

Media Law in Egypt and the Universal Principles of Freedom of Expression

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Throughout the past several centuries, the universal avowal of democracy and the rule of law have dramatically evolved. As a result, the international community as we know it now identifies the “right to freedom of opinion and expression” as an indispensable cornerstone for any democratic society.

The global acceptance of the right to “freedom of opinion and expression” has developed immensely. So much so, that it has been a key factor in the realization and accommodation of other civil and political rights such as “the right to freedom of media and press,” “the right to thought and belief,” “the right to vote,” and “the right to equality” among a long list of other rights and freedoms.

The enshrining of these rights and freedoms into international law, and their universal acknowledgement, occurred with the intention that they be reflected in the practices of participating countries in the form of drafting progressive constitutions and national laws that reinforce and embed the practice of these rights nationally. Yet, this has not universally been the case.

In Egypt in particular, the uninhibited practice of the “right to freedom of opinion and expression” faces intense obstacles and hurdles that often strip individuals of their right to obtain and impart their opinions.

This paper seeks to shed light on the discrepancies between Egyptian law and the international commitments made by the Egyptian government to foster and protect people’s inalienable right to freely form their opinions and thoughts and be able to express them. As such, the first part of the paper will offer a thorough examination of the international standards of the free practice of this right. The second part will address the Egyptian laws that regulate the work of the media and press and examine how they jeopardize the country’s ability to meet this international obligation. Finally the paper will describe the dire situation of journalists and media personnel working in Egypt by showing the terrific impact of malpractice on the status of freedom of media and press in the country.

The International standards of “freedom of opinion and expression”

What do we mean by “international standards”?

When human rights advocates use the term “international standards” it is usually in reference to the universal norms that embed the recognition and acknowledgment of these rights in the global consciousness as they set the universal standards for the free practice of public rights and freedoms.

These norms include the provisions of international/regional treaties and conventions signed and ratified within the context of the international community, the subsidiary interpretations of these conventions and treaties, verdicts of regional courts of human rights as well as their national counterparts, domestic constitutional provisions, and finally domestic laws and regulations.

Contemporary experiences of international human rights advocacy show expansion of the concept of universal public rights and freedoms to accommodate the dramatic political, economic, and social changes that the world has witnessed in the past decades. It has become perspicuous that the conventional recognition of the universal rights is insufficient to bring an end to odious atrocities and gross violations of human rights.

Thus, it is important that human rights practitioners make use of the various interpretative commentaries, reports, and verdicts of the regional and international human rights commissions and courts that demonstrate and expound more thoroughly on the enshrined rights and what their best practices should encompass.

The right to freedom of “opinion and expression” in international treaties and conventions

The right to “freedom of opinion and expression” has been enshrined in numerous international treaties and conventions. The first ever international treaty to recognize the right to “freedom of expression and opinion” was the Universal Declaration of Human Rights (UDHR)¹, when its drafters stated in article (19) that *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*

Eighteen years later in 1966, the International Covenant for Civil and Political Rights (ICCPR)² recognized the same right in article (19) by asserting people’s fundamental right *“to seek, receive, and impart information and knowledge without interference.”* However, paragraph (3) of the same article stressed that the practice of this right carries with it special duties and responsibilities that include *“respect for the rights and reputations of others, and also for the protection of national security or of public order (ordre public), or of public health or morals.”*

Also, the African (Banjul) Charter on Humans and People’s rights³ (ACHPR)⁴ in 1984 acknowledged the universal right to “freedom of expression and opinion” in article (9) by stating that *“every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law.”*

Additionally, article (32) of the Arab Charter of Human Rights⁵ (ACHR) of 1994 states that *“the charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.”*

Moreover, the European and the Inter-American conventions of human rights have respectively recognized the right to freedom of expression. Paragraph (3) of article (13) of the Inter-American Convention⁶ states that the free practice of the right might be restricted by *“indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in dissemination of information, or by any other means tending to impede the communication and circulation ideas and opinions”.*

The UN Human Rights Council (UNHRC) expanded the definition of the right in the general remarks of its landmark commentary (no. 34)⁷ in 2011, by asserting that its full recognition stands as *“indispensable conditions for the full development of the person.”* It also affirmed that this right is a core constituent of any *“free and democratic society”* as it paves the way for the *“exchange and development of opinions.”*

Furthermore, the third remark of the commentary refers to the right as a *“a necessary condition for the realisation of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights,”*

¹ A non-binding declaration that was adopted by the United Nations General Assembly on 10 December 1948 by the then members of the United Nations.

