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Communications regarding the new Egyptian Constitution

1- The Constitution should be annulled: Egypt deserves a new constitution, restore the rule of law

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2- La période transitoire témoigne d'une transformation inquiétante de l'Etat

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To

**Special Rapporteur of the Human Council on the independence of judges and lawyers
c/o Office of the United Nations High Commissioner for Human Rights**

United Nations Office at Geneva
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Communications regarding the new Egyptian Constitution

The Constitution should be annulled

Egypt deserves a new constitution, restore the rule of law

1- The judiciary should never be under the *de jure* or *de facto* control or direction of the executive branch of government. Egyptian state must respect the independence of judiciary and measures should be taken to comply fully with guarantees for judicial independence. Without independence of the judiciary there is no separation of powers and without separation of powers there is no rule of law or democracy

2- All the constitution declarations issued by president Morsy on 8 December cancels the 22 November declaration are not assure and guarantees of the protection of all judicial actors against attacks, threats of judges and the Supreme Constitutional Court and acts of intimidation or reprisal committed by Islamists forces. No such acts should go unpunished:

3- The former Commission on Human Rights identified the independence of the judiciary and the separation of powers as two essential elements of democracy. Separation of powers, the rule of law and the principle of legality are inextricably linked in a democratic society. The independence of the judiciary is a core component of democracy, the rule of law and good governance. It should be strengthened both in an institutional manner, vis-à-vis other branches of power, as well as in an individual manner (independence of the judges)
Commission on Human Rights resolution 2002/46 entitled "Further measures to promote and consolidate democracy" para. 1; and resolution 1999/57 on "Promotion of the right to democracy", para. 2, A/HRC/14/26
http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.26_en.pdf

4- Former Deputy President of the Supreme Constitutional Court Tahani al-Gebali, has filed a challenge against Egypt's new Constitution and its stipulations on the court's system of adjudication. "Infringing upon the court is an infringement on the rights of the Egyptian nation," she said, adding that she filed the suit not for personal reasons but "to defend the independence of the court." She also alleged that the court has been facing a "systematic plot to destroy it."

The Supreme Constitutional Court released a statement Sunday condemning the protests that blocked judges from entering the building to hear lawsuits challenging the Constituent Assembly and the Shura Council, describing the events as a "dark day" for the judiciary.



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“The session on reviewing lawsuits filed [in] the Supreme Constitutional Court took place on 2 December 2012, which [will be] a dark day in history of the Egyptian judiciary throughout the ages.

<http://www.egyptindependent.com/news/scc-protests-blocking-court-dark-day-judiciary>

5- In a press conference on Tuesday, Gebali said the lawsuit demands the new Constitution be annulled, and that its stipulation that the court rules on the constitutionality of laws after their approval by the legislature be cancelled.

6- “The so-called Constitution represents an unprecedented assault on judicial authority,” Gebali said during the conference, aired by Al-Jazeera Mubasher Misr. She argued that the Constitution “violated all legal norms when it ordered the removal of seven judges from the constitutional court ... judges are independent and irremovable.” She said she held the conference in order to “document facts and to express her position on the legitimacy of the current constitution.”

7- SCC rulings played a pivotal role during Egypt's transitional period. Relations between the court and the ruling Islamist regime grew tense after the court disbanded the Islamist-dominated People’s Assembly last June, ruling the law governing its elections unconstitutional.

8- Islamist supporters of President Mohamed Morsy besieged the court in early December to pressure its judges, who were scheduled to rule on the constitutionality of the Constituent Assembly that drafted Egypt’s new Constitution. The judges postponed the session indefinitely.

9- Article 233 of the Constitution stipulates: “The first Supreme Constitutional Court, once this Constitution is applied, shall be formed of its current President and the 10 longest-serving judges among its members. The remaining members shall return to the posts they occupied before joining the court.” The provision effectively removed Gebali from her post. Article 176 states that: “The Supreme Constitutional Court is made up of a president and ten members. The law determines judicial or other bodies that shall nominate them and regulates the manner of their appointment and requirements to be satisfied by them. Appointments take place by a decree from the President of the Republic.”

