt's pledges, paras B 15

²⁵ Human Rights Watch, “Egypt: End Harassment of Labor Rights Group,” April 27, 2007, <http://hrw.org/english/docs/2007/04/27/egypt15781.htm>.

²⁶ Human Rights Watch, “Egypt: End Campaign Against Labor Rights Group,” April 16, 2007, <http://hrw.org/english/docs/2007/04/16/egypt15696.htm>.

²⁷ Egypt's pledges, paras B 15.

"entrenches a system in which NGOs are treated as the children of a paternalistic government."²⁸

The Special Representative of the UN Secretary General on Human Rights defenders has repeatedly expressed her concern to the Egyptian government regarding the hostile legal environment in which defenders operate in Egypt. In 2006 the Special Representative reported that:

Law 84 of 2002 still severely compromises the right to freedom of association by giving the government unwarranted control over the governance and operations of NGOs. The law which took effect in June 2003 provides for criminal penalties for so-called "unauthorized" activities, including "engaging in political or union activities, reserved for political parties and syndicates" (Article 11). In addition, it provides for up to six months in prison for receiving donations on behalf of an NGO without prior ministry approval. Persons carrying out NGO activities prior to the organization's formal registration are also liable to a three-month prison term.²⁹

The EIPR and HRW further hope that the government's pledge to encourage the media to "contribute as partners towards the protection and promotion of human rights within the applicable national legislations" signals its intention to reverse its recent crackdown on freedom of expression in the country and to reform Egypt's laws governing the media.

On May 2, 2007, on the eve of World Press Freedom Day, a Cairo criminal court sentenced Al-Jazeera journalist Huwaida Taha Mitwalli, who also works for the London-based daily *Al-Quds al-Arabi*, to six months in prison for a documentary she made about torture in Egypt.

²⁸ Human Rights Watch, "Egypt: Margins of Repression—State Limits on Non Governmental Organization Activism", July 2005, Volume 17, No.8, available at <http://hrw.org/reports/2005/egypt0705/index.htm>.

²⁹ Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani-Addendum: Compilation of developments in the area of human rights defenders, UN Doc. E/CN.4/2006/95/Add.5, para 517.

The sentence follows a string of threats to freedom of expression in Egypt. On April 14, 2007, security officers arrested television journalist and blogger `Abd al-Monim Mahmud at Cairo airport as he tried to board a plane for Sudan to work on a story about human rights abuses in the Arab world for the London-based Al-Hiwar satellite channel. Mahmud, who is affiliated with the Muslim Brotherhood, had recently written in his blog about his experience of torture in 2003, and prior to his arrest he spoke out about torture in Egypt at conferences in Doha and Cairo and in interviews with journalists and human rights organizations. He is currently in Tura prison, outside Cairo, awaiting trial on charges of “membership in a banned organization.”

On March 12, 2007, the Alexandria Court of Appeals upheld a four-year prison sentence against `Abd al-Karim Nabil Sulaiman, a blogger who had criticized Islam and President Hosni Mubarak. And on March 10, secular activist and blogger Mohammad al-Sharqawi – himself a victim of police torture – returned home to find that his laptop, which he said contained an unreleased video depicting police abuse, had been stolen. Cash and other valuables in the apartment were untouched.

On October 31, 2006, a military court in Cairo sentenced Tal`at al-Sadat, a member of parliament elected as an independent but affiliated with the suspended opposition al-Ahrar party and nephew of late President Anwar al-Sadat, to one year in prison for “insulting the military and the republican guard.”

On June 26, 2006, a court near Cairo sentenced Ibrahim `Issa, editor of the opposition newspaper *al-Dustur*, and Sahar Zaki, a journalist for the paper, to one year in prison for “insulting the president” and “spreading false or tendentious rumors” in connection with an al-Dustur article reporting a lawsuit against President Mubarak and senior officials in the ruling National Democratic Party. The two appealed the sentence, and on February 27, 2007, a Cairo appeals court reduced the sentence to a US \$3,950 fine.

Long-awaited amendments to Egypt’s Press Law passed in July 2006 left in force Article 308 of the Penal Code, which imposes a minimum sentence of six months in prison on journalists whose articles “comprise an attack against the dignity and honor of individuals, or an outrage of the reputation of families.”

Article 179, which calls for the detention of “whoever affronts the president of the republic,” also stays on the books, as does Article 102(bis), which allows for the detention of “whoever deliberately diffuses news, information/data, or false or tendentious rumors, or propagates exciting publicity, if this is liable to disturb public security, spread horror among the people, or cause harm or damage to the public interest.”

These vague and broadly worded provisions in Egypt’s Press Law invite abuse and contravene international standards of freedom of expression.

Conclusion

The EIPR and HRW submit that Egypt has not upheld “the highest standards in the promotion and protection of human rights,” and regret that Member States did not “take into account the contribution of candidates to the promotion and protection of human rights,” pursuant to General Assembly Resolution 60/251 when electing Egypt to the Council. Nevertheless, as a member of the Human Rights Council, this is now an opportunity to scrutinize Egypt's human rights record and to ensure it meets the benchmarks it committed to prior to being elected.