

March 2018

The State and Human Rights Organizations in Egypt: A Problem of Political Culture or a Structural Crisis?

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Abstract

The top-down structures of the modern Egyptian state have dictated the relation between successive regimes and civil society formations. The Egyptian state has mostly looked upon civil society as a constellation of the social elements in service of the state within the top-down vision of society, where it is allowed into spaces deserted by the state or to fulfil certain developmental or even political functions as determined by the state. The authoritarian ruling regimes in Egypt have not been conducive to social interactions that could have resulted into a representative political system. The state in Egypt, like many others in the postcolonial third world, has itself been shaped by variables such as international dynamics or circumstances surrounding independence as well as domestic upheavals such as revolutions and military coups. In the absence of a political opposition, which is usually oppressed, regimes clash with civil society organizations (CSOs), whether developmental or human rights, which, although not seeking political power, present a danger to the order which political regimes seek to maintain. The state worked to control organizations and their social impact through laws and security measures restricting their actions. Organizations deployed strategies to ensure a minimal space for action.

This meant the space available for civil society was dictated by how much space the state wanted or was able to occupy. CSOs then greatly retreated during the Nasserite era, not only because of legislative restrictions and security measures, but also because the state believed that it was itself

playing their roles. Later change in the structure and nature of the political regime and its relationship with the economy opened wider spaces for civil society, especially in aid and developments sectors, while global political changes and consequent calls for democratization played a role augmented by the struggle of human rights activists in Egypt to open a limited space for a sector of civil society working on human rights.

Due to the ruling structures and the authoritarian political culture established and embraced by the post-colonial Egyptian state, CSOs were doubted and seen as a possible danger for national security. On the other hand, the CSOs, especially human rights organizations, were rarely able to move beyond suspicion and distrust in their relationship with the state, a position which sometimes obstructed human rights struggles and reduced it to mere protest.

A solution to this dilemma does not lie only in enabling legal regulations but more in the political domain itself. Without opening spaces for action and organization to the various societal forces we shall not have the necessary momentum and energy to reformulate the structure of the state to be more representative of its various societal elements from the bottom up.

Against this background, this paper addresses the relationship between human rights organizations and the state in Egypt through three main perspectives: the first is related to structure, both of the state and the organizations, which is essentially affected by the time and conditions under which these organizations emerged. The second addresses how the two sides interacted especially in the field of regulation, and, finally, the existing political culture and its reflection on the performance of both parties.

Introduction

Although political organizations in countries like Egypt in the Third World were supposed to compete for power, they have been in fact weakened due to internal factors related to organization, internal democracy, party affiliation, etc., as well as external factors such as the exploitation of state institutions by ruling regimes to abort any real attempt to create a political rival challenging their authority. Here lies the importance of civil society and its organizations, as they are more dynamic and effective in their relationship with the society while not competing for political power. However, this importance also made them a target of suspicion by authoritarian regimes that fear people's organization or popular movements outside its vision and direct control.

In Egypt, like many third world countries, political power evolved from a range of variables, both external such as international changes and conditions surrounding struggles for independence, and internal ones such as revolutions and military coups. The discourse of the resulting ruling regimes is characterized by populism and charismatic leadership that ensures compliance of community organization.

Here, in the absence of political opposition, that is usually oppressed, regimes clash with CSOs, whether developmental or those working on human rights, which although far from political action and do not aim at reaching power, still constitute a threat to the social organization, which political regimes seek to maintain according to balances that secure their interests and position in power. The conflict revolves around regulations that govern associations and influence their social impact. Thus, laws are passed to reduce the space of action for CSOs or the state resorts to restrictive security measures in the face of strategies used by organizations to ensure a minimum operational space.