Source: <http://www.egyptindependent.com/news/ousted-scc-judge-files-suit-against-new-constitution>

10- International law and standards do not prescribe a particular mechanism for the enforcement of the Constitution or, for withdrawn of the constitution or annulled it. International human rights law lays down obligations which State of Egypt is bound to respect. By becoming a party to international treaties; Egypt assumes obligations and duties



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under international law to respect, to protect and to fulfill human rights. However, in order not to undermine the separation of powers, it is essential that this communication

mechanism at the international level to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.

11- This Complaint examines some (not all) key provisions of the Constitution in light of international law and standards and, in particular, separation of powers and the independence of the judiciary. the lack of clarification on how the independence of the judiciary, and in particular of the Supreme Constitutional Court, an independent judicial body provided for by article 175 to exclusively exercise judicial control of the constitutionality of laws and regulations, should be guaranteed, as well as women's equal representation in the Supreme Constitutional Court."

12- Consequently,

- We urge you and invite you to come to Egypt in order to play an active role in the constitution-making process. The Egyptian authorities should provide for the establishment of a representative and democratically elected constituent assembly in full conformity with international standards of inclusivity, participation and transparency. Sufficient time must be granted to allow for the drafting of a new constitution that fully represents the views of Egyptians. Constitution must also be made to ensure that women and people belonging to minority groups and Coptic Christian play an active role in the constitution-making process.
- "We would also like clarification on how the independence of the judiciary, and in particular of the Supreme Constitutional Court, an independent judicial body provided for by article 175 to exclusively exercise judicial control of the constitutionality of laws and regulations, will be guaranteed, as well as women's equal representation in the Supreme Constitutional Court."
- "We urge the Egyptian Government to ensure women's full and equal participation in all processes related to the political transition, to guarantee their freedom to express their views, to be protected against violence in their political and public activities and have their voices incorporated in public discourse and in shaping the society. Further, the Government should ensure that the Constitution provides the strongest guarantees to advance equality and women's human rights in line with Egypt's obligations under international law," Ms. Chandrakirana underscored.

UN expert group encourages review of Egypt's draft Constitution to ensure conformity with its obligations under international law on equality and women's human rights, Press Releases, GENEVA (14 December 2012)

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12892&LangID=E>



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13- The new Egyptian Constitution was proclaimed after the holding of a popular referendum on 15 and 22 December 2012. The new constitution has been passed with approximately 63.8% with huge support from Islamist forces and fraud. The observers monitoring the referendum have said that the absence of judges and attempts to influence voters and prevent Christians from voting are among the most dangerous electoral irregularities that have taken place on the two days of referendum: The constitution was drafted by an Islamist-dominated Constituent Assembly Chairperson Hossam al-Geriany and was approved, according to initial results, after huge support from Islamist forces. The Constituent assembly had seen withdrawals by several non-Islamist members in protest of some of the document's articles, as well as Islamists' domination of the assembly.

14- The new Constitutional opens the door to violations of the International Covenant on Civil and Political Rights, in particular the guarantees for the independence of the judiciary, as well as the right to effective remedy, access to justice. And other international human rights treaties

Egyptian Presidential declaration conflicts with international obligations

15- On 22 November 2012 Egyptian President Morsy issued constitutional declaration. The declaration renders all Presidential decrees and laws immune from judicial appeal or cancellation. The declaration also protects the Shura Council and the, Islamist dominated, Constituent Assembly from dissolution and any judicial control further protects the Constituent Assembly by extending its mandate to draft a new Egyptian constitution to eight months instead of six.

16-- The declaration grants immunity to all decisions and decrees issued by President Morsy since taking office on 30/06/12 and until the ratification of the new Egyptian constitution. The president also granted himself the exclusive right to take any measures necessary to protect Egypt's national unity, national security and the revolution.

