



General Assembly

Distr.
GENERAL

A/HRC/8/NGO/41
28 May 2008

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Eighth session
Agenda item 3

PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

**Written statement* submitted by Cairo Institute for Human Rights Studies (CIHRS),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[27 May 2008]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

Independence of the Judiciary in the Arab World.¹

1. Arab legislation and practices adopted by the Executive Authorities in the majority of Arab States have gravely harmed the judicial independence and standards, and has contributed to undermining the effectiveness of existing judicial systems; thus diminishing public confidence in the ability of the national judiciary to achieve justice and equality. This crisis in public confidence is made worst by an increasing tendency of Arab regimes to appoint judicial panels with the sole purpose of adding legitimacy to human rights violations, obstructing the enjoyment of public freedoms, and granting immunity to the perpetrators of serious human rights violations.

2. A severe democracy deficit in most of the Arab countries has resulted in lack of judicial independence in the region. Constitutional guarantees for the independence of the judiciary are often void of any effect. Arab country constitutions almost always provide for hegemony of executive authority over the parliamentary and judicial branches. Legislative drafting has always been and is still undertaken by the executive authority even in parliamentary countries. Most of these parliaments are still manifestations of a single dominate party or the sole existing ruling party. Such hegemony enables the executive authority to pass any legislation deemed favorable to the ruling regime, including laws that undermine the independence of the judiciary.

3. With the exception of the Egyptian case where the judicial system has witnessed a relative independence in comparison with different Arab countries, political control over judicial authorities in the Arab region blatantly violates international standards of judicial independence. This is largely due to the significant power ministers of justice and administrative agencies affiliated with ministries of justice have over the appointment, promotion, delegation, inspection and transfer of judges. Furthermore, judicial systems in these countries do not possess independently administered and legally guaranteed budgets, but are instead dependent on the political party/parties in control of the central government for all funding.

4. ***The Egyptian*** exception does not imply that the Egyptian judiciary has achieved fully-fledged independence. There are several forms of executive interference in judicial affairs and in the administration of justice. The President of the Republic, head of the Executive authority by virtue of the Constitution, chairs the Supreme Judicial Council. He is entitled to absolute authorities allowing him to appoint the Attorney General, the Chief Justice of the Supreme Constitutional Court and the Chairman of the State Council. Furthermore, the President is entitled to refer cases to military courts involving citizens convicted of any charge for which there is a provision in the Penal Code or any other law. Even if the government intends to end this state of emergency, the latest Constitutional amendments approved last April ensure the same authorities for the President are preserved under the pretext of anti-terrorist legislation.

¹ *This intervention is largely based on the conclusions of the international conference organized recently by CIHRS, in cooperation with the International Federation for Human Rights and the Euro-Mediterranean Human Rights Network. Participants in the conference included several key judges, human rights advocates and academia from Arab, European countries and USA. The proceedings of the conference were published in a book in Arabic entitled "Judges and Political Reform". An English version will be released soon.*

5. In May 2008, the Egyptian Parliament approved a draft law on economic courts submitted by the government, instead of setting a limit to the different forms of exceptional judiciary. The General Assemblies of the Egyptian Judges Club, and State Council Judges Club respectively has deemed such draft law as establishing an exceptional judiciary body that detracts from the mandate of the normal judiciary to decide on investment and economy related disputes. It also entrenches the Executive Authority interference in administering justice by virtue of the laws granting the Minister of Justice the powers to mandate the chairs and define the premises of such courts, as well as specify the *modus operandi* of the case preparation panel and the procedures to be followed.

6. Moreover, the last few years have witnessed a dramatic increase in the harassment of the Judges Club in Egypt, due to their increasingly strong call for judicial independence. These measures included the referral of key judges, including the Vice Presidents of the Court of Cassation, to a disciplinary council for criticizing unfair national elections.

7. ***In Tunisia***, members of the Supreme Judicial Council are selected by a Presidential Decree. This law only allows for the election of 8 of the 18 members of the Council. Council resolutions are passed by majority and in the need for a deciding vote, the President's vote, or that of the Minister of Justice in the absence of the President, fulfills this role. The Council, subject to the Executive authority, has authority over the nomination of judges and judicial rotation. The Council is also responsible for disciplining judges. Furthermore, civilians can be tried before exceptional military courts if a case is brought against by a member of the military. Moreover, Tunisian judges involved in calls for reforming the judiciary and enhancing its independence have been dismissed ensuring the obedience of the judiciary to executive control.