Modern CSOs evolved in Egypt in the first half of the 20th century. Despite changes occurring in both objectives and mode of action of organizations, on the one hand, and the nature and orientations of the state, on the other hand, the relation between the two sides was rarely complementary and often confrontational, especially for human rights organizations. The Egyptian Division for Human Rights was the first human rights organization in Egypt. Established in 1931 by journalist and writer Mahmoud Azmi, it took advantage of the provisions of the 1923 Constitution granting freedom of association. Labour strikes and protests increased exponentially in the 1930s and 1940s, sowing the seeds of rights-based socioeconomic action in modern Egypt.¹

In this context, this paper discusses the relationship between human rights organizations and the state in Egypt, through three main approaches: (a) the structure of the state and CSOs, which is linked in the case of the latter to the time and circumstances of their evolution; (b) how the two sides interacted

¹ Islam Elmaraghi, "Rights Groups in Egypt: A Short History", Eda'at, 22 July 2016, [available in Arabic at goo.gl/YBdjRe](http://goo.gl/YBdjRe)

especially on the legal front; and (c) the political culture and its reflections on the practices of both parties. We shall address those issues by examining the following points:

1. How the relationship between the two parties evolved.
2. Has the State acted uniformly or have there been differences among its constituents vis-à-vis human rights organizations?
3. What are the government's most important concerns and objectives?
4. What is the history of the laws and regulations affecting NGOs, and how did the latter react and resist their restrictions? Who are the key players in those conflicts and/or negotiations?
5. The formation of the National Council for Human Rights. What is its role, importance and Impact? And what does it symbolize?
6. What is the scope of control over NGOs and what are the GNGOs in Egypt?
7. How do NGOs deal with various constraints and what are their strategies in dealing with the government? Was organization in exile useful?

The study will review available literature, CSOs' digital presence and media coverage as well as interviews with human rights activists.

I. The State and Human Rights Organizations: A Relationship of Suspicion and Need

In 1923, the state promulgated the first modern constitutional arrangement for the civil society in Egypt, when the country's first modern Constitution was issued, granting in Article 21 the right of association. Civil society activities existed in Egypt long before this measure and were subject to two laws, the Civil Code for mixed courts issued in 1875 and a law issued for domestic courts in 1883. The two laws differed regarding the legal personality by which associations and organizations were represented in courts.² Some courts granted the legal personality to associations while others refused it. In 1938, Law No. 17, issued by a royal decree, banned associations or groups, permanent or temporary, which have the form of paramilitary formations serving a particular party or political faction. This was followed by another wave of restrictions with the issuance of Law No. 49 of 1945, which conditioned the formation of an association by the notification of the Ministry of Social Affairs.

Associations remained subject to this Constitution until its cancellation in 1952. In 1953, a constitutional declaration was issued in preparation for the drafting of a new Constitution, but it did not touch upon the organization of associations. The 1971 Constitution enshrined the right of

² Ahmed Ragab, *Legislative Development of Laws Regulating Egyptian nongovernmental organizations from 1938 until 1952*, Egyptian Center for studies of public policies, undated, p. 3. (hereafter Ahmed Ragab, *Legislative Development*)

association but added vague restrictions such as the prohibition of antagonizing the social order.³ The 2012 Constitution then added the principle of formation by notification only. Finally, the 2014⁴ Constitution prohibited government interference in the work of associations.⁵

A long series of legislations since the royal decree no. 17 of 1938 included several provisions restricting activities of associations by vague and broad provisions such as violating public morals or harming the safety of the homeland. Those included:

- Law No. 49 of 1945 was issued six years after the establishment of the Ministry of Social Affairs, which was entrusted with the organization of charities. In its first article, the decree establishing the ministry stipulated that it shall be responsible for the affairs and interests it has enumerated, including morality police, prison administration, the various institutions for the rehabilitation and reform of criminals and juveniles, etc. The decree is based on a vision for the role of the ministry built on planning and coordination with CSOs on issues identified by the decree as the scope of work of the ministry. This law required any CSO to notify the ministry before it was legally established. Afterwards, the association is subject to the ministry's monitoring, inspection and supervision of funds and resources. A CSO should notify the ministry in advance before receiving donations. The law granted the ministry the right to invalidate the board elections of an association if not in line with its bylaws and statutes. Some believe that this law was primarily targeting the Muslim Brotherhood, at loggerheads with the Wafd government at the time, since it stipulated that the existing organizations and associations should reformulate their status in accordance with the law in a period not exceeding three months or else they would be dissolved.⁶
- Law No. 66 of 1951 was issued with the aim of incorporating organizations, to which the 1945 law did not apply. It further restricted the articles in the various constitutions and even diminished the rights contained therein or at least circumvented them. Security concerns and state suspicion towards CSOs were evident. The law delegated the supervisory and