<http://www.un.org/en/documents/udhr/>

² The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and came into force in 23 March 1976.

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³ A multilateral treaty that aims to promote and protect human rights of African nations. The charter was first signed by the member states of the African Union in the Gabonese capital Banjul in 1981 and then ratified four years later.

http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf

⁴ Egypt has signed and ratified the charter in March 1984.

⁵ The charter was adopted by the Council of the League of Arab States on 22 May 2004 to affirm the coral principles contained in the international human rights treaties and conventions.

<https://www1.umn.edu/humanrts/instree/loas2005.html>

⁶ The convention is an international human rights instrument that was adopted by a number of American countries on 22 November 1969. It came into force in 18 July 1978.

http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf

⁷ The UNHRC general comment no. 34, adopted in September 2011.

<http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

while the fourth remark identifies the right to form the basis for the “*full enjoyment of a wide range of other human rights such as the freedom of assembly and association, and the exercise of the right to vote.*”

For its part, the UNHRC’s adopted resolution 7/36 (2008)⁸ that set the mandate of the UN Special Rapporteur⁹ on “the promotion and the protection of the right to freedom of expression and opinion”¹⁰ states in its preamble that the right to “freedom of expression and opinion” is instrumental “*to the development and strengthening of effective democratic systems.*” The resolution also affirmed that “*the invocation of national security, including counter-terrorism, is not used unjustifiably or arbitrarily to restrict the right to freedom of opinion and expression.*”

Finally, one of the core manifestations of the practice of the “right to freedom of opinion and expression” are the subsidiary principles of “freedom of media and press,” which are pivotal constituents of any democracy as they guarantee the full enjoyment of the right to obtain information, disseminate news, and impart opinions and thoughts.

The following section discusses in detail the core elements of the right to “free and independent media and press” and its various expressions in international treaties and instruments.

What is the right to “freedom of media and press?”

The concept of “free and independent” media emerged after WWII and then developed remarkably during the collapse of the Soviet Union in the late eighties. This happened concurrently with the rise of the new Eastern European democracies, after suffering from the authoritarian control of the Soviet government(s) over the media and press.

In 1991, immediately following liberation from apartheid South Africa a group of African journalists convened in Windhoek, Namibia to discuss and agree definitively on the core elements of “free and independent” media. The resulting document is known as the “Windhoek Declaration.” The elements of this declaration, endorsed by the UNESCO general assembly¹¹, set the international standards of promoting free and independent media.

The declaration identified a “free” media as “*a press that is independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals.*” It also defined “pluralistic” media as media to “*end monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community.*”

From the aforementioned definitions, it can be concluded that certain conditions must be met in order to identify media outlets as “free” and “pluralistic,” most importantly to guarantee their full independence from any political or economic control, or from any form of government control. These measures should also extend to end all monopolies of any kind over the ownership of infrastructure and the materials necessary for the publication and production of newspapers, magazines and periodicals.

Moreover, the declaration stated that it is a matter of urgency for all member states of the international community to establish “*truly independent, representative associations, syndicates or trade unions of journalists, and associations of editors and publishers*” in order to assist in the preservation of the enumerated freedoms in the declaration and to guarantee the full protection of the rights of all journalists and media personnel.

