

Defenders in Retreat

Freedom of Association and Civil Society in Egypt



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Freedom of Association and Civil Society in Egypt

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Club of Madrid Project on Freedom of Association in the Middle East and North Africa

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Preface

Associations are indispensable to the very survival of democracy and societal progress. Non-governmental organisations (NGOs) defending human rights at local, national or international level are the guardians of fundamental liberties, and often constitute the only framework through which minorities and other vulnerable segments of the population can ensure that their voices are heard, their rights respected and their participation guaranteed. The degree of effective use of freedom of association therefore constitutes an important barometer in judging the factual situation of democracy, human rights and participation in a country.

In addition to being a fundamental right in itself, freedom of association is also a precondition and safeguard for the defence of collective rights, freedom of conscience and religion, and therefore deserves special attention and vigilance. With the rise of transnational terrorism, recent years have witnessed freedom of association in many countries being suppressed in the name of national security. Obligations that expose the founders of associations to arbitrary admission criteria, pedantic verifications and unnecessary administrative hindrances are indicators of government efforts to exert political control. This may happen formally – via the adoption of laws that allow inappropriate limitations on freedom of association – or informally – through a failure to apply the law in practice and the predominance of informal rules that replace the rule of law.

Recognising the fundamental significance of freedom of association and a vibrant, active civil society for citizen participation and the dynamics of democratisation, the Club of Madrid, an independent non-governmental organisation of 70 former heads of state and government dedicated to democratic practice, embarked in February 2007 on a project aimed at strengthening dialogue on freedom of association across the Middle East and North Africa

region. With the support of the European Commission's European Initiative for Democracy and Human Rights (EIDHR) and the United Nations Democracy Fund, the objective of the project has been to improve the capacity of both civil society and the authorities to construct a shared vision on the promotion of freedom of association. In cooperation with FRIDE and local partners, the Club of Madrid (CoM) has been engaging in efforts to strengthen dialogue between civil society and government and, on the basis of the CoM members' own leadership experience, it thus aims to contribute to fostering the inclusion of civil society. With this end in mind, the project hopes to propose constructive legal and policy reforms that contribute to advancing citizen participation in national political debates on freedom of association and, more broadly, on democratic reform.

This report is one of a series of six country reports that provide independent analysis of the state of freedom of association and civil society in Morocco, Jordan, Bahrain, Egypt, Tunisia and Saudi Arabia, respectively. The reports are intended to accompany and support the aforementioned project led by the Club of Madrid by identifying both outstanding challenges and civil society's ideas on how to resolve them. Each report is based on a substantial number of consultations and interviews with local civil society stakeholders, government representatives across all levels, parliamentarians, political party representatives, journalists, union activists, women's and human rights activists, and lawyers and political analysts, conducted throughout 2008. The independent analysis aims at facilitating public debate and further societal dialogue on freedom of association in the respective country. The main findings and recommendations summarise the views expressed by the numerous local stakeholders who kindly granted us some of their time for an interview.

Egypt: the vanguard of authoritarian upgrading

The earthquake of unprecedented social mobilisation throughout 2005 triggered hopes that Egypt would finally move towards a genuine democratic opening and lead the region away from its long history of authoritarianism. However, these hopes have now largely faded away. Protests have been contained, the opposition weakened, divided or jailed, and it has become painfully obvious that Hosni Mubarak's pledges of democracy during his 2004-5 presidential campaign were but another PR line. For the time being, talk about democratisation in Egypt appears to be off the agenda.

The adaptation of governance strategies to the changing norms and expectations in the post-Third Wave world can be observed in many hybrid regimes. Across the Middle East and North Africa (MENA), the establishment of democracy as an international norm in the post-Cold War era and the increased international pressure on authoritarian regimes to change their ways has not led to greater democratisation, but to an adaptation of governance strategies and tools (a process that some have called "upgrading authoritarianism").¹ In an often reactive trial and error fashion, these methods have become increasingly consolidated and sophisticated. This adapted strategic approach has been aimed at formally liberalising politically non-threatening areas while keeping tight control over those policy areas and actors with the potential to meaningfully challenge the ruling elite's prerogatives. While "the great and proud nation of Egypt" has missed its chance to lead the process of

democratisation (as suggested by US President Bush in his speech on the state of the nation), Egypt has certainly been able to claim regional leadership in a different sphere: consolidating the tools and strategies of authoritarian upgrading to resist the pressures of democratisation.

Like many of its authoritarian neighbours, the Egyptian regime resorts to open coercion and violent repression only when it can be sure that this is accompanied by a public diplomacy line that provides an internationally acceptable justification (i.e. the fight against terrorism; fears generated by the rise of political Islam). The rationale behind this double-edged method is the need to satisfy conflicting interests, that is, to accommodate enhanced domestic and international demands for democratic governance by maintaining the façade of a gradual reform process. While selective liberalisation and public mobilisation advanced towards the middle of the decade, recent years have again seen massive setbacks, especially in the areas of freedom of expression and the press, and freedom of association and assembly. In contrast to other selectively liberalising countries in the region, such as Morocco, where the measures of liberalisation also serve as a valve to channel and contain domestic and international demands for structural, systemic democratisation, in Egypt the undermining of the slightest democratic openings by massive setbacks have long eroded any credibility of President Mubarak's or his NPD fellows' commitment to genuine democratic reform, even among the most credulous citizens. In Egypt, democracy is not in process, but in retreat.

The outlawed Muslim Brotherhood, as the only opposition force with a sustainable public appeal and the potential to meaningfully challenge the NDP regime, has become the victim of a dramatically intensified crackdown ever since the movement proved its value as a challenger by winning 88 seats in the 2005 legislative elections. The subsequent years have seen hundreds of Brotherhood members arbitrarily arrested, held in custody without charge, and tried and convicted before military courts. Yet the regime's highly

¹ Steven Heydemann: 'Upgrading Authoritarianism in the Arab World', Brookings Institution Analysis Paper n° 13, October 2007. On a similar note, see Larry Diamond: 'Thinking about Hybrid Regimes', *Journal of Democracy* - Volume 13, Number 2, April 2002, pp. 21-35; Andreas Schedler: 'The Menu of Manipulation', *Journal of Democracy* - Volume 13, Number 2, April 2002, pp. 36-50.

problematic relationship with the Muslim Brotherhood (MB) is only the tip of the iceberg. The regime's harsh backlash via crackdowns on human rights defenders during the past year has likewise illustrated the government's nervousness. The issue of "succession" to President Hosni Mubarak, which hangs over Egypt like a sword of Damocles, is poisoning the regime's approach to the Muslim Brotherhood and inhibits it from developing a healthy approach towards dealing with political dissent in general.

Recent months have also seen a reprisal of the regime against Ayman Nour, the political leader of the Al Ghad Party and former presidential candidate. Nour had been able to introduce a new model for a popular politician challenging Mubarak and advocating for reform. He was involved by the government in a politically motivated case and sent to prison. Formally for health reasons, in February 2009 Nour was released from prison, but as a former prisoner convicted of a crime against integrity, he remains excluded from political contestation for the time being.

Some point to the numerous improvements that the environment which Egyptian civil society operates in has seen during the last few decades. Arguably, NGOs were able to make important gains over the last two decades, the human rights agenda as such is widely accepted in theory, election monitoring is no longer a taboo issue and the number of human rights organisations is on the rise. However, reflecting a general trend across the MENA region, the blatant, open repression of past decades has largely been replaced by more subtle means to ensure the state's continued firm grip over civil society and political opposition. Against the background of these overarching constraints, a number of structural, legal and political aspects condition and shape the way Egyptian NGOs are able to operate.

Associations landscape

The number of associations registered under the Associations Law is estimated by different sources as being between 17,000 and 30,000.² Taking into account the associations whose application for registration has been rejected or ignored and/or that are registered under the regime for private businesses, the real number is thought to be substantially higher. Only a minority of the those is really active. Religious associations and associations dedicated to development together represent more than half of all associations. Other important groups include sports, youth and social clubs and cooperatives. There are 115 trade and industry chambers, 24 professional syndicates and 22 workers' unions organised under a common federation. Moreover, there are currently 24 legally registered political parties.

Human rights and advocacy associations only constitute a small percentage of the associative sector, yet they are the ones whose ability to freely associate and develop their activities is most harshly affected by the formal and informal limits put upon them by the state. The majority of the roughly 25,000 associations (according to official figures) engage in largely apolitical fields such as local development and cultural and religious services. While the quantitative share of human rights and advocacy NGOs may be of relatively little importance, their qualitative role is crucial as their very goal is to defend free association and other fundamental rights and freedoms in the interest of all Egyptian civil society. Moreover, the very obstacles these organisations face in carrying out this important work offer the most truthful indicators of the need and demand for it.

² Michel Doucin (Ed): 'Guide de la liberté associative dans le monde', La Documentation Française, Paris, 2007, p. 245; Euro-Mediterranean Human Rights Network: 'Freedom of Association in the Euro-Mediterranean Region', Copenhagen, December 2007, p. 29.