³ Article 55 stated that "citizens have the right to form associations as stipulated by the law. It is prohibited to form associations that are hostile to the order of society or of a secret or military nature". Article 56 added that the democratic formation of syndicates and unions is a "right" and that these entities have a legal personality. The law organizes the contribution of syndicates and unions in the implementation of social plans and programs, raising and supporting socialist conduct among their members and in the protection of their funds. They are obligated to hold their members accountable in their exercise of activities according to ethical charters.

⁴ Article 51 of the 2012 Constitution confirmed that citizens had the right to form organizations by notification. See full Arabic text at goo.gl/31FNAQ

⁵ Under article 75, citizens have the right to form non-governmental organizations and institutions, "which shall acquire legal personality upon notification. They shall be allowed to engage in activities freely. Administrative agencies shall not interfere in the affairs of such organizations, dissolve them, their board of directors, or their board of trustees except by a judicial ruling. The establishment or continuation of non-governmental organizations and institutions whose structure and activities are operated and conducted in secret, or which possess a military or quasi-military character are forbidden, as regulated by law." See Egypt 2014 Constitution at goo.gl/DQTaFE

⁶ Ahmed Salah, "15 Amendments throughout the MB History", Vetogate, 26 March 2016, available in Arabic at goo.gl/LnhvG7

dissolution authorities to the Ministry of Interior, whose decisions could be appealed in the administrative court, but bestowed the final decision of dissolution of an association to the court of first instance. Institutions had to keep their records and photos of their members in their headquarters. Violations were punishable by penalties that include imprisonment.⁷

- Law No. 357 of 1952 strengthened the government's grip on CSOs by granting the Ministry of Social Affairs the right to appoint CSO boards in certain cases, thus more fully subjecting CSOs to the conditions and vision of the ruling regime. In 1964, the state⁸
- Law No. 32 of 1964 tightened state control and prohibited CSOs from working on religious and political issues and established an oversight committee to monitor the CSOs' activities and their funding. It gave the state the power to dissolve an organization in case it did not provide certain required information on members to this committee.
- Law No. 153 of 1999 was the outcome of negotiations with CSOs and concluded with a new draft law. However, the organizations were taken by surprise when they found another draft being discussed in the People's Assembly, reproducing the 1964 law, without guarantees for the independence of civil society action. The Constitutional Court struck the law down on procedural grounds since it was not submitted to the Shura Council (the upper chamber of the parliament then).

Then came Nasser and the Nasserite 1950s and 1960s with massive and almost total state control of public action, leaving the state as the only space for public socio-political action or expression. After the return of multiparty system in the second half of the 1970s under the rule of President Anwar Sadat, young people who joined these parties, mostly members of the student movement in the late 1960s and early 1970s, were disenchanted with Sadat's pluralism. Some of them went on to establish several human rights organizations in Egypt in the 1980s and later.

One of the main landmarks at the time was the Egyptian Organization for Human Rights (EOHR), founded by a group of secular, leftists and Nasserite nationalist intellectuals. Many of those founders later set up other independent human rights organizations in the second half of the 1990s and the beginning of the 2000s following internal disputes over EOHR structures and strategies. Those disputes centred around the opening or closing of the membership of the EOHR. However, they were also a public expression of several controversial issues related to representation (who are the right holders represented by EOHR? And how did they delegate the organization to speak on their behalf?) and influence (how to bring about change in society and the state).

⁷ Ahmed Ragab, *Legislative Development*, p. 6.

⁸ Egypt Portal for the Judiciary and the Law, "Decreed law no. 357/1952 on the amendment of law 49/1945 of the regulation of charity associations, social institutions and donation to charity", available in Arabic at goo.gl/mw7izG

Although the period from 1989 to 1993 witnessed great achievements by the EOHR, in terms of professionalizing human rights work and improving the documentation of violations, the challenges were greater. The organization split after 1995 and many of its leaders left to form their own organizations. This fragmentation, however, has had a positive side effect: the birth of a number of national human rights organizations working on different issues with various strategies, although they continued to face the same challenges as in the early 1990s, as well as increasing governmental constraints, leaving several of them in a threatened gray legal zone.