⁸ The UNHRC resolution 7/36

http://ap.ohchr.org/Documents/E/HRC/resolutions/A_HRC_RES_7_36.pdf

⁹ A non-paid UN expert whose mandate and appointment is decided by the general assembly of the UN human rights council. See: *The UNHRC special procedures.*

<http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

¹⁰ The official page of the UN special rapporteur for the promotion and protection of the right to freedom of expression and opinion on the OHCHR webpage. The current rapporteur is the recently appointed Mr. David Kaye of the USA. <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx>

¹¹ Declaration of Windhoek on promoting independent and pluralistic media. 1991

http://www.unesco.org/webworld/fed/temp/communication_democracy/windhoek.htm

The United Nations and its relevant bodies were invited to “*identify the economic barriers to the establishment of these independent outlets*” as well as to “*specify the legal barriers to the recognition and effective operation of trade unions or associations of journalists, editors and publishers.*” In addition, the UNHRC commentary (no. 34)¹² concluded that government subsidies to the “public media” shall not impede its freedom and independence nor shall it disadvantage the “private media” outlets from accessing, disseminating, and distributing the news equally. Consequently, state parties should take appropriate action, consistent with the covenant, to “*prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views.*”

The right to freedom of “media and press” in international instruments

UNHRC general commentary no. 34 (2011): The interpretative commentary stressed that all forms of opinion “are protected,” including opinions of a “*political, scientific, historic, moral or religious nature.*” In the general remarks of the commentary, the Human Rights Council deemed the criminalization of the holding of any opinion as a “violation” to the core principles of the covenant, whether it takes the form of “*harassment, intimidation or stigmatisation of a person, including arrest, detention, trial or imprisonment.*”

While acknowledging “the right to freedom of expression,” it considered commenting on “*one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse*” as expressive means of dissemination of opinions. Therefore, the commentary affirms that a “*free, uncensored and unhindered*” press or other media is “essential” in any society to ensure the full enjoyment of the enshrined rights and freedoms of the covenant.

To that end, the UNHRC commentary concluded that, “the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is *essential.*” This implies that a “free” media and press should be enabled to comment on public issues “without censorship or restraint and to inform public opinion.”

Consequently, according to the commentary the penalization of journalists or media personnel working in different venues “*solely for being critical of the government or the political social system*” can never be considered a “*necessary restriction*” of freedom of expression.

The annual report of the UN special rapporteur on “the promotion of the right to freedom of opinion and expression”, August 2010: In his report to the UNHRC general assembly on the status of “freedom of expression and opinion,” the UN special rapporteur, Frank La Rue, asserted the importance of promoting the principles of free media and press¹³ by confirming that “*the credibility of the press is linked to its commitment to the truth and to the pursuit of accuracy, fairness and objectivity.*”

He added that journalists play a “*watchdog role*” in ensuring transparency and accountability in the conduct of “public affairs and other matters of general interest by keeping the public informed.” In his report La Rue acknowledged the great deal of risk that journalists might encounter due to their “monitoring role” and because of their “ability to influence public opinion.” He added that human rights violations ranging from, abduction, arbitrary detention, harassment, extrajudicial killings and the forced disappearance of journalists investigating human rights abuses or expressing their own opinions on “sensitive issues” constitute a “clear” violation to the ICCPR and its core purposes.

However, the expansion of the legitimate practices of the right to “freedom of expression” carries with it special responsibilities and duties, as enshrined in paragraph (3) of article 19 of the ICCPR that might hinder these practices as well. This is why the Human Rights Council was invited to interpret the limitations and the restrictions of paragraph (3) in light of its wide definition of the rights to “freedom of opinion and expression” and also the right to “freedom of media and press.”

¹² The UNHRC general comment no. 34, adopted in September 2011.

<http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

¹³ UNSR report on the mechanisms to “promote and protect the right to freedom of opinion and expression” presented to the UNHRC general assembly in its 69th session in August 2010.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/482/85/PDF/N1048285.pdf?OpenElement>

Limitations of “the right to freedom of expression and opinion” and the right to “freedom of media and press” in International Law

UNHRC general commentary (no. 34): In its interpretation of paragraph (3) of article (19) of the ICCPR, the council reiterated that the free practice of the right to freedom of expression and opinion carries with it special duties and responsibilities that should not impair nor jeopardize the right itself and its existence.