The organisations facing the greatest challenges with regard to freedom of association are those which are politically active and which have the greatest potential for broad political mobilisation. In addition to human rights and advocacy organisations and political parties, trade unions, professional syndicates and cooperatives play an increasing role in this regard, as these are the institutions with the greatest potential to mobilise important social groups. This ability has been illustrated by a number of public protests organised by workers' unions during recent years, and state oversight of unionist activities has been tightened considerably.

Social work is largely carried out by the associative sector. Since the early 1990s, the public authorities have supported the creation of associations in this field, and increasingly tend to rely on them with regard to social and rural development. The important role of associations in fields such as the fight against poverty, literacy programmes, health and family planning has led to the increase in awareness of the importance of the associative sector for improving the social equilibrium, especially at local level.

Against the background whereby international donors mostly prefer to fund associations directly rather than channelling funds via public bodies, the Egyptian authorities have also been trying to "recover" the latter source of funding by encouraging the founding of associations under their own control. A large number of "development" associations have been created for this purpose, especially in the countryside.

Legal framework

The freedom of non-governmental organisations in a wider sense – including political parties and unions – to organise and develop their activities is laid down in the constitution and regulated or influenced by a number of laws, including the Associations Law, the Political Parties Law, the Press Law, the Penal Code, the Emergency Law, and a number of other laws regulating professional syndicates and trade unions.

It is generally agreed that both the Associations Law and the arbitrary way in which it is applied violate Egypt's international legal commitments to uphold the freedom of association. Egypt's membership of the International Labour Organisation (ILO) obliges it to guarantee the rights of free association and collective bargaining. International treaties and conventions that guarantee the freedom of association, expression and assembly, and to which Egypt is signatory, include the International Covenant on Civil and Political Rights; the International Covenant on Social, Economic and Cultural Rights (both ratified by Egypt in 1982); and the African Charter on Human and People's Rights (ratified in 1984).

Constitution

The right to freely associate is enshrined in article 55 of the Egyptian constitution. The article states: "Citizens shall have the right to form societies as defined in the law. The establishment of societies whose activities are hostile to the social system, clandestine or have a military character is prohibited."³ The right to organise in unions and federations is regulated in article 56. Other human rights and fundamental freedoms directly relevant to free association are equally enshrined in the constitution: free assembly (article 54), freedom of speech (article 47), freedom of the press (article 48), and literacy and scientific research (article 49). All of these have been upheld in numerous rulings by the Egyptian Constitutional Court.

Recent years have seen a number of significant amendments to the Egyptian constitution, most of which were widely seen as aimed at securing Mubarak's and the National Democratic Party's (NDP) continuous rule in the future. Most importantly, article 76 of the constitution was amended to allow multi-candidate presidential elections for the first time in the history of the republic. While these amendments were sold by the Mubarak regime as a step towards

³ Constitution of the Republic of Egypt of 2 September 1971 (amended in 1980, 2005 and 2007).

greater democratisation, the final amendments did not provide for fair, competitive elections as they placed draconian restrictions on the nomination of both partisan and independent candidates, the latter apparently in order to prevent the scenario of a too successful Muslim Brotherhood. Moreover, the long-standing popular demands to reduce the current six-year presidential term and introduce a maximum number of terms for the incumbent were not taken into account.⁴ Finally, the latest constitutional amendments of 2007 substantially limited the judicial supervision of elections, and inserted anti-terrorism clauses into the constitution, de facto leading to a devaluation of rights protected by the constitution. The latest amendments in particular were widely considered a “constitutional backlash” by Egyptian human rights and political groups, aimed at securing the incumbent’s rule by means of constitutional manipulation.⁵

Apart from the constitution, a large set of interlocking restrictive laws and provisions, as well as the general political framework, put severe restrictions on Egyptian civil society and, in particular, leave NGOs active in the field of human rights hardly any room to operate. Among the legal provisions that most immediately affect freedom of association are the Associations Law (Law 84 of 2002), the Political Parties Law (Law 177 of 2005) and the Press Law, as well as some provisions of the Penal Code and the Emergency Law, to name only the most important.

Associations Law

The Egyptian Associations Law (Law 84 of 2002) is regarded as one of the most restrictive in the Arab World and has been widely criticised for providing a framework for governmental control over civil society, rather than vice versa. Moreover, the way the restrictive law is phrased is said to have enabled other

authoritarian regimes in the MENA to draft similar laws that allow total control over civil society while maintaining a façade of pluralism.⁶

Non-governmental organisations (NGOs)⁷ and NGO federations come under the provisions of Law n° 84 of 2002 (replacing Law 32/1964), and its relevant Executive Regulation 178 of 23 October 2002. Law 84 of 2002 distinguishes between two types of non-profit organisations: associations and civic foundations. Article 1 defines an association as any “group with an organisation continuing for a specific or unspecific period and formed of national or juridical persons, or both together, whose number is not less than ten in all cases, for a purpose other than gaining a physical profit.” A civic foundation, according to article 56, is established on the basis of a financial fund “for a definite or indefinite period for the realisation of a purpose other than physical profit (...).” The main differences between an association and a civic foundation are thus that the former is a membership organisation with an elected board of directors, while the latter requires initial founding capital and has an appointed board of directors. Where not otherwise specified, the rules applicable to associations generally also apply to civic foundations.

Registration

The overall competency of registering associations and overseeing their activities formally lies with the Ministry of Social Solidarity (and the Governorates at the local level). Law 84 foresees that at least 10 founding members are needed to found an association. These have to submit a registration dossier to the Ministry that includes a number of clearly outlined points of information and documents. Upon submission of the dossier, the Ministry is obliged to check that it is complete and then provide a receipt of submission. If, after a delay of sixty days, the applicants have not

⁴ See also Amr Hamzawy: ‘Arab Constitutional Manipulations’, Arab Reform Bulletin, Carnegie Endowment for International Peace, 9 January 2009.

⁵ For a detailed analysis of the latest constitutional amendments, see Nathan J. Brown, Michele Dunne and Amr Hamzawy: ‘Egypt’s Controversial Constitutional Amendments’, Carnegie Endowment, 23 March 2007.

⁶ See also Dina Guirguis: ‘NGO Bill Imperils Civil Society Funding’, Arab Reform Bulletin, Carnegie Endowment for International Peace, February 2009.

⁷ For the purpose of this report, the term non-governmental organisation (NGO) is used to describe all Egyptian civil society organisations, whereas the terms association and civic foundation refer to the two categories used in the Egyptian Associations Law (Law 84 of 2002).

received any notification from the Ministry, according to the law, the registration is deemed to be accepted and obtains legal status (articles 2-6). In other words, the law establishes a regime whereby no prior authorisation from the authorities is required, but rather a mere declaration on the part of the founders of the NGO.

If the registration of the association is refused, the Ministry of Social Solidarity must give the reasons for this decision. Article 11 of the law states that an application can be refused if the association's purpose is that of "forming military or paramilitary detachments or formations", or "threatening national unity, violating public order or morals", or "calling for discrimination between citizens because of race, origin, colour, language, religion or creed". A refusal of the registration of an association, stating the reasons, must be communicated to the applicant within sixty days from the date of application in the form of a certified letter acknowledging receipt of the application. The applicant is entitled to contest the refusal before court within sixty days from the date of notification (article 11).

Internal governance

Article 34 of the Law foresees that the Ministry of Social Solidarity may raise objections to the board members proposed by an association. The Ministry must be given at least six days notice in advance of board elections, and be provided with the names of all the candidates. The Ministry of Social Solidarity, or in fact "any interested party", may exclude certain candidates from nomination. In contrast to the regulations for associations, the board of a civic foundation is internally appointed by the founding members and no public bodies may, according to the law, interfere in their selection. In consequence, civic foundations have become a relatively more popular legal form than associations.⁸

Activities

According to article 48 of the Executive Regulation, once it has obtained legal status, the association can

engage in the full range of its activities. The field in which an association is entitled to develop its activities must be laid down in its statutes, within the boundaries of the law and the restrictions outlined above. Furthermore, article 11 of the Associations Law forbids associations from exercising any activity restricted to political parties or syndicates according to the Political Parties Law or the Trade Unions Law, respectively. Likewise, associations are not entitled to seek profit beyond the revenue necessary for the realisation of the association's objectives.

Funding

Article 17 of the Associations Law imposes high restrictions on funding as it allows associations to receive funding from abroad only after explicit prior clearance by the Minister of Social Affairs. The article states: "The association has the right to receive funds; fundraising is permissible by natural or legal persons after the administrative entity's consent and abiding by the executive regulations of the law. By all means, it is not permissible for associations to receive funds from abroad either from an Egyptian or foreign persons or a foreign body or its representative. None of the aforementioned should be sent to the individuals or organisations above until it is authorised by the Minister of Social Solidarity (...)". Contrary to the case of registration, the law is not clear on what happens if the Ministry fails to reply to an association's request to approve a foreign grant, or whether a prolonged silence equals the granting of approval. In practice, therefore, when the authorisation is not given, the funds remain frozen.