17- The UN High Commissioner for Human Rights Navi Pillay **has urged the President of Egypt, Mohamed Morsi, to reconsider the Constitutional Declaration issued last week, saying a number of measures contained in it are incompatible with international human rights law.** She further warned that approving a constitution in these circumstances could be a deeply divisive move. She outlined the areas where the Constitutional Declaration opens the door to violations of the International Covenant on Civil and Political Rights, in particular the right to effective remedy, access to justice as well as the guarantees for the independence of the judiciary.

18- The haste with which the Constituent Assembly adopted the final text for Presidential action, and many of the surrounding circumstances, have put into question the credibility of



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the process, and contributed to the chaos in Cairo and other cities,” Pillay said. **“Urgent steps are needed to restore confidence in the process, and in the country’s all-important new Constitution, on which so much depends.”**

19- Article II of the Constitutional Declaration prohibits any legal challenge to any ‘previous constitutional declarations, laws, and decrees made by the president since he took office on 30 June 2012, until the constitution is approved and a new People’s Assembly is elected.’

20- The High Commissioner raised serious concerns about the process leading up to the referendum, and said her Office had been carefully analyzing the contents of the draft Constitution, as well as monitoring the Constitution-drafting process.

Pillay alarmed by Egypt violence and by “major problems” with draft Constitution, Press Releases, GENEVA (7 December 2012)
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12870&LangID=E>

21- “The lack of inclusive participation of various actors in Egypt in the constitution-drafting process is a matter of major concern, and one of the main reasons for the disastrous situation that has been developing in Egypt over the past couple of weeks,” Pillay said. “This is the last thing Egypt needs during such a difficult period of transition, but I believe people are right to be very concerned -- not just about the way the process has been short-circuited, but also about some of the elements included in, or missing from, the draft text.”

22- We are highly concerned, by the absence in the current new constitution of any reference to the international human rights treaties which Egypt has ratified, and is bound to uphold. The 1971 Constitution, by contrast, stipulated the legal standing of these treaties.” *

23- “For human rights to have meaning in any society, they must be guaranteed by law and enforced by independent courts,” the High Commissioner said, pointing to concerns regarding article 176 of the draft constitution. “This provision also marks a serious step backwards from the 1971 constitution, which stated that judges of the Supreme Constitutional Court cannot be removed from their positions,” she said. “The draft constitution provides for the direct appointment of judges to the Supreme Constitutional Court by the President, which risks giving the Executive excessive power over the judiciary. This concentration of power in the hands of the President -- like the provisions of the President’s Constitutional Declaration -- undermines the independence of the judiciary.”

24- This provision contravenes the fundamental notion of the rule of law by placing the President’s actions outside judicial scrutiny, and not permitting any legal challenge, irrespective of its substance,” Pillay said. “This encroachment on the role of the judiciary in a democratic society is inconsistent with Article 14, paragraph 1 of the Covenant that guarantees the independence of the judiciary.”



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25- Article II of the Constitutional Declaration also annuls all lawsuits presently before the courts relating to 'previous constitutional declarations, laws, and decrees made by the president since he took office on 30 June 2012.'

26- "Denying access to the courts to those who may wish to legally challenge presidential actions is contrary to Article 2, paragraph 3 of the Covenant," Pillay said, noting that paragraph 3 stipulates that a State Party to the Covenant 'undertakes to ensure that any person, whose rights or freedoms as herein recognized are violated, shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.'

27- Article V of the Constitutional Declaration states that 'no judicial body can dissolve the Shura Council or the Constituent Assembly.' "This is incompatible with the principle of the independence of the judiciary, as well as with Article 2 of the Covenant, which affirms the right to an effective remedy including in the context of elections," Pillay said.

28- The High Commissioner also commented on concerns about the composition of the Constituent Assembly, noting that "Any proper constitution-making process must include adequate representation of the full political spectrum, men and women, minorities, and civil society, which was not seen to be the case with this Constituent Assembly." Pillay, expressed concerns about the unfolding events in Egypt and warned against taking divisive measures such as adopting a Constitution that may lead to further escalation and tension.

