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December 7, 2012

Mohamed Morsi Isa El-Ayyat
President of the Arab Republic of Egypt
c/o Consulate of the Arab Republic of Egypt
1110 Second Ave, Suite 201
New York, NY 10022

Dear President Morsi:

I am writing on behalf of the Association of the Bar of the City of New York (the “Association”), an independent, non-governmental organization of 24,000 lawyers, judges, law professors, and government officials from the United States and 50 other countries. Throughout its 142-year history, the Association has consistently maintained that an independent judiciary and respect for the rule of law are essential in all jurisdictions.

The Association has serious concerns regarding the independence of the judiciary in Egypt following recent events there. On November 22, 2012, your office issued a Constitutional Declaration (“Declaration”) granting your decrees and laws immunity from judicial review even if they violate basic human rights “until a new constitution has been ratified and a new parliament has been elected.” The decree also replaced Egypt’s public prosecutor, and stated that the judiciary could not dissolve the Constituent Assembly. The Decree abrogates an independent judiciary and nullifies the very purpose for which a judiciary exists—to rule upon and interpret the legality and constitutionality of law, serve as a check and balance upon the other branches of government, and provide a forum in which to redress violations of human rights.

Following popular protests and concerns voiced by members of the judiciary, your office made statements that it would curb enforcement of some of the Declaration’s harshest mandates and limit its scope to “sovereign matters.” Despite these statements, no withdrawal or amendment to any of the Declaration’s text has yet been made. Although the Declaration gave the Constituent Assembly until January to complete the draft constitution, it began an overnight session to consider the document on November 29 after the Supreme Constitutional Court (“SCC” or “Court) announced that it would still consider whether Egypt’s Constituent Assembly should be dissolved. On November 30, the draft constitution was adopted and retained provisions that had been widely criticized as limiting press freedom, expression, and other human rights. Media has reported that this session was boycotted by secular parties and the Coptic Church.

After the adopted draft was sent to your office, you called for a referendum on the document. The SCC attempted to meet on December 2 to make a ruling on the assembly, but was reportedly blocked from doing so. The Court has now announced that it will suspend court sessions until it can work without “psychological and physical pressures,” and the Judges’ Club, the union representing judges across the country, has announced that members will refuse to perform their customary roles as election supervisors.

The Association affirms concerns made by the United Nations Office of the High Commissioner for Human Rights “about the possible huge ramifications of this declaration on human rights and the rule of law in Egypt, [fearing] this could lead to a very volatile situation[.]” Recent and escalating protests and violence in Egypt in response to the events above demand action from your administration to stand by your repeated promises to protect human rights and democracy.

The Declaration has not only sparked disruptions in the judicial process, but is itself inconsistent with Egypt’s obligations under international law. The International Covenant on Civil and Political Rights (the “ICCPR”), to which Egypt is a State Party, requires that Egypt ensure that its judiciary is “competent, independent, and impartial” (Art. 14).¹ The UN Basic Principles on the Independence of the Judiciary (“Basic Principles”) states that judges must be protected from “threats or interferences, direct or indirect, from any quarter or for any reason.”² They also require that “[j]udges [] be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties,” and that a “charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure” where the “judge shall have the right to a fair hearing.”

As a State Party to the ICCPR, Egypt is also required to provide an effective remedy for violations of rights and freedoms (Art. 2(3)),³ and implement emergency measures curtailing these protections only after officially declaring a state of emergency “[i]n time of public emergency which threatens the life of the nation . . . to the extent strictly required by the exigencies of the situation (Art. 4).⁴ Further, Egypt must immediately communicate the reasons for the state of emergency to the other parties to the convention via the UN Secretary General.⁵

In contravention of these provisions, Article 3 of the Declaration dismisses the public prosecutor, and Article 5 strips powers from the judicial branch, both without appropriate due process or legislative authority. Further, Article 2 places laws and decrees of the Executive Branch beyond the reach of judicial review and redress, even where they violate human rights and freedoms, in breach of ICCPR Article 2. Article 6 of the Declaration, which allows Egypt’s

¹ International Covenant on Civil and Political Rights, Art. 14.1 (1966). *See also* Universal Declaration of Human Rights, G.A. Res. 217 A (III), Art. 10 (10 December 1948).

² *Basic Principles on the Independence of the Judiciary*, Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, (Geneva: UN High Commissioner for Human Rights, 1985), endorsed by G.A. Res. 40/32, U.N. Doc. A/RES/40/32 (Nov. 29, 1985) and G.A. Res. 40/146, U.N. Doc. A/RES/40/146 (Dec. 13, 1985).

³ International Covenant on Civil and Political Rights, Art. 2(3) (1966).

⁴ *Id.* at Art. 4.1.

⁵ *Id.* at Art. 4.3.

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Executive Branch to utilize “all necessary measures” as an emergency power not subject to judicial or legal review, also violates international law procedurally, because there has been no officially declared state of emergency, and the language allowing the authority to undertake “all necessary measures” is not narrowly tailored to the extent strictly required by the exigencies of the situation as dictated by the ICCPR.

The powers arising under the Declaration are said to expire once a new constitution is ratified and a new parliament is elected, but we urge you to withdraw it immediately to ensure that these next steps in Egypt’s transition are not impacted by the violations of international law that the Declaration creates.

Therefore, the Association respectfully urges you to withdraw the Declaration and allow the transparent review of Executive laws and decrees and adequate time to consider draft laws and measures, which will ensure the independence of the judiciary, strengthen the legitimacy of Egypt’s democratic institutions, and demonstrate your commitment to the rule of law.

Very truly yours,

A handwritten signature in black ink, appearing to read "Carey R. Dunne", with a long horizontal flourish extending to the right.

Carey R. Dunne

cc:

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