Fiscal regime / taxation

According to article 13 of the Associations Law, associations legally registered under this law enjoy substantial tax exemptions, including on contracts, delegations, correspondence and other matters, as well as from customs, other import taxes and donations (by decree of the Prime Minister). Moreover, they are free from registration and booking fees and enjoy a number of other reductions and special tariffs on phone, transportation, water, electricity and gas bills.

⁸ Other internal governance and administrative procedures are specified in detail in the Executive Regulation articles 81-90.

Dissolution

The dissolution of associations is regulated in articles 41-47 of Law 84/2002. The decision can be taken by the Ministry of Social Solidarity and does not require a court ruling. The grounds on which a legally registered association can be dissolved are listed in article 42:

- “Disposing of its property and funds or appropriating them for other than the purposes it was established for;
- Acquiring funds from, or sending funds to a foreign quarter, in violation of the provision of clause 2, article 17 of this law;
- Committing a serious violation of the law, or public order or morals;
- Joining, participating in or affiliating with a club, association, authority or organisation whose seat is located outside the Arab Republic of Egypt (abroad) in violation of the provision of article 16 of this law;
- Establishing that the reality of its purposes is targeting or exercising one of the activities banned in article 11 of this law;
- Collecting donations in violation of the provision of article 17, clause 1, of the present law.”

The Ministry of Social Solidarity has extensive powers to halt the association’s activities, discharge the board and/or remove the cause of violation by simple decree (article 42). Article 47 further states: “Subject to the provision of article 44 of this law, the members of the dissolved association and any other person in charge of its administration shall be prohibited from continuing its activity or disposing of its funds and property. All persons shall also be prohibited from participating in the activity of any association that is already dissolved.” In order to appeal the decision, the NGO may not go to court directly but must first take the case to a three-person dispute committee. If the committee has not decided on the issue within sixty days, the NGO may take the issue to the Administrative Court (article 7).

Public utility

The status of public utility or public benefit is regulated in article 48-53 of the Associations Law. Article 49

states: “Any association visualising the realisation of a general interest upon or after its foundation may be vested with the quality of public benefit, by decree of the President of the Republic, upon the request of the association, or of the administrative authority or the General Federation for Associations and Non-Governmental Institutions (...).” The privileges enjoyed by associations of public benefit are determined by decree of the President of the Republic. The main difference from associations which do not have this status is that the funds of associations of public utility are considered public funds. The public authorities therefore claim a number of prerogatives, such as stronger control and oversight of activities and funds. On the other hand, the status of public utility is a guarantee of permanence for the association and promises smooth relations with the Ministry of Social Solidarity. It is, however, of little practical relevance as it is given only to a handful of charity associations.

Other legal forms

Confronted with the substantial practical constraints underlying the registration and development of associations, many NGOs (especially the ones working in politically sensitive areas) have been registering under legal forms other than the Associations Law. The most common of these is registration as a private company, usually restricted to societies pursuing commercial and economic activities. This is the legal form of some research institutes and the majority of organisations working on human rights issues. In practice, the most active human rights NGOs are those that are not registered under the legal form of an association.

In order to escape the harsh provisions, and particularly funding limitations, of Egyptian legislation, many NGOs have registered as foreign associations with a branch in Egypt. Some have registered several times under different hats, so that if they are dissolved as one legal form, they can continue under the other. However, in order to prevent NGOs from escaping the restrictive supervision of the Associations Law, the provisions of the 2002 Law foresee that any “group whose purpose includes or that

carries out any of the activities of the aforementioned associations or institutions, even if it assumes a legal form other than that of the associations and institutions, shall adopt the form of an association or institution, and amend its articles of incorporation accordingly and submit an application for its registration" within a period of six months, otherwise it can be dissolved (article 4). The law further states that "whoever established an entity under any name to carry out the activities of the associations or non-governmental institutions without following the provisions prescribed in this law" can be imprisoned for up to six months (article 76). In practice, the non-registered NGOs ignore this regulation on a de facto basis, and the law is being selectively enforced by the authorities on this point.

Penalties

Law 84 establishes extensive penalties, including prison sentences, for a wide range of ill-defined conditions. Anyone who establishes an association running clandestine activities, or who develops his activities outside of the boundaries of article 11 or the law, can be punished with imprisonment of up to one year and a fine of up to ten thousand Egyptian pounds. Activities that can be penalised with up to six months imprisonment include the development of association activities under a different legal form, engaging in the activities of an association that has been dissolved, or receiving funds from abroad. Activities that can be penalised with up to three months imprisonment include initiating activities prior to completed registration, or becoming affiliated with a foreign organisation without notifying the Egyptian authorities (article 76).

Foreign associations

Article 1 of Law 84/2002 stipulates that "Foreign non-governmental organisations may be licensed to exercise the activities of associations and non-governmental institutions", subject to the provisions of the Associations Law. The registration of foreign associations falls under the competence of the Ministry of Foreign Affairs. Foreign organisations may choose to found a local association under Egyptian law via an

Egyptian partner, who will be accountable to the Egyptian state. Alternatively, they may choose to establish a branch by signing a convention with the NGO department of the Ministry of Foreign Affairs. In practice, this is a very lengthy and unpromising process. Human Rights Watch, for example, has unsuccessfully been trying to establish a branch in Egypt for several years.

Political Parties Law

The Political Parties Law (Law 177 of 2005), combined with the general government policy of putting major constraints on the registration process, impedes the emergence of a truly pluralistic electoral choice. Currently there are 24 political parties legally registered. Registration of new political parties, however, is very restrictive and, in particular for potentially powerful opposition forces, a hopeless matter, given that the ruling party de facto controls the registration process. The formal responsibility for registering new parties lies with the Political Party Committee (PPC), the members of which are nominated by the Shura Council. But as the Shura Council is permanently dominated by NDP members, the latter indirectly decide over the registration of new parties. In practice, this means that the registration of a new political party is close to impossible.⁹

The restrictiveness of Law 177 also weakens existing opposition parties in several other ways. Under democratic conditions, when there is a major ideological split in an existing party, factions can break away and form a new party. In Egypt this is not an option, as the formation of new parties is practically impossible, and existing parties are forced to stick together, deal with great internal divisions and compromise. This not only strongly limits their efficiency, but also contributes to further worsening the image of Egyptian political parties in public opinion. However, a reformation of Law 177 is not currently on the agenda.

⁹ For more detail on the Political Parties Law, see Human Rights Watch: 'Monopolising Power: Egypt's Political Parties Law', Human Rights Watch, Number 1, January 2007.

Key obstacles to free association

Law 84 (2002) puts severe restrictions on associations. On top of the draconian legal constraints, the frequent non-compliance with those provisions of the Law aimed at protecting NGOs against the state, as well as numerous legal loopholes that allow arbitrary behaviour on the part of the authorities, make practice even more repressive. This all combines to create a legal framework in which the state can dominate NGOs at will, and which aims to strike a balance between securing strict state control over civil society while maintaining a minimum image of liberalism.

With all efforts to bring about a reform of the Associations Law, it is well known that major obstacles to freedom of association in Egypt lie outside of the margins of the law. The legal and political framework in which Egyptian NGO activity takes place is dominated by the absolute powers of a factual one-party rule that severely limits basic human rights and fundamental freedoms in the name of security and uses a shallow democratic discourse to gain domestic and international legitimacy. Placed within this overall repressive framework, even an associations law perfectly in line with international human rights standards would be no guarantee for improving the situation of Egyptian NGOs.

The restrictive law and the arbitrary practice of implementation form but one important piece of the puzzle in an overwhelmingly repressive environment where arbitrary decisions prevail over the rule of law. The fate of outspoken dissenters is dictated by the security services, which exert substantial influence over all processes concerning the registration, activities and funding of NGOs, without a legal basis beyond the vague provision of the maintenance of "public order", and the broad mandate bestowed on them by the permanent

warfare of emergency rule.¹⁰ To this general framework it is important to add the current situation of the anticipated power shift after Mubarak's retirement or death, the outcome of which remains extremely unclear. This scenario has significantly tightened the regime's grip on dissent and led to a series of recent clampdowns on Islamists, journalists, bloggers and NGO activists.

Provisions and implementation of Law 84 / 2002

The provisions of the Associations Law outlined in the previous chapter inhibit the free establishment and development of Egyptian NGOs. "The law is an accumulation of restrictive regulations, administrative barriers and procedures that represent an unreasonable burden on NGOs and substantially reduce, if not eradicate, their room to operate, and offer wide space for arbitrary practices":

Registration & dissolution

- Restrictive registration process: The registration process with the Ministry of Social Solidarity is arbitrary and tiresome, and some human rights NGOs have had to struggle for years in order to get their registration through. This imposes unacceptable constraints on their work, as non-registered NGOs are unable to function. While the formal responsibility lies with the Ministry, in practice everything considered to be of political significance is automatically referred to the secret services, which exercise an extra-legal role in this regard. This, in turn, makes it impossible to take legal measures against their decisions. In order to escape the harsh limitations under Law 84, NGOs register in the legal form of a law firm, a non-profit company or a research centre, among others. Others establish themselves as branches of Europe-based paper companies. Yet others undertake a year-long struggle finally to be registered under the Associations Law.