This affirmation conforms to the definitive obligation of the signatory states of the covenant in article (5) that “nothing in the present Covenant may be interpreted as implying (...) any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein (...).”

According to the commentary, restrictions to the free practice of the right to “freedom of opinion and expression”:

- I. Must be applied only for those “purposes” for which they were prescribed and must be directly related to the specific need on which they are predicated,
- II. Must be “necessary” for a legitimate purpose,
- III. Must conform to the principle of *proportionality*, that has to be respected by the administrative and judicial authorities in applying the law,
- IV. Must not be *overbroad*,
- V. Must not be enshrined in *traditional, religious* or other such *customary law*.

National laws and regulations shall also be crafted with “sufficient precision” to enable all individuals to clearly comprehend his/her rights and obligations and regulate their conduct accordingly. Moreover, state parties to the covenant shall precisely demonstrate the *causal link* between legitimate restrictions to the practice of “freedom of opinion and expression,” and the threat or the public interest they vindicate. For example, the restrictions of discussing “national security” issues shall never impede the rights to access of information and the right to freedom of media and press.

The council also contended that since the “concept of morals” is derived from “social, philosophical and religious traditions” which vary immensely and change over time, subsidiary limitations “must be based on principles not deriving exclusively from a single tradition.” Therefore, media and press laws should not limit the practice of the right to freedom of expression according to changing social and religious norms¹⁴.

More importantly, the council affirmed the very high value of “uninhibited expression” especially with regard to issues of public concern and political discourse, thus, the fact that forms of expression are considered “to be insulting to a public figure” is not sufficient to “justify” the imposition of “penalties” as sitting presidents and heads of states are “legitimately” subject to criticism and opposition. This is why it is incompatible with the covenant to vaguely criminalize the “insulting” of the president and other government officials as it encumbers people’s right to political opposition and public dissent.

Furthermore, the commentary firmly asserted that it is “incompatible” with the covenant to invoke “national security laws” to restrict the movement of journalists and media personnel who are investigating human rights abuses and grievances. In this regard, paragraph (3) of article (19) of the covenant shall never be cited to justify the “muzzling” of any advocacy of democracy and human rights.¹⁵

Limitations of paragraph (3) in the light of article (20) of the ICCPR:

Article 20 of the ICCPR¹⁶ states that “Any propaganda for war shall be prohibited by law,” adding that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

¹⁴ Ibid

¹⁵ Comparative study: *Freedom of Media in Egypt and other countries*, Association for freedom of thought and expression, 2012 <http://afteegypt.org/wp-content/uploads/2013/02/afte001-14-02-2013.pdf>

حرية الإعلام في مصر وبلدان أخرى: دراسة مقارنة، مؤسسة حرية الفكر والتعبير، ٢٠١٢

¹⁶ The International Covenant of Civil and Political Rights (1966) <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

The UNHRC commentary, alongside the council's resolution no. 7/36, concluded by affirming the legitimacy of the legal restrictions that aim at combatting any advocacy or propaganda for war or for social/religious hatred that could incite violence and cause severe social disruptions.

The incitement of violence on the basis of race, nationality, or religion is prohibited by a number of international instruments, as well as the vast majority of national laws and constitutions. Thus, the expression and the incitement of hatred against religious minorities, political opposition, or even human rights advocates are considered a "violation" of the covenant.

How Egyptian laws contradict the international principles of "freedom of media and press"

The legal framework governing media and press in Egypt consists of a large number of laws and legislations that are described by many¹⁷ as "outdated," "authoritarian," and not in compliance with the minimum standards of the aforementioned international benchmarks. This section will address these shortcomings in some detail to shed light on how these laws violate the international responsibilities of the Egyptian government to protect, foster, and guarantee the existence of a "free," "uncensored," and "independent" media and press in the country.

The Constitution of 2014

Article (70) of the Egyptian constitution¹⁸ reaffirms the protection and fostering of the principles of "*freedom of press*," including granting persons the right to own newspapers. The final clause of the article also contends that newspapers should be issued only by notification and not by administrative licensing.