29- "It is within the legal prerogatives and political responsibility of President Morsi to address these concerns in conformity with international human rights principles," she said.

The process for drafting and adopting the Constitution

30- The process for drafting and adopting the Constitution has failed to meet international standards of inclusive participation, representation and transparency. It has been undermined by the exclusion of large sectors of the Egyptian society, (For example, only 7 women were elected to the Constituent Assembly) political discord and uncertainty concerning the legal framework governing the transition process. In particular, Article 60 of the March Constitutional Declaration on the selection of the members of the Constituent Assembly, led to various political conflicts and judicial proceedings about whether or not, or under which conditions, Parliament had the authority to select the 100 members of the Constituent Assembly.

31- Further, the time for drafting the Constitution has been inadequate to allow for the genuine participation of the Egyptian people in the constitution-making process. The Constituent Assembly was selected on 12 June 2012 and completed the Draft Constitution in



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five and a half months. Although the bylaws of the Constituent Assembly allowed individuals to submit comments and information to the Assembly, there was insufficient time for information received to be meaningfully taken into account.

32- In addition, the two weeks provided from the approval and publication of the Draft Constitution until the referendum is insufficient to assess the Draft Constitution, which contains 236 articles. (*Guidance provided by the United Nations on constitution drafting suggests that it is necessary to provide sufficient time, opportunity, and transparent procedures to allow for a comprehensive public dialogue that can include all stakeholders without any exclusion, and which may lead, consequently, to a consensus-based constitution.*)

33- There has been a lack of clarity and timely publication of the procedures for the referendum itself, including how people will vote, oversight of the referendum and appeals regarding irregularities. Information in this respect has not been forthcoming, with a Presidential Decree on the voting procedure not published until 12 December 2012.

34- These elements, combined with the holding of a referendum in the midst of largescale protests and violence, undermines the right of all Egyptians to take part in the conduct of public affairs, including the drafting and adoption of a new constitution.

35- Consequently, the Draft Constitution should be withdrawn. The Egyptian authorities should provide for the establishment of a representative and democratically elected constituent assembly in full conformity with international standards of inclusivity, participation and transparency. Sufficient time must be granted to allow for the drafting of a new constitution that fully represents the views of Egyptians. Provision must also be made to ensure that women and people belonging to minority groups play an active role in the constitution-making process.

Rule of the law: Separation of Powers

“Lack of clarity in the delimitation of the respective competences of the executive, legislative and judicial authorities may endanger the rule of law and a consistent human rights policy”.

36- The Human Rights Committee has noted, a “lack of clarity in the delimitation of the respective competences of the executive, legislative and judicial authorities may endanger the rule of law and a consistent human rights policy”. (*See Concluding Observations of the Human Rights Committee on Slovakia, CCPR/C/79/Add.79, para.3*)

37- For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are



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accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."

Report of the Secretary-General on The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies
([S/2004/616](#)).

38- Although the principle of separation of powers was clearly spelled out in the 1971 Constitution, the independence and functioning of both the legislature and the judiciary suffered under the ruling of President Mubarak. The powers of these branches were either insufficient, particularly in light of the Emergency Law provisions, or lacked the clarity to ensure the adequate delimitation and separation of power in practice. The result was the heavy predominance of the executive over both the legislative and judicial branches.

39- The Constitution outlines numerous articles are subject to qualification or clarification by subsidiary legislation. For example:

A- The powers of the judiciary are to be "defined by law" (Article 168).

B- While "conditions and procedures for their appointment and disciplinary actions against them" are "defined and regulated by law" (Article 170).

C- Further, Article 173 grants the OPP the ability to investigate, pursue and press charges in all criminal cases "except what is exempted by law".

D- The State Council and Supreme Constitutional Court's competencies are limited in similar ways (Article 174 and 175). Such limitation may effectively grant the legislature authority to undermine the role of the judiciary and could infringe on the notion of separation of powers.