¹⁰ See Human Rights Watch: 'Egypt: Margins of Repression. State Limits on Nongovernmental Organisation Activism', Human Rights Watch Vol. 17 N°8, 2004.

Fear of alienating the authorities and the wish to avoid problems and harassment largely contributes to making NGOs seek legal registration, in spite of all the restrictions.

- De facto authorisation: The law formally requires only a notification of NGO registration (regime of declaration), as opposed to a licensing process subject to approval (regime of authorisation). According to the law, the NGO is automatically legally registered sixty days after its application is submitted to the Ministry if the latter does not raise any objections. In practice, however, a lack of response from the Ministry is equivalent to non-registration, as NGOs can barely function without an official registration number, and non-registered groups are banned from conducting their activities. Moreover, for some external donors, legal registration as an association is a prerequisite for receiving funding. With an official rejection letter from the Ministry, NGOs can go to an Administrative State Council and file a complaint. Without such a letter, or without receipt of their application in the first place, they have no legal remedy.
- Vagueness favours abuse: "The vague provisions of 'threatening national unity, violating public order or morale' in article 11 provide generous loopholes for arbitrary interpretations as to the grounds on which an NGO or its activities can be declared illegal. The provisions of article 11 are so vague that they are giving the authorities and the secret services unlimited powers to dissolve NGOs and to harass activists."
- Easy dissolution: In procedural terms, Law 84 allows the dissolution of NGOs by administrative order. Under international human rights standards, a court ruling would be required to dissolve an NGO.

Activities

- Prison penalties: The law establishes significant custodial penalties for engagement in the activities of a non-registered NGO.
- Interference in internal governance: The Law establishes government interference with regard to associations' board elections and other internal organisational decisions.

- Narrow scope of activities: The law significantly reduces NGOs' scope of permissible activities, prohibiting NGOs from engaging in "political" or unionist activities.
- Thematic and geographical clearance: The Law requires prior permission from the authorities for NGOs to expand their thematic and/or geographical scope of work.
- No foreign affiliation: The Law forbids affiliation or cooperation with foreign organisations.
- Burdensome reporting: The Law establishes a complicated, lengthy reporting system which imposes an inappropriate burden on small and/or underfunded NGOs in particular.

Funding

- Previous clearance of foreign funds: The law requires prior government clearance for foreign funding on grounds other than tax and customs, without clear and transparent criteria. As authorisation is rarely ever given to NGOs working in politically delicate fields, the provision equates to a prohibition of foreign funding. Given the insignificant domestic public funding options, NGOs must thus rely on private donations from domestic businessmen, or have to use illegal international funding, which entails a substantial risk both for the continued existence of the NGO and for the individual activists.
- No legal resources: The law fails to establish clear procedures as to what happens if the authorities withhold their response to a foreign funding request. In practice, whenever there is no reply, the funds remain frozen. The lack of clarity in the law on this point thus provides a convenient loophole for the authorities to bar funds from abroad without having to issue a formal prohibition.

2007 saw the enforced closure of two human rights NGOs, the Association for Human Rights and Legal Aid (AHLRA) and the Center for Trade Union and Worker Services (CTUWS). It was the first time in 25 years that a legally registered human rights organisation was shut down by the Egyptian authorities. AHLRA had been legally registered under Law 84, but began to get into serious trouble when it

started working on torture cases, for it was very outspoken and filed torture cases against state security officers. It was closed by an administrative decision in September 2007, but eventually won its appeal against the closure decision before the State Council in October 2007. However, at the time of writing, the decision has not yet been implemented, following appeal by the authorities. The CTUWS had been closed by the Ministry in March 2007 over its role in the massive workers' strikes in the delta region in Upper Egypt. The government closed the NGO on the grounds that it was not registered as an association but as a private company. A court allowed it to reopen in March 2008, but it was not before June 2008, following three months of CTUWS's negotiations with the security services, that the regime finally accepted the ruling and allowed CTUWS to reopen.

The popular movement Kefaya has a special role within Egyptian civil society as it is an informal, ad hoc mobilisation mechanism with no fixed structures, members or headquarters. Alongside the formal legal structures of parties and NGOs, the idea of the mobilisation movement was also born. Its lack of formal organisation brings a number of very tangible advantages that partly undermine the harsh operating conditions imposed on Egyptian civil society by the regime. The lack of an organisational structure deprives government and secret services of their main NGO control mechanisms of registration, monitoring and reporting, limiting activities and clearing funding. Moreover, the harassment of targeted security agents becomes difficult as there are no NGO premises to shut down, no central assets to seize, no listed founders and members to prosecute, and no funding to authorise. Moreover, the lack of formal structures keeps expenses very low, so they can be covered by private domestic donors and require no extra external funding.

Observers agree that Kefaya, which, for a brief moment in 2004/5, was able to nurture the people's hopes for a democratic Egypt, has now lost most of its clout. However, the movement's great achievement was – according to one of its founders – to “break the culture of fear”. By going on the streets and demonstrating,

citizens “learned to exercise their constitutional rights”. The group opened the gates for political mobilisation, an achievement which has been benefitting other groups ever since. An emerging young generation of blogging and demonstrating activists is growing strong, and they are building on Kefaya's achievement and techniques of mobilisation. Lately, Kefaya veterans report, the grounds for mobilisation are becoming more theme- and sector-specific. At the same time, younger generations of political activists are succeeding in taking over and applying the innovative mobilisation techniques first used by Kefaya. In 2008, groups of factory workers managed to mobilise on the grounds of the deteriorating socio-economic situation. A joining of forces of all of these groups against the quality of Mubarak's governance may have huge potential in theory, but as of yet it does not appear likely. Kefaya veterans are aware of the great advantages of their organisational form and have occasionally expressed criticism of the traditional Egyptian NGO community, which they say has been largely shaped by the burdens placed on it by the regime, to the detriment of a dynamic, innovative activism.

The situation of political parties is not much better than that of NGOs. Currently, there are twelve political parties fighting before the Supreme Administrative Court of the State Council to push through their registration. However, most of them filed their application for registration prior to the 2005 amendments, so their applications are now outdated as they were based on the previous legal provisions. Now they have to meet the new requirements, which include a “distinguishing clause”: to be registered as a new party, aspirants have to show that they substantially differ from existing parties, thus adding value to the party landscape. But the law is very vague as to what that means.

The most prominent examples are the moderate Islamist party Wasat (a Brotherhood offspring), and Karama (a splinter from the Nasserist party), both of which are critical of the regime and have been applying for a licence for years. Karama applied in 1998 and

was rejected. On the second attempt, the group's application was acknowledged by an official receipt, since which – on the basis of current legislation – the group considers itself a legal party. Wasat, on the contrary, did not receive any receipt, and thus has no access to legal resources. The group keeps on fighting for legal registration.

The Muslim Brotherhood (MB) has been banned as an association since 1954. They have never officially attempted to register as a party, and only lately expressed their aspirations to do so. In their discourse, freedom of religion, but also of expression and assembly, are more dominant themes than free association. As an illegal organisation, the Brotherhood is subject to all kinds of clampdowns and its members face massive harassment in the form of surveillance and monitoring, travel bans, arbitrary arrests, and unfair military trials, all in the name of national security. On the other hand, for the MB there are also a number of tangible advantages to being outlawed, including the absence of fiscal and financial accountability requirements and funding restrictions. Currently, the MB does not depend on (and does not usually accept) foreign public funding, as it is financed via private donations and through its charities. However, it is very likely that in financial terms, its outlawed status is a great advantage. For this reason, even if the government allowed the group to register as a party or association, there would likely still be no internal consensus. The relationship between the MB and Egyptian human rights NGOs is rather ambiguous: apart from differences between both regarding religious rights, the MB resents that the Egyptian human rights community does not defend them more in the face of the recent crackdown on MB members. Historical reasons (dating back to the antagonism between the previously fundamentalist MB versus leftist human rights activists) play an important role here. Most importantly, in a barely veiled reaction to the MB's strong performance in the 2005 parliamentary elections, the 2007 constitutional amendments forbid not only the establishment of political parties but of all political activity that is based on religious principles.