In article (71)¹⁹, the constitution acknowledges and recognizes the "right to freedom of publication," outlawing all sorts of "censorship, confiscation, and suspension of media outlets, with few exceptions in times of war or 'general mobilization.'" It also adds that "no custodial sanction" shall be imposed for crimes "committed by way of publication or the public nature thereof," yet it criminalizes the "incitement to violence or discrimination amongst citizens" or "impugning the honor of individuals."

Media Laws

State-owned media: The Egyptian Radio and Television Union (ERTU), also known as "Maspero", is the state-owned media body that regulates the ownership and broadcasting of all TV channels and radio stations owned and administered by the state. The ERTU, which was established in 1960 by presidential decree,²⁰ is regulated in conformity with the law no. 13/1979, which identified the union's core policies and principles, set its administrative hierarchy, and specified its financial resources.

¹⁷ The annual report of the status of "the freedom of opinion and expression" in Egypt in 2014, Association for Freedom of Thought and Expression, April 2015
<http://goo.gl/DBxccc6>

¹⁸ Article (70) of the Egyptian constitution reads as

"Freedom of press and printing, along with paper, visual, audio and digital distribution is guaranteed. Egyptians -- whether natural or legal persons, public or private -- have the right to own and issue newspapers and establish visual, audio and digital media outlets. Newspapers may be issued once notification is given as regulated by law. The law shall regulate ownership and establishment procedures for visual and radio broadcast stations in addition to online newspapers."

<http://www.sis.gov.eg/Newvr/Dustor-en001.pdf>

¹⁹ Article (71) of the Egyptian constitution reads as

"It is prohibited to censor, confiscate, suspend or shut down Egyptian newspapers and media outlets in any way. Exception may be made for limited censorship in time of war or general mobilization. No custodial sanction shall be imposed for crimes committed by way of publication or the public nature thereof. Punishments for crimes connected with incitement to violence or discrimination amongst citizens, or impugning the honor of individuals are specified by law."

www.sis.gov.eg/Newvr/Dustor-en001.pdf

²⁰ Comparative study: *Freedom of Media in Egypt and other countries*, Association for freedom of thought and expression, 2012
<http://afteegypt.org/wp-content/uploads/2013/02/afte001-14-02-2013.pdf>

Policies: Article (2) of the law grants the union the authority to broadcast the audio and video broadcasting services with due regard to the “the country’s best interests” and to preserve at best the “values and the traditions” of society, without specifying which interests in particular should be defended and served.²¹ Among a long list of objectives, the union is also responsible for “supporting and corroborating the socialist²² policies of the ruling regime” as well as vowing to improve and develop the televised and the radio-transmitted media in accordance with the “religious” and “moral” values of society.²³

Although article (2) allows political parties to discuss their electoral programs during election time, the union must acquire government approval of the broadcasting of any news or information beforehand. In article (4), the minister of information is granted the authority to supervise the union’s commitment to serve the aforementioned objectives.

Competences: According to article (3) of the law, the union has the right to establish (with others) joint-stock companies to assist in its fulfillment of the outlined objectives. The union is also responsible for the marketing of its produced material and also for the publication of periodicals and magazines that promote its policies and messages. Article (3) extended the duties of the union to the establishment of training centers for its employees and to cooperate duly with international news agencies and institutions to strengthen the union’s capability to disseminate and impart news and information.

Funding: Articles (17), (18), and (20) of the aforementioned law specified the legal channels to finance and fund the union in undertaking its responsibilities. Whereas article (17)²⁴ stated that the budget and the share capital of the union is specified and decided by presidential decree, article (18) confirms that the union has an independent budget that is also approved by the president. Article (20)²⁵ stipulates that the revenue sources of the union are composed of the following:

- The government funds,
- Subsidies and donations,
- The profits of marketing its produced materials and publications,
- The gross profits of its owned and subsidiary companies.

