

## Remarks on some Articles of the Bill

The Arabic Network for Human Rights Information (ANHRI) has proclaimed its outright rejection of the so-called “Anti-Terrorism” draft bill; because it is marred by constitutional flaws as well as flagrant violations of several fundamental rights enshrined in the Constitution and the international legal principals and charters that oblige Egypt as they are domestic laws. ANHRI calls upon the political parties, civil society groups, and social movements to reject the draft bill.

The bill contradicts Article 237 of the Constitution that provides for: “The State shall fight all types and forms of terrorism, and track its funding sources as a threat to the nation and its citizens, within a specific timeframe while guaranteeing basic rights and freedoms. The law shall regulate the provisions and procedures of fighting terrorism, and fair compensation for the damages resulting there from and because thereof.”

Egyptian government publicizes the law as if it has come upon the desire of the majority of Egyptian people. In addition, it makes use of the unfortunate terrorist incidents in order to gain sympathy.

Some individuals belong to the executive bodies have called for boycotting the newspapers next Friday; in response to the journalists’ official rejection of the bill.

The Supreme Judicial Council, during a session presided over by Court of Cassation President Ahmed Gamal Al-Din, approved the “Anti-Terrorism” draft bill, making some remarks related to procedural matters included in the law. This opinion was sent to the Ministry of Transitional Justice; paving the way to its submission to the State Council’s Legislation Department again, in order to conduct a legal review concerning those remarks.

### *Remarks on some Articles of the Bill*

#### **\*Articles that waste freedom of expression in general and freedom of the press in particular**

##### Article (26)

Every person promotes or prepares to promote, directly or indirectly, to commit any terrorist offence either orally, in writing or by any other means, shall be punished by imprisonment for a term no less than five years. The indirect promotion is the promotion of innovative ideas and beliefs to the use of violence, and that any of the means set forth in the preceding paragraph of this article.

The penalty shall be imprisonment for not less than seven years, if the promotion takes place inside places of worship, or among members of the armed forces, or police forces, or in private places of these forces. Whoever possesses any means of printing or recording or publicity used or intended for use, even if on a temporary basis, with a view to printing or recording or broadcasting anything that is said shall be punished by the same penalty in the first paragraph of this article.

Dramatically, this article facilitates targeting and prosecuting freedom of expression in accordance with this law. It also makes it easier to prosecute journalists and political opponents, under the existence of unclear definitions.

It, moreover, infringes Article 65 of current Egyptian Constitution that provides for: “Freedom of

thought and opinion is guaranteed.

Every person shall have the right to express his/her opinion verbally, in writing, through, imagery, or by any other means of expression and publication”.

#### Article (27)

Every person who establishes or uses a website on the Internet or the World Wide Web or other modern means of communication, in order to promote the ideas or beliefs calling for committing terrorist acts, or broadcasting what is intended to mislead the security authorities, or influence the course of justice in any terrorist crime, or to exchange messages and issuing assignments between terrorist groups or those belong to, or information relating to actions or movements of terrorists or terrorist groups inside the country and abroad, shall be punished by imprisonment for not less than five years.

Every person who checks, without right or illegally, websites affiliated to any government entity, with the purpose of obtaining the data or information contained in them or accessing, changing, deleting, destructing, or falsifying the content, and that with the purpose of committing any of the offenses referred to in the first paragraph of this article or preparing for it, shall be punished with rigorous imprisonment for a term not less than ten years.

A decision of the competent public prosecution may halt the websites provided for in the first paragraph of this article or blocking them, or blocking the aspects of the use set forth in the article, in addition to seizing the devices and equipment used in the crime. The Court, in the ruling of conviction, orders the confiscation of the material in question.

This article aims at confiscating the freedom of expression as well as the freedom of information on the Internet. It dramatically expands in the prosecution of Internet and e-newspaper users, and the closure of the websites. Furthermore, it enables the authorities to impose its grip over the World Wide Web.

In light of the double standard policy, the meaning of misleading the security forces becomes open to different interpretations from one person to the other, which supports the one opinion policy and blocks the way for speculation or criticism or journalistic analysis.

#### Article (33)

Every person who intentionally publishes untrue news or data regarding any terrorist operations in contradiction with the official statements issued by the concerned authorities shall be punished by imprisonment of not less than two years, and without breach to the disciplinary penalties prescribed in this regard.

This is the most dangerous article in the draft bill, as it confiscates the press and media freedoms, civil society groups and others apropos of their role as an alternative or independent source for information. Meanwhile, the executive bodies remain the only source of information, although it is part of the conflict. Certainly, the information will be issued from a single-point of view, in addition to confiscating the citizens' right to identifying the truth, regardless of its source.

In addition, it constitutes hostility towards freedom of expression and freedom of information and

its dissemination; making it a new sword on the necks of journalists and opinion holders. Such a matter applies on the opinion pieces, analysis and criticism; forming a single point of view and one-voice front. Such a way only works with the Nazi governments, particularly when Goebbels was taking over Hitler's Ministry of Propaganda.