Extralegal role of the security services

While the Ministry of Social Solidarity is formally in charge of NGO affairs, in practice it deals with their daily matters by permanent interference through the State Security Investigations (SSI) via demands, questions, orders etc. The SSI interferes massively in any matter of political significance and plays a central role in determining the fate of NGOs. Its interference is greatest with regard to politically significant issues such as the decision over whether to register a new association, nominate board members or allow foreign funding. Not the Ministry of Social Affairs but the SSI has the last word on any matter considered "political". The Minister of Social Solidarity himself takes his orders from the SSI and the Ministry of the Interior. Crucially, the massive interference by the SSI lacks any legal foundation. The SSI de facto controls not only the registration of new groups but also implements a policy of systematic monitoring and harassment of existing NGOs.¹¹ Activists also report a "culture of harassment" in the Ministries and the SSI, as well as anticipatory obedience to the perceived wishes of the ruling establishment. The Ministry of Social Solidarity also issues a lot of decrees imposing additional measures of harassment on NGOs, for example the Decree of Social Solidarity that forbids contacts with foreigners. Most NGOs interpret these as attempts at intimidation, and therefore try to ignore them as best as they can without jeopardising their own survival.

In practical terms, the influence and harassment of both the Ministry of Social Solidarity and the SSI are being felt by NGOs on a daily basis. For example, the SSI has given instructions to all hotels to notify it of any meeting held by an association working on human rights, and in many cases the security services have prohibited and/ or prevented the meetings. The SSI is

¹¹ For more details on the SSI's role see also Human Rights Watch: 'Egypt: Margins of Repression. State Limits on Nongovernmental Organisation Activism', Human Rights Watch Vol. 17 N°8, 2004.

becoming increasingly involved in NGO activities. NGO meetings at hotels rarely take place without the presence of an agent questioning participants. Only lately, this harassment has been extended to international/foreign NGOs, such as Freedom House or Transparency International. The harassment of human rights NGOs by secret service agents also creates additional funding problems: whenever private businessmen want to donate funds to one of those NGOs, they are systematically harassed, and on many occasions this has led them to withdraw the funds.

Furthermore, not even the Ministry of Social Solidarity bureaucrats appear to be clear about the legal provisions for NGO registration. This lack of knowledge is illustrated by the fact that, on occasion, official letters of rejection of the registration of an NGO state the security services' disapproval as the official reason for rejection. NGOs also report that the Ministry of Social Solidarity blindly follows security service orders, at times blaming restrictive stances on an order received from the latter.

Permanent state of emergency

Since 1981 the president has exercised his powers under a continuous state of emergency, the renewal of which has been successively approved by the Parliament. The Emergency Law 162 of 1958, the Anti-Terror Law 97 of 1992, and a number of related military decrees, together give the authorities far-reaching powers to arbitrarily and systematically curb human rights and fundamental freedoms in the name of national security. Arbitrary arrests on the grounds of upholding "national security" or "public order", prolonged detentions, far-reaching media censorship, prohibition of strikes, demonstrations and electoral campaigns, the use of violence against people who are peacefully exercising their constitutional rights, and the referral of civilian cases to military courts, are just a few of the far-reaching powers the authorities can exercise with impunity. According to Human Rights groups, the state holds at least 10,000 people detained without charge on the basis of the emergency law.

Over the past seven years the Emergency Law has not been directly used against human rights groups, but there are still a number of serious concerns pertaining to the state of emergency that have affected civil society. First, arbitrary detention (powers under the state of emergency) has been used widely over the last three years against civil and political activists. Second, some articles in the Penal Code have been used to prosecute rights activists on the grounds of national security (for example, the prominent activist Saad Eddin Ibrahim was prosecuted in 2008 on the grounds of threatening national security and spreading false information about Egypt abroad, thereby harming national interests). Third, rights activists report an increasingly intimidating tone on the part of officials towards human rights defenders who are engaged with International Human Rights mechanisms, and who are being accused of espionage or of threatening the national interests of Egypt (for example, statements made by Egyptian officials after the adoption of a critical resolution on Egypt by the European Parliament in early 2008, for which Egyptian rights activists had provided substantial input).

On numerous occasions, including during his presidential campaign of 2005 and in the run-up to the elections for Egypt's membership in the UN Human Rights Council, Mubarak made pledges to end the permanent state of emergency. The government claimed that the old Emergency Law 162 (originally drafted by the Sadat government to secure safe rule in war times) would be amended to form a modern counter terrorism law. However, none of these pledges were ever fulfilled. As Prime Minister Ahmad Nazif claimed that the drafting process of the new anti-terror law needed careful attention and could not be finished in time, the state of emergency was again renewed in May 2008 against vociferous objections from the opposition and human rights groups. At the same time, rights activists are sure that the coming anti-terrorism law will substantially limit the space of civil society even further.

Approaching power shift

The restrictive provisions of the Associations Law and other relevant legal provisions, their arbitrary application in practice, and the overly dominant role of the security agencies create a highly difficult environment for NGOs to operate in. In addition to this, the space of NGOs, political parties and the media has substantially narrowed since the 2004/05 liberal peak. In a blatant reversal of the period of political opening in the first few years of the millennium, the past few years have seen the Constitution amended, laws modified, and activists, journalists, bloggers, union leaders and Islamists jailed and condemned to harsh prison sentences. Further restrictions are also underway. To some extent, all of these measures are an expression of the regime's nervousness with regard to the approaching power shift. The regime is responding with a new wave of repression to the emergence of a massively successful political opposition (the Brotherhood in parliament, Kefaya on the streets) as the end of the Mubarak era is expected to lead to a political shift. This constellation has driven the country into a political stalemate in which all prospects of meaningful political reform appear frozen, or even in retreat.

In discussions among Egyptians, several possible scenarios emerge. The most common is a hand-over of power to Hosni Mubarak's son, Gamal Mubarak. As nobody can rule Egypt without the backing of the military, a take-over of the military via an acceptable non-civilian candidate seems another likely option. Finally, if the establishment is unable to agree on a successor in time, the emergence of a power vacuum and struggle, resulting in public riots and chaos, is another possibility. While Gamal appears to be the most likely candidate, several factors work against him. The NDP is not prepared for Gamal's succession, there is public rejection of Gamal as the next president and, in addition, it is not even clear what exactly his profile would be. But most importantly, the military establishment has repeatedly ruled out being commanded by a civilian leader, and rejects a direct succession just like the general public. Looking ahead

to a future of great insecurity, the moment of "succession" is feared by the regime and opposition alike.

The current marked stalemate within the political opposition both reflects and influences the freezing of Egyptian political life as a whole. The generational divide within the parties contributes significantly to this scenario: the leaders of all the parties are around 70 or 80 years old, but Egypt's population is becoming younger and younger, thus also leading to a rift within the parties as the generation of younger leaders are rising and increasingly questioning the leadership of the old guard. The parties' focus on their own respective internal divides is reducing their attention to and capacity for dealing with societal problems.

Contrary to the political opposition, the NDP does not suffer from the same divisions and internal struggles as others – on the contrary, they are united in their wish to maintain the status quo. The main reason for this is that the NDP is a benefit community rather than an ideological community, so its members do not mainly share ideological principals or political convictions, but rather a determination to advance their interests and obtain tangible advantages and benefits, which can only be secured through the maintenance of the current power constellation.

Under these conditions, it is only logical that the authorities perceive the anticipated change as a danger. Their interest does not lie in democratisation but, on the contrary, in the maintenance of the status quo. They do not foresee the inevitability of change – indeed, any sense of inevitability would be perceived as equalling chaos and anarchy – and they are therefore taking increasing measures to reassert the control that has been reduced over the past decade. At the same time, they are keen to learn from their international authoritarian partners on how to manage a "safe transition". The result is the consolidation of an increasingly sophisticated authoritarian soft power toolbox that is flanked by a renewed resort to open repression to prepare for a smooth succession.

The role of civil society is often understood as a mediator between the state and society. In order to fulfil this role, NGOs that aim to bring forward reforms must aim to establish a critical but constructive relation with the authorities. The frequency, quality, mechanisms and institutions in which this takes place determine the extent to which NGOs can be effective societal mediators.

State – civil society relations

Reflecting a general trend in the MENA region, the Egyptian state's attitude towards political civil society has over the last two decades switched from open repression and total rejection of human rights activism in the 1990s towards an attitude aimed at more subtle forms of containment. In spite of this comparatively positive development, Egyptian NGO activists report that the traditional suspicion of the authorities vis-à-vis politically active NGOs, as well as their lack of incentives to give civil society a meaningful stake in the process of political decision-making via systematic consultation, still inhibits the emergence of regular, productive consultation mechanisms that lead to tangible results. A systematic dialogue between NGOs and the government on reform issues is not taking place. Dialogue happens occasionally on an ad-hoc basis, and human rights and advocacy NGOs were able to press for a number of steps to be taken by the government, including the establishment of a National Human Rights Council, and the government's agreement to allow the monitoring of the 2007 elections. In spite of such selective gains, however, rights groups complain about the ad hoc nature of consultations, the lack of follow up, and the one-way nature of dialogues (which are always organised and managed by the Ministry of Social Solidarity). NGO activists report that such meetings are rarely real consultations for planned legal reforms but "include only stuff that has already been cooked" (as happened in the cases of consultations for Law 84 and the

Constitutional amendments, among others). As such, activists claim that these meetings are PR appointments for the government, which serve the sole aim of conveying a liberal message to the West.