Administrative hierarchy: The unions’ board of directors is responsible for deciding the broad policies and approving the relevant work plans to help achieve the end goals of the union, as described in articles (5), (8), and (9). The head of the board is appointed by the presidential decree that specifies his mandate, the duration of his tenure, and also his salary; while the other board members are appointed by the prime minister, in accordance with article (5).

The union is administered by the Ministry of Information according to presidential decree no. 44/1982, which awarded the minister authority over the media in Egypt. The minister is appointed by sealed decree by the prime minister. The presidential decree no. 310/1986²⁶ precisely defined the competences and the authorities of the minister of information to direct the union and its relevant bodies to serve the interests of the state, to propagate its policies, and finally to ensure that the disseminated news and information does not threaten the maintenance of the public order and morality.

These articles clearly violate the international principles of “freedom of media and press” as they entrench the union’s subsidiarity to the ruling regime, restrict its broadcasting policies to vaguely serve non-static social norms and traditions, and also abandon the right to serve as a medium of information and news instead of propagating government policies and decisions.

²¹ Ibid

²² The law was issued at a time when the constitution of 1971 in article (1) identified the political regime as a “Socialist”.
<http://goo.gl/ugXXIK>

²³ Article (2) of the law no. 13/1979

²⁴ Law no. 13/1979

²⁵ Ibid

²⁶ Comparative study: *Freedom of Media in Egypt and other countries*, Association for freedom of thought and expression, 2012
<http://afteeegypt.org/wp-content/uploads/2013/02/afte001-14-02-2013.pdf>

It appears that the core philosophy of this law²⁷ violates the government's responsibility to carry out and supervise the work of its owned outlets in a freeing fashion that guarantees its independence from government control, as stipulated in the "UNHRC general commentary no. (34)" and the core principles of the "Windhoek Declaration" by failing to impose measures that could guarantee the unions' financial and administrative independence.

Unfortunately, the law also does not conform to the outlined principles and standards set out by the UN-appointed special rapporteur on the promotion and protection of the "right to freedom of opinion and expression" that calls upon the states party to the ICCPR to avert from invoking vague and restrictive language in their national laws relevant to the practice of the covenant rights.

Private media

Private media in Egypt is organized and regulated by the Investment Law no 8/1997, the Ministerial Decree no 456/1996, and finally the Prime Minister's Decree no. 411/2000. Satellite channels should be established in conformity with these laws.

The Investment law no. 8/1997 grants the administrative board of the "Media Free Zone" the full authority to supervise and closely monitor the conformity of the satellite channels with the regulating laws. The administration of the "free zone" is appointed by the government and is considered as a subsidiary body to the Ministry of Investment. Any satellite channel that broadcasts in Egypt must register to the board of the "free zone" in order to obtain its own frequency.²⁸

By decree, the administrative board of the "free zone" was awarded the following powers:

Setting media policies and standards: The board of the "free zone" set a number of legal standards for satellite channels such as objectivity, neutrality, respect for the right to privacy, and the prohibition of broadcasting false information or news. Satellite channels working under the supervision of the "free zone" shall never propagate or condone the broadcasting and dissemination of any hate speech that is based on religion, race or politics. The channels and their founding enterprises should also abide by the media code of ethics.²⁹

Inspection: The law grants the board of the "free zone" the right to inspect the broadcasting projects of the enterprises working under its supervision to ensure their conformity with the law.³⁰

Interception of broadcasting: Article 63 of the law awarded the board of the "free zone" the right to investigate any violations to the code of ethics or to the registration requirements that might be committed by the registered channels and enterprises.³¹ This right also extends to the authority of issuing warnings of closure or cutting the broadcasting of any registered channel if they do not abide by the laws and regulations of the "free zone."

Press Laws

Egyptian press, whether state-owned or private, are regulated by three main legislations, namely the Journalism Law no. 96/1996, the Journalists Syndicate Law no. 70/1976, and the Publications Law no 20/1936. These three laws identify the rights and the obligations of all journalists and specify the legal framework for the proper professional conduct.