### **\*Articles Generally Impacting Criminal Justice**

The new anti-Terror bill has expanded the regime's definitions of terms, for example:

#### **Article (1): General Provisions of Chapter I**

In applying the provisions of this law, the following terms and phrases, meanings hereby assigned to them:

1- **Terrorist Groups:** is every group or association or body or entity or organization, composed of at least three persons, or other gatherings or entities prove such a feature, regardless of its legal or real form, whether inside the country or outside it, whatever their nationality or citizenship of those belonging to them, and aims to commit one or more terrorism crimes, or terrorism is one of the means used to achieve or implement criminal purposes.

#### **Comment:**

The definition of terrorist groups is enigmatic, and the phrase "regardless of its legal or real form" gives wide powers to those in charge of implementing this law to implicate any legal entity and fabricate lawsuits involving accusations that can reach the death penalty considering it a terrorist group, without imposing restrictions on those in charge of enforcing the law.

By virtue of this article, the opposition political parties, independent newspapers, human rights organizations, NGOs, civil corporations, political and pro-democracy movements become vulnerable to the charges set forth in this law.

This article gives the bodies (Ministry of Interior and Public Prosecution) enforcing this law broad and arbitrary powers to involve any of the abovementioned entities in these serious charges.

2- **Terrorist:** Every natural person who commits or attempts to commit or incites or threatens or plans at home or abroad for a terrorist crime by any means, even individually, or contributes to such a crime in a joint criminal enterprise, or takes command or leadership or management or construction or participation in membership of any of the terrorist entities stipulated in Article No. (1) of the decree of the President of the Arab Republic of Egypt No. 8 of 2015 concerning the regulation of lists of terrorist entities and terrorists, or funded by, or participate in activities with his knowledge.

#### **Comment**

ANHRI believes that the second paragraph of Article (1) is very serious, as it does not give precise definition of who is the terrorist. It, however, referred the definition to Article (1) of the President of the Arab Republic of Egypt's decree, law no. 8 of 2015 on the regulation of terrorist entities and terrorists' lists.

This article has expanded the concept of terrorist entities, whereas there are vague phrases by which any participant in protests, strikes or peaceful events would be deemed terrorist, and also any group that participates in those events is a terrorist group and must be punished. Prior to passing Anti-Terrorism Law, it was ordinary to the police body to use such phrases in the arrest reports, such as; deliberately disrupting transportation, causing disorder, peril the society's safety, suspending provisions of the Constitution and law, destruction of public property...etc.

The arrests reports as well as the cases of protests have been full of such charges against protesters. Nonetheless, most of the courts gave no attention to those charges, and acquitted the protesters even after passing the Anti-Protest Law and enforcing it.

Nevertheless, the vague phrases taken in this law, in addition to expanding the definition of a terrorist and terrorist entity, will facilitate for authorities to accuse any person or group that express their views by any means of peaceful protesting of joining a terrorist group, and to punish them in accordance with this law, in case of charging them with any phrase set forth in the law.

Finally, in accordance with the last paragraph of Article (1) of terrorist entities law: "This applies to entities and persons mentioned when exercise or target or their purpose is to carry out any of those acts even if it is not addressed to the Arab Republic of Egypt," any citizen or foreign citizen inside Egypt will be subject under the terrorist or terrorist entity clause in case that they organize a protest or march against their country or their embassy in the Arab Republic of Egypt, and will be accused of any vague phrases enshrined in Article (1) of "terrorist entities" law.

By the same manner, the bill drafted the rest definitions by vague phrases that lead to an alarming expansion in the indictment division.

### Article (3)

Every person who attempts to commit any terrorist offense shall be punished by the same penalty for the complete offense.

This article increases the penalty of attempted felony to become even tougher than the punishment stipulated in Article 46 of the Penal Code: "Any attempted felony shall be liable to the following penalties unless otherwise prescribed by the law:

- Permanent hard labor, if capital punishment is the penalty for the felony.
- Temporary hard labor, if permanent hard labor is the penalty for the felony.
- Temporary hard labor for a period not exceeding half the maximum, legally prescribed, or imprisonment, if temporary hard labor is the penalty for the felony.
- Imprisonment for a period not exceeding half the ceiling legally prescribed, or detention, if temporary hard labor is the penalty for the felony.

### Article (6)

Those who implement the provisions of this law are not to be held criminally accountable if they use force to perform their duties, or to protect themselves from eminent danger to their person or to the money, all this whenever the use of this right is necessary and enough to deter the danger.

This article allows those in charge of the implementation of this law and especially the police forces

to commit any crimes against all citizens without any accountability, whether those who fall under the jurisdiction of this law or others, and whether they are unarmed or armed and regardless of their affiliation, killing here and other crimes become permissible in order to implement this law and would be justified under the pretext of the defendants carrying weapons or resisting the authorities or other methods of infringement which may be fabricated in the arrest complaint in order to gain impunity.

The article was also in violation of the Egyptian constitution and in total disregard of public freedoms of citizens and the inalienable human rights, especially the following articles:

#### Article (51)

Dignity is the right of every human being and may not be violated. The State shall respect and protect human dignity.