8. ***In Lebanon***, judges are appointed by a Decree upon the recommendation of the Supreme Judicial Council. However, the law does not oblige the executive authority to take the Council's recommendations into consideration. The Lebanese Court of Justice is classified as an exceptional court. Cases are referred to this Court via a Decree by the Prime Minister, and are usually of a political nature. The judgments issued this court cannot be appealed or challenged.

9. ***In Jordan***, the executive authority appoints Court Chief Justices through Royal Decrees. Senior judicial positions are appointed directly by the executive authority. As such, the Supreme Judicial Council in Jordan is in no way independent.

10. ***In Syria***, members of the Supreme Judicial Council are all members of the ruling Baath party. The President of the Republic chairs the Supreme Judicial Council in addition to his being head of the executive authority. The President is responsible for appointing all members of the Constitutional Court, though it is the only Court responsible for prosecuting the President in cases of high treason charges. The department of Judicial Inspection reports directly to the Minister of Justice and the Council. The resolutions of the Council, regarding appointment, promotion, transfer or discipline, cannot be challenged before any other judicial body.

11. ***In Saudi Arabia***, appointing and dismissing Judges depends on Royal Decrees, and upon the recommendations of the Supreme Judicial Council, whose chairman and members are also appointed by Royal Decrees. Furthermore, the role of the Council is limited to

proposing candidates for the vice president positions of the Court of Cassation, Courts of First Instance and Summary Courts. Candidates are then appointed by Decrees of the Minister of Justice.

12. *In Morocco*, and although important steps towards democratization have been accomplished, the role of the Supreme Judicial Council is still limited as it is presided by the King who can either accept the Council's recommendations or reject them, thus restricting the Council's role to consultation. While there have been achievements in enhancing the role of civil society in Morocco, judges are still denied the right to form or be members in syndicates and/or unions. The Moroccan authorities recently applied harsh measures against judges for their involvement in the "Association for Defending the Independence of the Judiciary," and judges were forced to withdraw from this association upon a royal message to the Supreme Judicial Council prohibiting the involvement of Judges in any association except for the "Judges' Wedadeya Hassanya Association," an organization known for its close relations with the political authorities.

13. *Judicial authorities in the Arab states lack financial independence.* Ministries of Justice almost fully control their budgets, allowing for further political manipulation and control.

14. *Public Prosecutors in most of the Arab countries* lack independence and are subject to the executive authorities represented by the Ministers of Justice. This is becoming an increasingly dangerous phenomenon. The tendency in many Arab countries, under the pretext of combating terrorism, is to pass special legislation allowing wider authorities to public prosecutors, thus minimizing judicial review of the issuing of arrest warrants, and detention of suspects. This allows suspects to be held for long periods while investigations are pending.

Recommendations:

A. Cairo Institute for Human Rights Studies calls for synchronization of efforts of the UN agencies, the international organizations and the human rights and Judges groups in the Arab region to urge the Arab governments to adopt ambitious programs of judicial reform designed to enhance the independence of the judiciary. Including:

1. Revising their Constitutions to ensure international standards and obligations of fair and independent judicial systems are adhered to.
2. Ensure that the national legislation concerning judicial independence also conforms to these commitments;
3. Maintain financial and administrative independence for judicial bodies.

B. Arab governments are urged to:

1. Remove executive hegemony concerning the formation of Supreme Judicial Councils and to allow the appointment of the members of these Councils by their general assemblies. These Councils should be allowed decisive authority in appointing judges.

2. Judicial inspection departments should report to the Supreme Judicial Councils instead of the Ministers of Justice.
3. All forms of exceptional courts should be constitutionally outlawed.
4. Public Prosecutors should not have to report or be under the control of the Ministries of Justice.
5. It is imperative to ensure the right of Judges to establish associations and syndicates to maintain their interests promote professionalism and work on maintaining the independence of the judiciary.
6. CIHRS also stresses the importance of renewing efforts of the international community to urge the Sudanese authorities to cooperate with the ICC, in accordance with Security Council Resolution 1593, and to comply with the ICC's requests to surrender those accused of perpetrating war crimes and crimes against humanity.

- - - - -