39- As noted by the Special Rapporteur on the independence of judges and lawyers: "Understanding of, and respect for, the principle of the separation of powers is a sine qua non for a democratic State and is, therefore, of cardinal importance for countries in transition to democracy- which heretofore have been typically characterized by precisely the absence of a separation of powers."

(See Report of the special Rapporteur on the independence of judges and lawyers, UN document E/CN.4/1995/39, Para. 55.)

The Independence of the Judiciary in Egypt



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40- Judicial authority is exercised independently by courts of different types and levels. No interference in judicial affairs is permissible. The judicial authority consists of a number of bodies represented by the ordinary courts, the Council of State, the administrative judiciary, and the Supreme Constitutional Court. (CCPR/C/EGY/2001/3) REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT)

41- It is a cornerstone of the rule of law that States must guarantee the independence of the judiciary. This principle is affirmed in the United Nations Basic Principles on the Independence of the Judiciary (UN Basic Principles), which provide that it is the responsibility of all institutions, governmental and others, to respect the independence of the judiciary. (Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Principle 1)

The High Judicial Council: Minister of Justice's

42- The HJC has competence over judicial appointments, promotions, transfers and disciplinary proceedings for the ordinary judiciary. However, the Minister of Justice's residual powers undermine the independence of the HJC and therefore the judiciary as a whole. In particular, under the JAL the Minister of Justice is granted specific powers regarding the appointment, disciplining, retirement and secondment of judges. (Articles 9, 99, 111, and 55-62 of the Judicial Authority Law, respectively)

43- The UN Human Rights Committee has emphasized that the exercise of power by the Ministry of Justice over judicial matters, including the disciplinary appeal process and its powers of inspection of the courts, constitutes an interference by the executive and a threat to the independence of the judiciary. (Concluding Observations of the Human Rights Committee on Romania, CCPR/C/7 9/Add.111, para. 10)

The Office of the Public Prosecutor (OPP)

44- Prosecutor General Talaat Abdallah, who was appointed by President Mohamed Morsy in November in a constitutional decree, initially stepped down after hundreds of members of the prosecution rallied before his office calling for his resignation. Judges Club President Ahmed al-Zend appealed to prosecutors to return to work, confirming that Prosecutor General Talaat Abdallah asked for time to think about quitting. Judicial officials say the president does not have the authority to remove their members from office, as Morsy did by replacing the Mubarak-era Prosecutor General Abdel Meguid Mahmoud with Abdallah in his November decree.



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45- The UN Guidelines on the Role of Prosecutors affirm that States should “ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability”.
(Guidelines on the Role of Prosecutors, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (Cuba), 27 August – 7 September 1990, Guideline 4, available at: <http://www2.ohchr.org/english/law/prosecutors.htm>.)

46- Moreover, the African Union Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa state: “Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.”
(Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Guideline F(k), African Union, http://www.afrimap.org/english/images/treaty/ACHPR_Principles&Guidelines_FairTrial.pdf,

The Supreme Constitutional Court

47- The Court was established under the terms of the 1971 Permanent Constitution (chap. V, sect. 5, arts. 174-178) to replace the Supreme Court which had been established by Act No. 81 of 1969 but abolished by Act No. 48 of 1979, concerning the Supreme Constitutional Court. This Court is an independent and autonomous judicial body based at Cairo. Its members cannot be dismissed. Its rulings on constitutional matters and interpretive decisions are published in the Official Gazette. Such rulings are binding on all the State authorities and, once they have been handed down and published in the Official Gazette at the legally specified time, any text that is declared therein to be unconstitutional is automatically abrogated and becomes inapplicable on the day following the publication of the ruling. If the text that is declared unconstitutional has a bearing on criminal procedure, any convictions that have been handed down on the basis thereof are deemed to be null and void. (CCPR/C/EGY/2001/3 page 15)

48- In Egypt, although the 1971 Constitution provided for an independent Constitutional Court (Article 174) with Constitutional guarantees of irremovability for its members, these guarantees of independence were undermined by the executive’s comprehensive control over the selection and appointment of the members of the courts.