#### Article (52)

Torture in all forms and types is a crime that is not subject to prescription.

#### Article (54)

Personal freedom is a natural right, shall be protected and may not be infringed upon. Except for the case of being caught in flagrante delicto, it is not permissible to arrest, search, detain, or restrict the freedom of anyone in any way except by virtue of a reasoned judicial order that was required in the context of an investigation.

Every person whose freedom is restricted shall be immediately notified of the reasons therefore; shall be informed of his/her rights in writing; shall be immediately enabled to contact his/her relatives and lawyer; and shall be brought before the investigation authority within twenty four (24) hours as of the time of restricting his/her freedom. Investigation may not start with the person unless his/her lawyer is present. A lawyer shall be seconded for persons who do not have one. Necessary assistance shall be rendered to people with disability according to procedures prescribed by Law.

Every person whose freedom is restricted, as well as others, shall have the right to file grievance before the court against this action. A decision shall be made on such grievance within one (1) week as of the date of action; otherwise, the person must be immediately released.

The Law shall regulate the provisions, duration, and causes of temporary detention, as well as the cases in which damages are due on the state to compensate a person for such temporary detention or for serving punishment thereafter cancelled pursuant to a final judgment reversing the judgment by virtue of which such punishment was imposed.

In all events, it is not permissible to present an accused for trial in crimes that may be punishable by imprisonment unless a lawyer is present by virtue of a power of attorney from the accused or by secondment by the court.

#### Article (55)

Every person who is either arrested, detained, or his freedom is restricted shall be treated in a manner that maintains his dignity. He/she may not be tortured, intimidated, coerced, or physically or

morally harmed; and may not be seized or detained except in places designated for that purpose, which shall be adequate on human and health levels. The State shall cater for the needs of people with disability. Violating any of the aforementioned is a crime punished by Law. An accused has the right to remain silent. Every statement proved to be made by a detainee under any of the foregoing actions, or threat thereof, shall be disregarded and not be relied upon.

And also Article (57)

The right to privacy may not be violated, shall be protected and may not be infringed upon. Postal, telegraphic and electronic correspondences, telephone calls, and other means of communication are inviolable, and their confidentiality is guaranteed.

They may not be confiscated, revealed or monitored except by virtue of a reasoned judicial order, for a definite period, and only in the cases defined by Law. The State shall protect citizens' right to use all forms of public means of communications.

Interrupting or disconnecting them, or depriving the citizens from using them, arbitrarily, is impermissible. This shall be regulated by Law.

Article (58)

Privacy of homes is inviolable. Except for cases of danger or call for help, homes may not be entered, inspected, monitored or eavesdropped except by a reasoned judicial warrant specifying the place, the time and the purpose thereof. This is to be applied only in the cases and in the manner prescribed by Law. Upon entering or inspection, the residents of houses must be apprised and have access to the warrant issued in this regard.

Article (59)

Everyone has the right to a safe life. The State shall provide security and reassurance for its citizens and all those residing in its territory.

Article (60)

The human body is inviolable and any assault, deformation or mutilation committed against it shall be a crime punishable by Law. Organs trade shall be prohibited, and it is not permissible to perform any medical or scientific experiment thereon without a certified free consent according to established principles in medical sciences and as regulated by Law.

Article (65)

Freedom of thought and opinion is guaranteed.

Every person shall have the right to express his/her opinion verbally, in writing, through imagery, or by any other means of expression and publication.

Article (47)

The provisions of Articles 208 bis (a) and 208 bis (b) and 208 bis (c) and 208 bis (d) of the Code of Criminal Procedure in cases where through inference or investigation provides sufficient evidence to press charges of committing a terrorist offense. The competent authorities are to take the necessary precautionary measures, including the freezing of assets, and prevention of their

disposition or management, or imposing travel bans, to be bound by the terms and procedures set forth in the articles mentioned in the first paragraph of this article.

This article wastes an important and stable legal base in the world's conscience, namely: that the defendant is innocent until proven guilty, where it makes the citizen accused until proven innocent!

Conclusion:

The worst time to propose such a law, is the exceptional moments in which a desire for revenge and vengeance fills the atmosphere, to issue a law to address a particular fact or a group of facts, and not in order to organize the life of society.

This law is constitutes imposing the state of emergency, in the most extreme form of arbitrariness, and makes it continuous, and when placed side by side with the infamous laws issued by interim President Adly Mansour, and after him the current president Abdel Fattah al-Sisi "The anti-protest law, extend pre-trial detention, holding trials in areas known for torture - such as Police Academy Trustees and Central Security Camps - and the law of terrorist entities ", the life of Egyptian citizens becomes – the innocent and the violent and terrorist alike - hostage to exceptionally unfair measures, slamming the values of justice and hindering fair trial, and making independent and professional journalism a thing of the past, as well as the expansion of powers for judicial officers, coupled with ensuring impunity.

This unjust anti-freedoms draft law must not pass.