On the institutional side, a National Council for Human Rights (NCHR) was created in June 2003 as a dialogue forum on human rights and an interface between the government and civil society. Institutionally subsidiary to the Shura Council, the NCHR is officially "independent in practising its functions, activities and jurisdictions". Among the Council's members are a number of prominent human rights activists. NGO activists across the board complain, however, that the newly founded National Council for Human Rights has been used as a forum for holding meetings of Egyptian NGO representatives with foreigners to convey the message: "we know we have some problems, but all things are moving in the right direction". Some of the initial NGO board members resigned out of fear that membership of such an institution might be harmful to their reputation. Rights activists also criticise the NHCR for being more interested in meeting foreign than national actors and for helping to shield the government from international criticisms. The NHCR also plays a critical role in selecting the NGOs entitled to monitor elections or to engage in other significant activities involving national and international actors.

There is a consensus among civil society, however, that any successful lobbying for reform proposals requires the systematic establishment of contacts within the relevant authorities. Indeed, the only institution able to organise regular NGO dialogues with meaningful government participation has been the National Council for Human Rights. On the one hand, this is of course due to its closeness to the regime, almost as a governmental institution. On the other hand, many among its members do try to work towards facilitating dialogue and lifting some restrictions on NGOs. While the Council may have little added value in the existing human rights NGO landscape, the little added value it does have lies precisely in establishing contacts with the authorities.

Many NGO representatives report that “dialogue” between civil society and the regime is already taking place, as they have been in contact with the people in charge at the relevant ministries for some time. They emphasise that in their relationship with the Ministry of Social Solidarity, dialogue is not an achievement in itself, because such an approach would but mirror the strategy of the regime to replace action by talking. The problem, NGOs report, is not the lack of conversation, but the lack of follow-up. Indeed, many activists therefore say that the combination of dialogue without intention of implementation reflects a deliberate tactic on the part of the authorities that aims to provide a safety valve for opposition demands and to reconcile a reformist image with the maintenance of the status quo. NGOs are aware that they are the weaker party and depend on the authorities’ good will to receive and consider NGO proposals. For this reason, according to activists, they always ask the authorities to tell them what they want but never get a clear and concrete answer. Instead, government representatives repeat the same lines, asserting their esteem and support for freedom of association in a general manner. For this reason, there is a sense of disillusionment and cynicism among the NGO community with regard to further dialogue attempts. Debates with regime representatives are seldom useful, they say, because they lead to nothing and actually form part of the regime’s strategy. Human rights activists report that in the run-up to the latest round of Constitutional amendments, they went to approximately 20 conferences about the amendment of the Constitution, but in the end, none of the many proposals made by civil society was taken into account.

In spite of this disillusionment, civil society at large remains aware that it is part of its role to mediate between the government and society, and remains open to dialogue and cooperation. However, most activists say that if mediation and cooperating with the regime means turning a blind eye to rights violations, they cannot accept it. The government has obvious reasons for why it makes it so difficult for NGOs to lobby for their proposals: there is no genuine incentive for the government to take those proposals into account, and even less so if these proposals imply a substantial

reduction of effective government control over NGOs. According to the specific issue on the agenda, the government appears more or less open to negotiate on issues such as women and children’s rights. However, when it comes to more narrowly political issues that have the potential to empower the opposition, such as freedom of association, the door to genuine negotiation remains shut. The authorities are aware that granting the right to truly free association and expression would likely end up jeopardising the regime.

At the same time, international NGO representatives in Cairo report that the Egyptian NGO community is often internally divided over the best strategy to adopt, and the rather static stances of some leading players at times reduce the possibility of successfully conducting dynamic, strategic lobbying with the regime. Indeed, human rights activists themselves complain that one of the greatest weaknesses of Egyptian NGOs is that “they do not work together very effectively”, and therefore a “powerful collective advocacy is absent”. In terms of institutions, the lack of an overdue nationwide NGO network or platform may have contributed to the difficulties of fostering unity and consensus-building among Egyptian civil society and channelling national NGO demands effectively in a common direction. An embryonic structure of such a platform was organised in 2008 by one of the main Cairo human rights organisations, with the intention of institutionalising this mechanism and filling this gap in the Egyptian civil society landscape.

More recently, rights activists report that constructive relations between the state and civil society are put under further constraint by an emerging trend of the government to marginalise government-critical Egyptian NGOs internationally and prevent their effective participation in international and regional Human Rights mechanisms.¹²

¹² For example, under the framework of the Euro-Mediterranean Partnership (the ‘Barcelona Process’), the Egyptian government voted against the representation of NGOs at the review process of the Istanbul Action Plan on Women’s Rights. Numerous other examples are documented at the UN Human Rights Council.

Local calls for reform

Intense local lobbying led the government in 1998 to initiate a process to reform the suffocating provisions of the previous Associations Law of 1964. The relatively open Minister of Social Solidarity at the time initiated a rather superficial consultation process with civil society over six months. At the end of these consultations, civil society submitted a draft law to the Ministry and to the NDP. The law eventually adopted by the cabinet, however, did not include most of the relatively liberal provisions of the initial draft from the Ministry of Social Solidarity. Brought before the Constitutional Court of Egypt in 1999, the law was declared anti-constitutional. A hastily amended version of the law was eventually adopted, namely Law 84/2002, as it is currently in force.

While having erased some of the harshest provisions of the previous law, Law 84 is still considered one of the most repressive associations laws in the Arab world. Widespread criticism has therefore led the Egyptian government in recent years to work on a set of new amendments to the bill. A commission was set up at the Ministry of Social Solidarity to discuss the issue and draft the amendments. However, after several years of debate on a renewed reform of the Associations Law, no clear outcome has yet been shown, and no official draft law has been made public. However, it is possible that a new draft law prepared by the Ministry may be introduced in parliament before the end of the parliamentary session in summer 2009.

Expectations for the new law are mixed. While it is likely that some of the harshest provisions (including the restrictive registration process and the ban on “political activities”) will be eased, it is widely expected that, overall, the new Law will impose further restrictions on NGOs. In particular, civil society representatives fear that the new amendments will include provisions aimed at curtailing NGO funding from abroad by greatly enhancing government oversight over NGO funds, which would have far-

reaching consequences for many Egyptian NGOs that largely depend on foreign sources for their financial survival. In addition, some civil society activists fear that the law might further increase the role of the SSI in monitoring NGOs by making its role explicit.¹³

In order to provide input to the drafting process of the new law, Egyptian civil society has brought forward a number of initiatives and coalitions, often in collaboration with international donors, which have produced a series of concrete proposals regarding the upcoming amendments to Law 84. Several of these initiatives have drafted amendments to Law 84 or produced entirely new draft laws. Initially, internal divisions and disagreements on priorities, methodology and the best approach prevented the main human rights NGOs from effectively joining forces and agreeing on a common proposal. While the legal proposals of the three main initiatives shared a basic consensus on the reform requirements, they did not join forces initially. However, in late 2008, two of the main initiatives (a coalition of over 150 NGOs) agreed on a common draft law to be proposed to the Ministry as a replacement for the current legislation. The coalition is led by the Cairo Institute for Human Rights Studies (CIHRS) and the Egyptian Organisation for Human Rights (EOHR). Both organisations are well respected by both the regime and society, and are therefore considered well suited to putting forward this initiative.

There are several points that are deemed by a broad consensus among civil society to be the most urgent requirements for the new draft law:

1. It must **exclude prison sentences**;
2. It must **effectively establish the regime of declaration**, plus the necessary safeguards to ensure its implementation;
3. It must **not impose any restrictions on domestic or external funding**.

¹³ See Dina Guirguis: ‘NGO Bill Imperils Civil Society Funding’, Arab Reform Bulletin, Carnegie Endowment for International Peace, February 2009.

Moreover, on a more technical note, NGOs agree that it should not be too overregulated (reflecting a common criticism from legal experts). The above mentioned principles also reflect international standards of NGO legislation, to which the Egyptian government has subscribed via its international legal commitments. The NGO coalition asks the government to comply with those commitments, "trying to bring about a shift in NGO philosophy".

Further specific requirements included in the NGO coalition's draft law include the following:

- A substantial reduction in the preconditions needed to establish an NGO
- Free choice of thematic and geographical scope
- Registration by certified letter, without possibility of rejection
- The publication of new NGOs in a newspaper (instead of official government bulletins)
- The acquisition of legal status following the signature and declaration of the NGO's by-laws on behalf of its founders
- Objections from the authorities only after effective declaration
- Dissolutions only by a final court decision
- Independent external auditing, with a copy of the final account to the authorities
- Full transparency regarding the NGO's activities upon request
- Full freedom to collect domestic and external funds and donations after notification
- Objections to NGO funding only a month after notification
- Withdrawal or freezing of funds only upon court decision
- Guarantee of full free assembly without government interference
- Full freedom to cooperate and affiliate with foreign associations or bodies after notification
- No custodial sentences
- Sanctions to be applied only upon judicial ruling, within a clear hierarchy of measures
- Establishment of adequate direct legal resources for the NGO to challenge administrative decisions.