49- Similarly, while Articles 175 to 178 of the Draft Constitution provide for a Supreme Constitutional Court (SCC) as an “independent judicial body, seated in Cairo, which exclusively undertakes the judicial control of the constitutionality of the laws and regulations”, it maintains that appointments take place by decree from the President.(Article 176)



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State of Emergency and the Use of Military and Security Courts

50- Constitutional and legislative provisions providing for emergency state security courts and military courts have created a parallel judicial system that has further undermined the independence of the judiciary in Egypt.

51- The new Constitution fails to prohibit the trial of civilians before military courts. Article 198 permits the trial of civilians “for crimes that harm the Armed Forces”, where such crimes are defined by law. The wording of this article is broad and has the potential to perpetuate the expanded jurisdiction of military courts. Although the new Constitution expressly prohibits exceptional courts in Article 75, however, it is unclear as to whether emergency state security courts are considered ‘exceptional’.

52- Trials before state of emergency courts fail to meet due process guarantees, including the right “to a fair and public hearing by a competent, independent, and impartial tribunal established by law” (Art. 14(1)) and the right “to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing” (Art. 14(3)(b)). Such guarantees are provided for by the ICCPR, to which Egypt is a party. The continued use of emergency courts is in contravention with these provisions.

53- In 2002, the Human Rights Committee stated in relation to Egypt: “*The Committee notes with alarm that military courts and State security courts have jurisdiction to try civilians accused of terrorism although there are no guarantees of those courts’ independence and their decisions are not subject to appeal before a higher court (article 14 of the Covenant).*” *Concluding observations of the Human Rights Committee on Egypt, CCPR/CO/76/EGY, 28 November 2002, para.16(b)*

55- The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted in 2009, in the context of Egypt, that “*military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of their duties.*” *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, Human Rights Council, para.32, 14 October 2009, A/HRC/13/37/Add.2*

Source: International Commission of Jurists (ICJ), Legal Briefing Paper. The Draft Egyptian Constitution in Light of International Law and Standards

<http://www.icj.org/new-constitutional-declaration-undermines-rule-of-law-in-egypt/>



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Communication par Dr. Wagdi Sabete

Note adressée au Conseil des Droits de l'Homme - ONU- GENEVE

Je me permets de vous écrire afin de vous informer des drames humains que mon pays traverse depuis l'arrivée au pouvoir du régime des "Frères musulmans" et particulièrement depuis que le président M. Morsi a eu le pouvoir suite à une élection présidentielle entachée de fraude massive et de nombreuses irrégularités.

La période transitoire témoigne en effet d'une transformation inquiétante de l'Etat:

1. Le président, selon les consignes du groupe religieux auquel il appartient, a destitué de leurs fonctions, illégalement, des responsables dans la haute administration de l'Etat. Il les a remplacé par des membres du groupe des (frères musulmans). Dans ce mouvement d'épuration de l'administration qui vise à placer le uniquement des islamistes adhérents ux frères musulmans ou sympathisant, le procureur générale de la République, considéré a été destitué, et remplacé, par un membre des frères musulmans au mépris de toutes les règles de nomination des magistrats par le conseil supérieur de la magistrature. Actuellement, ce procureur dirige l'action pénale uniquement contre les membres de l'opposition et des jeunes révolutionnaires. Cette nomination scandaleuse est le fruit d'une volonté unilatérale du président de la République qui reçoit ses consignes du guide des "frères musulmans" Mohamed Badie. Cette atteinte au principe constitutionnel de l'inamovibilité des juges a provoqué et provoque encore un mouvement de colère et de contestation parmi les substituts du procureurs qui se mettent en grève avec toutes les conséquences qui en découlent sur la bonne administration de la justice et les effets de ce dysfonctionnement sur les usagers.

2. Un second exemple tout aussi attentatoire au principe de l'indépendance de la justice: il s'agit de révoquer des juges à la Haute Cour constitutionnelle (mesure de vengeance suite à leur décision d'invalidation de la loi électorale portant atteinte au principe d'égalité entre les candidats).