Articles (1) and (3) of the Journalism Law no. 96/1996³² recognize the importance of a "free" and "independent" press, it also acknowledges journalists' rights to:

- 1) Conduct their journalistic work independently (article 6),

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

³¹ Ibid

³² Journalism law no. 96/1996

<http://www.aljazeera.net/specialfiles/pages/beat9b266-bdbf-4f4f-8677-05671f453131>

- 2) Access public information (article 7),
- 3) Not to disclose the identities of their sources (article 8).

However, the free practice of the above rights, among others, has been limited by a wide variety of restrictive requirements that impede journalists from fully enjoying their right to “freedom of press.”

Existing Restrictions

The right to access information: The Journalism Law 96/1996 invokes restrictive vocabulary with regards to the practice of this particular right. For example, articles (9) and (10) conditioned the right of journalists to access information by requiring they maintain the utmost respect for “national security” considerations. Also, article (31) prohibits the publication of any “offensive” material to the “society’s traditions and values.”

These articles and provisions clearly violate the UNHRC Commentary no. 34 and the specified requirements of restrictions within the commentary. The invocation of “ambiguous” language with regards to the “preservation” of “public morals” and “traditions” hurdles the right to freely express and discuss certain issues that might be “sensitive” to the state and the public as well³³.

The ownership of newspapers: Moreover, the Journalism Law 96/1996 limited the ownership of newspapers to “legal” persons and political parties in articles (45) and (52) ruling out the ownership to “normal” persons, meaning that normal people do not have the right to obtain and own their own newspapers.

This restrictive requirement stands in violation with the “Windhoek declaration” as, in paragraph (10), it called upon all African states to direct the supporting funds of the media outlets and the newspapers to the “establishment of nongovernmental newspapers, magazines and periodicals that reflect the society as a whole and the different points of view within the communities they serve.”

According to article (46), newspapers in Egypt are issued by “official licensing” that is obtained from the “Higher Press Council”, which is the government-appointed body that regulates and supervises the state-owned newspapers as well as the private ones.

In addition, the requirements of obtaining the license are also very restrictive as the owners have to submit the full details of their whereabouts, the names and addresses of the publishing houses, and the name and the funding sources of the newspapers’ budget, among other requirements. These requirements are thought to embed the administrative control over newspapers and publishing houses in a fashion that doesn’t conform to the obligation to make the requirements and the conditions of registering newspapers and publications relatively easy.³⁴

Also, the law prohibits those who are barred from practicing their political rights to obtain licenses, which is a clear violation of paragraph (1) of article (2) of the ICCPR which sets a clear obligation on all states party to the covenant to ensure “all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind³⁵...”

Finally, article (52) also sets another financial hurdle to the ownership of newspapers in Egypt as it states that the share capital of “daily” newspapers should not be less than 1 million EGP, while lowering the share capital of the “weekly” newspapers to 250 thousand EGP, and finally the “monthly” publications by 100 thousand EGP.³⁶

³³ Comparative study: *Freedom of Media in Egypt and other countries*, Association for freedom of thought and expression, 2012 <http://afteegypt.org/wp-content/uploads/2013/02/afte001-14-02-2013.pdf>

حرية الإلهام في مصر وبلدان أخرى: دراسة مقارنة، مؤسسة حرية الفكر والتعبير، ٢٠١٣

³⁴ Censorship of publications, *Association for freedom of Thought and Expression*, August 2014

http://afteegypt.org/law_unit/2014/08/11/8091-afteegypt.html

الرقابة على المطبوعات: دراسة قانونية، مؤسسة حرية الفكر والتعبير، أغسطس ٢٠١٤

³⁵ Paragraph (1) of article (2) of the ICCP reads as “Each State Party to the present Covenant undertakes to respect and to ensure to a, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³⁶ Comparative study: *Freedom of Media in Egypt and other countries*, Association for freedom of thought and expression, 2012

The registration of journalists: The *Journalists Syndicates Law 70/1976* identified the sole purpose of the syndicate as regulating and organizing the registration of journalists and the protection of their rights in light of “supporting and propagating for the policies of the-then socialist ruling party.”³⁷

According to article (65) of the law, journalists applying for legal work permits must first obtain the permission of the “socialist ruling party” after submitting official documents to verify his nationality, his working experience, and his criminal record, as stipulated in article (5). The director of the syndicate, too, has to be a member of the “socialist ruling party,” according to article (37), and has to be registered for 10 years in the syndicate with a clear criminal record.