Note: The full draft law proposed by the NGO coalition can be found in the annex of the present report.

In order to lobby for their proposals, the NGOs involved invited those in charge at the Ministry of Social Solidarity to several conferences and meetings to discuss the issue, and have also been lobbying with parliamentarians, NDP members and opposition parties. The NGO draft law was delivered to the human rights committee of the Parliament, the prime minister and the minister of social solidarity. However, members of the coalition lamented their reinforced impression that dialogue and consultation led at best to the consolidation of the government's position in being able to claim its commitment to a participative approach. In fact, according to NGO representatives, those they needed to enter into dialogue with on the governmental side were neither the Parliament nor the Ministry of Social Solidarity, but the Ministry of the Interior and the security services, given that formal competencies do not matter at all and sensitive, democracy-related issues such as freedom of association are decided upon by the security services. However, this poses a practically unsolvable dilemma since this extralegal competence rules out both legal resources and the possibility of effective lobbying.

In addition to domestic lobbying efforts, representatives of the NGO coalition have also been engaged in extensive lobbying in Europe, especially with the European Parliament, the African Union and the UN Human Rights Council, in order to raise awareness of the situation. NGOs agree that during the current process, the regime has neither entered into genuine negotiations nor responded to concrete legal proposals. They believe that the stronger reluctance of the government to actively involve civil society, compared to the previous consultation process in 1998, is partly due to the decentralised process whereby it was drafted, which also involved regional and local NGOs. This, they say, "makes the government more afraid." As of March 2009, no reply statement or government draft law had yet been issued.

With regard to the prospects for the success of the NGOs' initiative, there is little illusion in civil society that their proposals will be taken into account. Even if they were, there is no reason to assume that placed within an overly repressive political framework, a democratic Associations Law would actually have meaningful effect on the ground. Moreover, the current political stalemate in Egypt has frozen any impulse for further liberalising reform and appears, rather, to feed the regime's intentions to reverse the timid democratic gains of the past years. The few who entertain timid hopes in this regard rest them on the Egyptian regime's preoccupation with its international image, and the potential positive impact this may have on further reform. At the very least, representatives of the NGO coalition believe that their initiative "will increase awareness and factual knowledge about freedom of association and the situation of Egyptian civil society in and outside of the government." Many NGO activists believe that gradually increasing knowledge and awareness in an accumulative manner both in and outside of Egypt will eventually increase the internal and external pressures on the government to relax its rigid stance. Veteran activists know that real change needs time and have no illusions about ousting the incumbent immediately, hence they work for the future: "our role is to prepare everything for the next generation so they will smell freedom."

Annex:

Draft Law proposed to replace Law 84 / 2002, jointly presented by the Cairo Institute for Human Rights Studies (CIHRS) and the Egyptian Organisation for Human Rights (EOHR), October 2008

Draft Law on Associations (Non-governmental Organisations-NGOs) and Private Institutions

A joint project between the Cairo Centre for Human Rights Studies (CIHRS) and the Egyptian Organisation for Human Rights (EOHR).¹⁴

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In the name of the people,
The President of the Republic,
The People's Assembly approved the following Law and it is hereby enacted:

Clause (1)

Without prejudice to the regulations of associations established by virtue of international conventions, private associations and institutions shall be subject to the provisions of the attached Law, with the exception of the following:

- a) Associations established in accordance with, or whose regulations are approved by, special resolutions from the Executive authority, or are subject to the control or supervision of such;

¹⁴ This project supported by a number of human rights organisations, namely: members of the Freedom of Association Campaign, members of the Egyptian NGOs Freedom Coalition, the Democratic Development Foundation, the Association for Human Rights Legal Aid, the Egyptian Association for Community Participation Enhancement, the Human Rights Center for the Assistance of Prisoners, the Center for Trade Unions and Workers Services, the Arabic Network for Human Rights Information, the New Woman research center, the Egyptian Initiative for Personal Rights, the Land Center for Human Rights, the Andalus Institute for Tolerance and Anti-violence Studies, and the Arab Organisation for Penal Reform.

- b) Associations and institutions seeking financial profit for their members or staff;
- c) Political parties, professional syndicates, trade unions, and student unions;
- d) Commercial companies and companies established in accordance with the provisions of Article 505 and the subsequent articles of the civil law.

Foreign non-governmental organisations may be authorised to practice the activities of associations (NGOs) and private institutions subject to the provisions of the present Law pursuant to the rules established therein. The Executive Regulations of the said Law shall organise the facilitating procedures.

Clause (2)

Associations and private institutions in existence during the entry into force of the present Law and registered in accordance with Law No 84 of the year 2002 shall be officially registered. Said associations and private institutions shall amend their statutes and request the proclamation thereof in application of the provisions of said Law within one year as of the date of entry into force thereof if they desire to enjoy legal status.

Clause (3)

All associations or private institutions, the statutes of which have been re-proclaimed pursuant to the provision of the present Law, shall re-constitute the relevant board of directors in accordance with their re-proclamation within six months as of the date of completion of the proclamation, with the proviso that the executive and administrative structures of private associations and institutions existing upon the implementation of the present Law proceed with their activities until they have been re-constituted pursuant to the rules stipulated in the present Law.

Clause (4)

The term "administrative authority" shall, in the application of provisions of the attached Law, mean the Ministry of Justice.

Clause (5)

Law No 84 of the year 2002 on private associations and institutions shall hereby be repealed. Any other provision contrary to the provisions of the present Law shall also be repealed.

Clause (6)

This Law shall be published in the Official Gazette and shall come into force as from the date of publication thereof.

This Law shall receive the seal of the state and shall be implemented as a state law.

Issued at The Presidency of the Republic on A.H corresponding to A.D

Chapter One: Associations

Article (1)

The term "Association" shall, in the implementation of the provisions of the present Law, mean any permanent or impermanent non-governmental organisation established by two or more natural or legal persons, for non-profit purposes either for the associations, founders or members thereof.

Article (2): The relevant association shall put forth statutes, signed by the founding members thereof and including the following data:

- 1) Name, purpose and headquarters of the association;
- 2) Name, surname, nationality, profession and place of residence of each founding member;
- 3) Requirements of membership and conditions of withdrawal thereof;
- 4) Rights and duties of members;
- 5) Bodies representing the association, competencies of each, means of selection and deposition of members, or withdrawing or suspending membership thereof;
- 6) Prerequisites for the validity of regular and extraordinary general assembly meetings;
- 7) Resources of the association and the means of financial audits;

- 8) Rules of statute amendment;
- 9) Rules for the dissolution of the association and the body to which the funds thereof will be reverted.

Article (3)

The purpose of the association may not contravene either international human rights instruments or the Constitution

Article (4)

Persons irrefutably convicted of crimes related to honour or integrity may not participate in the management of an association, unless they have been absolved.

Article (5)

The association shall, in all its affairs, be subject to the general assembly thereof exclusively; in situations where the number of active members of the association is less than ten, the competencies of the general assembly shall be reverted to the board of directors. The association may not be placed under seizure or the funds thereof under sequestration by any judicial or non-judicial authority except in circumstances exclusively provided for in the present Law or in the statutes of the association.

Article (6)

The statutes of the association may not provide for devolution of the association's funds upon dissolution thereof to members, their heirs or families.

Article (7)

The association shall notify the administrative authority, by means of a registered delivery return letter, of the establishment of the association, enclosing therewith a certified copy of the association's statutes. A special register called the "register of private associations and institutions" shall be established at the headquarters of each court of first instance, in which the association shall be registered and assigned a serial number as soon as a copy of the statutes is deposited therewith, certified by the board of directors. The association may not, under any account, be denied proclamation.

Article (8)

The association shall be proclaimed by publicising the name, the registry number thereof, the court of law in the special register of which the association has been registered, the purpose of the establishment of the association, names of founding members and a detailed summary of the statutes in one of the widely spread newspapers. Proclamation procedures shall, within a one month term as of the date of deposition of the documents of the association, be carried out by a competent employee of the "registry of private associations and institutions", otherwise the legal representative of the association may carry out such procedures at the expense of the registry.

Article (9)

The legal status of the association shall be established once the founding members have signed the statutes thereof and upon notification of the competent administration and the court of first instance. The legal status may not be invoked against others except after the proclamation of the statute of the association.

Article (10)

The "register of private associations and institutions" shall issue a certificate to the association including the relevant name, purpose, place of registry and date of proclamation of such. The association shall be committed to registering and proclaiming all amendments introduced to the statute according to the same procedures as provided for in the previous articles. The amendment shall not be implemented except after the date of proclamation.