3. Le président de la République a pris une décision le 22 novembre qui immunise ses décrets contre toute forme de recours juridictionnels et rétroactivement depuis son arrivée au pouvoir au 30 juin 2012. Cette décision a provoqué une vague de contestation populaire notamment parmi les juristes et les professeurs de droit public dont je fais partie, au regard de sa portée sur le droit au recours au juge, ce qui n'aide ni a l'apaisement ni a la stabilité du pays.

4. L'assemblée constituante, qui élabore la nouvelle constitution, a été formée comme tout le reste, par une décision illégale (illégalité qui résulte de la formation majoritaire des frères musulmans et salafistes, particulièrement incompétents dans les affaires constitutionnelles) contrairement aux prescriptions de l'article 60 de l'acte constitutionnel transitoire et l'interprétation du juge administratif de la portée de cette disposition constitutionnelle. La



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formation de cette assemblée a fait l'objet d'un recours devant le conseil d'Etat et la cour constitutionnelle. Et afin d'empêcher celle-ci de statuer sur le recours, des groupes armés des frères musulmans et salafistes ont encerclé le bâtiment de la Cour constitutionnelle pendant un mois entier en faisant un blocus qui empêchent les juges de la cour constitutionnelle d'accéder au bâtiment pour toutes les audiences prévues pendant un mois. Ce fut un spectacle humiliant et une atteinte grave contre l'une des plus grandes cours constitutionnelles au monde arabe et en Afrique.

5. Ayant pu empêcher la Cour constitutionnelle de statuer, et après avoir destitué ses membres " gênants", le président de la République n'a jamais sanctionné ni condamné ces actes de violence commis par ses amis contre les magistrats de la Cour suprême. En revanche, l'assemblée constituante illégalement formée, a pu bâcler en 24 heures le vote sur la nouvelle constitution que je peux considérer, en tant que spécialiste de droit constitutionnel et de libertés fondamentales, l'une de plus dangereuses constitutions au monde. je me borne à quelques exemples significatifs.

A. L'article 81 al.3 pose une limitation générale à toutes les libertés fondamentales. Cette limitation n'est pas seulement un objectif d'ordre général ou une autre disposition constitutionnelle, mais il s'agit de l'ensemble des dispositions du titre I de la constitution portant sur les valeurs morales ayant pour sources, entre autres, les tendances doctrinales islamiques depuis le 7e siècle à nos jours. Les atteintes aux libertés qui résulteraient de ce seul article sont de nature à anéantir toute idée de droits de l'homme en Egypte.

B. Un organe spécialisé est créé pour contrôler le media et édicter les normes morales de l'information et sanctionner les journalistes qui critiquent le régime.

C. Le président de la République nomme les organes de contrôle de l'exécutif, ce qui favorise l'impartialité et le conflit d'intérêt.

D. Dessaisir la cour constitutionnelle de certaines compétences de contrôle de constitutionnalité, réduire le nombre de ses membres et récuser son rôle comme contrôleur et censeur du parlement.

Enfin, je ne pense pas qu'il serait inutile de réciter toutes les atteintes aux libertés d'opinion, de la presse et de conscience et les nombreuses atteintes à l'intégrité physique dont souffrent aujourd'hui les très jeunes manifestants non armés par certains membres de force de l'ordre aidés par des civiles des frères musulmans. Mais lorsque j'ai enseigné mon cours de droit international des droits de l'homme aux étudiants de Master de droit public, l'un de mes étudiants m'a posé une question sur l'efficacité pratique du système de l'ONU dans la protection des droits humains. J'ai tenté de défendre l'ONU et son système malgré toutes les difficultés qui traversent son chemin. Je souhaite vivement attirer votre attention sur la situation d'un Etat sans droit en Égypte en espérant votre intervention pour entamer un dialogue avec les autorités égyptiennes afin de faire cesser une situation qui risque dans les jours qui suivent de provoquer une deuxième révolution.



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Restant à votre disposition pour toute information complémentaire, je vous pris, chère Madame, de recevoir avec ma haute considération, mes sincères remerciements.

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