In addition, article (15) of the law states that journalists shall apply for work permits immediately after finishing their year-long training in any newspaper. Without compliance the registration committee cannot approve their requests nor can they apply for another permit before a year passes.

These requirements not only violate the constitutional right to “freedom of press” but also do not meet the minimum standards of “free press,” as they tie the syndicate to supporting the regime’s policies and decisions instead of protecting the interests of its members from the encroachments of the government and political parties.

Restrictions on the freedom of publication: Article (7) of the Publication Law no. 20/1936 stated that “no one is allowed to sell or distribute any publications in public spaces, without acquiring a permit from the ministry of interior,” while article (8) adds that it is prohibited for anyone to obtain a job that is relevant to the issuance and the printing of publications without first acquiring a work permit from the relevant governorate.

Moreover, article (10) grants the cabinet the right to confiscate any publications that are considered “seductive” or “derogatory to the abrahamic religions” as well as awarding the cabinet the right to confiscate all the foreign publications if they are “disruptive” to national security and “social harmony,” as stipulated in articles (11) and (21) of the law.

Conclusion

It is evident that the Egyptian laws regulating the work of media and press are, in totality, incompatible with the international standards of “freedom of press and media” and with the constitutional enshrining of these rights. As already mentioned, the core philosophy of these laws was to legitimize state control over media outlets and newspapers and to limit their capacity to function freely and independently from governmental encroachments.³⁸

However, there have been several attempts since the revolution in 2011 to amend, and sometimes revoke, these laws. The most significant attempt was the constitutional provisioning of establishing new regulatory bodies to replace the existing ones.³⁹ Accordingly, the prime minister issued a decree to establish legislative committees to amend and revoke the existing legislation, replacing them with ones that comply with the constitution and with the principles of “freedom of media and press.”⁴⁰ The committee was formed in October 2014 and is expected to present the final drafts of the laws in the coming weeks.

<http://afteegypt.org/wp-content/uploads/2013/02/afte001-14-02-2013.pdf>

حرية الإعلام في مصر وبلدان أخرى: دراسة مقارنة، مؤسسة حرية الفكر والتعبير، ٢٠١٢

³⁷ The law was drafted in the mid-seventies when the the-then “Arab Socialist Union” was the ruling party. It’s worth mentioning that this article was not revoked and is still used against the unregistered journalists.

³⁸ The annual report of the status of “the freedom of opinion and expression” in Egypt in 2014, Association for Freedom of Thought and Expression, April 2015

<http://goo.gl/DBxccc>

³⁹ See articles 211, 212, 213 of the Egyptian constitution (2014)

www.sis.gov.eg/Newvr/Dustor-en001.pdf

⁴⁰ Prime minister issues a decree to form legislative committees to amend the press and media laws, *Al Watan newspaper*, October 2014

م. ٢٠١٤ أكتوبر ١٤ الوطن جريدة «العالمية الصحفية» لربطت لصياغة لجنة بتشكيل قرارا يصدر محلب”. سيد وإيمان البهنساوي أحمد

<http://goo.gl/0E0r9g>

Ultimately, if the government⁴¹ is genuinely supportive of “*freedom of media and press*,” it should adopt any versions of the laws that stand for the rights of journalists and media personnel to work freely and independently. To that end, the new set of laws should be keenly crafted to support and embed the principles of “*freedom of media and press*” by allowing for the ownership of newspapers by “normal” persons, by easing the restrictive registration requirements for journalists, by transforming the state-owned media outlets into public-service broadcasters, and by allowing for freedom of publication without having to acquire official permits.

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⁴¹ The committees will have to present their drafts to the prime minister in the absence of an elected parliament.