Article (11)

The administrative authority may demur the establishment of the association after such is fully proclaimed, or may object to the amendment of the relevant statute by means of a petition incorporating the reasons for the demur. The memorandum shall, within thirty (30) days of the date of proclamation, be submitted to a judge of provisional matters at the court of first instance with jurisdiction over the headquarters of the association. The judge shall, subsequent to

hearing statements of the administrative authority and the legal representative of the association, order either the corroboration or dismissal of the objection of the administrative authority.

The order of the judge of provisional matters may, within thirty (30) days, be challenged pursuant to the rules established in the Code of Civil Procedure.

Article (12)

The association shall, upon establishment thereof, be committed to the matters avowed by relevant executives or employees; such avowals may be enforced on matters concerning the association but may not be invoked in order to slacken registration and proclamation procedures.

Article (13)

The right to voluntarily adhere to or withdraw from the association is guaranteed.

Article (14)

Membership of the elected bodies of the association and paid work therein shall not be combined.

Article (15)

The association shall carry out the following tasks:

- 1) Keep documents, correspondence and records at the headquarters thereof;
- 2) Register the data relevant to each member of the association in a special register;
- 3) Keep in special records the minutes and decisions of the sessions of the general assembly and elected bodies of the association;
- 4) Book-keep relevant accounts showing revenues and sources thereof, expenses and accounts thereof;
- 5) Appoint an external auditor if the budget thereof surpasses L.E 250,000 (two hundred and fifty thousand Egyptian pounds).
- 6) The association shall deliver to the competent administrative authority a copy of the relevant final annual accounts, certified by the general assembly and the external auditor, as well as decisions of the general assembly and the board of directors. The

association shall also notify the administrative authority of the sources of funding thereof.

Article (16)

All persons, bodies or institutions may have access to all books and records relevant to the activities of the association upon submission of a request to the administrative body where such documents are deposited. The competent administrative body shall establish the rules organising such an undertaking to ensure the right of all to have access thereto.

Article (17)

The association may, after notifying the administrative authority, carry out all money-generating activities, including fundraising from agencies, institutions and the public at large, through all possibly available means, such as television campaigns, charity concerts and correspondence, while being exempt from all prescribed charges and taxes on such services. The administrative authority may object to fundraising within one month from notification of such, by means of a petition including the reasons for the objection, submitted to the judge of provisional matters within the competent court of first instance.

Any association taking part in economic activities helping such to fulfill its objectives may allocate the profits generated by such activities for the purposes of the association.

Article (18)

Funds of associations shall be exempt from all kinds of dues, taxes and customs.

Article (19)

Donations made by individuals, institutions and companies to associations shall be assessed from the tax base of the donor.

Article (20)

Associations shall be entitled to convene plenary meetings either at the headquarters of such or in any external halls.

Associations shall be entitled to publish brochures or magazines of a periodic nature without being subject to restrictions prescribed in the Law on the Regulation of the Press.

Associations may be affiliated with, participate in or adhere to any association or body residing outside Egypt, pursuant to the rules defined by the statute or the board of directors. The board of directors shall be under an obligation to notify the administrative authority of such.

Associations shall be entitled to establish chapters and offices in governorates of the Republic and in cities pursuant to the rules defined by the statute.

Chapter Two: Private Institutions

Article (21)

The term "Institution" shall, in the provisions of the present Law, mean any judicial person establishing by virtue of the allocation of funds not less than L.E. 50,000 (fifty thousand Egyptian pounds) for a specific or non-specific period and for a purpose not contravening provisions of the present Law. Institutions established and proclaimed prior to the enactment of the present Law shall be excluded from this stipulation, unless such wish to become an association.

Article (22)

Institutions shall be established by virtue of an official deed or testament. Such deed or testament shall be equivalent to the statute of the institution and should include the following data:

- 1) Name of the institution, field of activities, scope of work and headquarters thereof;
- 2) Purpose the institution was established for ;
- 3) Accurate statement of the funds allocated for this action; and
- 4) Hierarchy of the administration of the institution, the method of selecting, dismissing and replacing members of the board of directors thereof.

Article (23)

Establishment of an institution shall be deemed, for creditors or heirs of the founder, a donation or testament. If the institution was established in detriment to the rights thereof, they may file legal action as prescribed in the law for cases of donations and testaments.

Article (24)

In the event the institution was established by virtue of an official deed, the founder(s) may waiver such by means of another official deed until the institution is proclaimed in accordance with the provisions stipulated in the present Law.

Article (25)

Institutions shall be proclaimed upon the request of the founder(s) or first executive director thereof pursuant to procedures for the proclamation of associations established in the present Law.

Article (26)

All special provisions on associations prescribed in the present Law shall apply to all institutions subject thereto unless otherwise provided for in the Law or in the deed of establishment thereof, except for special provisions on associations.

Chapter Three: The Right to Form Networks, Coalitions, Thematic and Regional Federations

Article (27):

Associations shall be entitled to establish or join local networks or coalitions which help such in coordinating their activities and support their joint objectives.

Article (28):

Any number of associations shall be entitled to create thematic or regional federations among themselves for a limited or unlimited period. The founding agreement of this federation shall specify the statute, regulations,

institutions, method of exercising competencies thereof, funding methods, dissolution thereof and termination of same activities. Notification of the creation of this federation shall follow the same method prescribed for notification of associations in the present Law, if the founders wish the federation to have legal status.

Article (29)

The board of directors of the federation shall notify the administrative authority of any development taking place in the formation or competence of the federation, and also of the new members adhering thereto or old members having withdrawn therefrom.

Chapter Four: Concluding Provisions

Article (30)

The administrative authority or any person or entity having interests may be entitled to resort to courts of law to challenge any decision or activity of the general assembly or board of directors of the association. The court of first instance in the jurisdiction of which the association headquarters is situated shall, after examining the request and hearing the defense of the association accompanied by corroborating documents, order either the repudiation or acceptance of the request, including all the ensuing sanctions. The court may incorporate in the same ruling an expedited validation, but except in the case of ruling for the dissolution of the association or liquidation of funds thereof, the ruling shall not be executed except when it is pronounced finally.

Article (31)

Sanctions which may be inflicted on the association by virtue of a court ruling, if it were proved that the said association had contravened the statute and rules prescribed in the present Law, include the following:

- 1) Warning the association to rectify the established infraction;
- 2) Annuling the decision or suspending the objected activity;
- 3) Freezing the activity of the contravening member or freezing said membership in the board of directors;
- 4) Fully removing the board of directors or some members thereof;
- 5) Freezing the activities of the association for a limited period;
- 6) Dissolving the association and liquidating funds thereof.

Article (32)

The court of law shall, in the event of a ruling being passed to dissolve the elected board of directors of the association, include in the same ruling the appointment of a member of the general assembly, other than the members of the dissolved board of directors, as a receiver. In the case that the general assembly had itself been the board of directors, the court shall appoint a receiver outside the assembly. The receiver shall be assigned, within a period not exceeding sixty (60) days as of the date upon which the ruling to appoint same became final, to hold new elections pursuant to the statute of the association, and shall have the competences of the chairman of the board of directors to preserve relevant rights provided that a full report of the activities of the receiver be submitted to the first general assembly meeting for approval.

Article (33)

If an association is dissolved, one or more liquidator(s) shall be appointed. The liquidator(s) shall be appointed by the general assembly if the dissolution is voluntary or by the court of law if the dissolution is judicial. In all cases, the rules prescribed in the statute of the association shall be followed with respect to the outcome of liquidation. In the case of failure to do such, the decision to appoint a liquidator(s) shall include the assignment of same to transfer the funds of the dissolved association to an association whose objectives are closest to those of the said association.

Article (34)

The association shall be entitled to challenge any administrative decision against same and to present the reasons for such challenge to the court of administrative judiciary within whose jurisdiction the headquarters of the association are located. The court

shall, after examining the challenge and hearing the defense of both the association and the administrative authority, either order the annulment of the administrative decision or repeal the challenge presented by the said association.

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The earthquake of unprecedented social mobilisation throughout 2005 triggered hopes that Egypt would finally move towards a genuine democratic opening and lead the region away from its long history of authoritarianism. However, these hopes have now largely faded away. For the time being, talk of democratisation in Egypt seems to be off the agenda. Egyptian rights NGOs are working under increasingly heavy pressure from the government.

This paper analyses freedom of association in Egypt and identifies the main obstacles that Egyptian NGOs, political parties and unions are facing. The planned amendments to the already restrictive Associations Law are likely to further limit the space in which civil society is able to operate. The extralegal role of the Security Services in monitoring and harassing political activists impedes the latter from taking any legal action. The permanent State of Emergency gives the government unlimited powers to restrict the activities of NGOs, unions, political parties and the media at will. These harsh conditions for Egyptian civil society are even more severe in light of the approaching power shift into a post-Hosni Mubarak era, marked by a tense political stalemate.

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