The emergence of human rights organizations in those circumstances gave rise to certain dynamics:

- Political forces, especially in the 1990s, including communists and Nasserites, saw in EOHR and other human rights organizations a platform for political action and representation in a country where political action was dramatically curtailed.
- Caution, exclusion and suspicion towards the state: Since it was an open membership organization, EOHR faced, according to some of its founders, the threat of being seized by one political group or another. Various attempts were made to neutralize rivalry among political factions since the General Assembly of the EOHR in May 1991.⁹ This has severely affected later choices by founders, especially with increased government infiltration or the formation of governmental NGOs.¹⁰
- Weakness of democratic culture within human rights organizations: The individual nature of the governance of most human rights NGOs and the outright leadership monopoly in some of them shaped their trajectory and evolution.

After the end of the Cold War, the world went through the so-called third wave of democracy, as described by Huntington. Within years, this wave swept most of Eastern Europe, Africa and Latin America.¹¹ After the attacks of 11 September 2001, western pressure for democracy promotion increased, especially on Arab states, where democratization was seen as a means to combat terrorism. However, this effort lost steam after failing to establish a stable democratic rule in Iraq following the US invasion and the electoral victory of Hamas in the 2006 Palestinian elections. The subsequent siege on the Gaza strip confirmed the position of those who believed that US or western support for a democratic transition was nothing but an instrument to serve western interests, and that if a democratic measure threatened these interests, it ceases to support such a transition. Perhaps the American and European positions, which usually ignore human rights violations in Saudi Arabia, are a sufficient proof of such an instrumental position vis-à-vis democracy and rights. The western support

⁹ Yasmeen Shash, "The Formal Birth of the Human Rights Movement in Egypt", Arab Reform Initiative, 4 August 2017, available at www.arab-reform.net/en/node/1095

¹⁰ Al-Sa'eed (Upper Egypt) Association for Education and Development was in turmoil in the late 1990s resulting in a General Assembly which fired the managing board. The disruptions were allegedly the result of manipulations by security agencies.

¹¹ Samuel P. Huntington, "Democracy's Third Wave", *Journal of Democracy*, Spring 1991, available at goo.gl/EQTorH

for democracy and human rights then becomes subject to several considerations, not limited to questions of moral values and legal standards only but also include and sometimes bow to current and future economic and political interests. No doubt there is a large element of instrumentalization in how Western countries address this issue, notwithstanding that the West is not a single coherent block and that the public opinion in these open democracies sometimes influence foreign policy more to the side of values and rights. Western NGOs, unburdened by the clashing demands on the foreign policy apparatuses, stick to a humanist position couched in the international human rights bill, though for advocacy purposes they also sometimes show how realpolitik interests cannot be divorced from democratization and respect for human rights in other countries.

In that context, Egypt underwent several noticeable changes since the early 2000s with calculated moves by the regime to open up politically in a cosmetic manner to cope with international pressures. There was no shortage of domestic pressures as well with hundreds of sit-ins and labour strikes organized every year. The political momentum and protest crystallized in the Egyptian Movement for Change (Kifaya or Enough!) in 2005. Open hostility dominated the relationship between the regime and human rights organizations after the 25 January 2011 revolution. Politicians, journalists and TV anchors, former officials from the Mubarak regime all supported security services in their confrontation with civil society. In this war of propaganda, a narrative was constructed and carefully disseminated that the revolution was nothing but a conspiracy concocted by civil society organizations, especially human rights groups driven by foreign forces. Security agencies cracked down on foreign and domestic NGOs by the end of 2011, when 43 foreign civil society employees, including 19 Americans and some other nationalities and a number of Egyptians, were referred to trial in case No. 173 of 2011 on charges of establishing NGOs and obtaining foreign funding without state permission.¹²

In an attempt by the government to defend its point of view and that it was not against the work of civil society, Judge Muhammad al-Demerdash, deputy chair of the State Council, and the legal adviser to the Ministry of Social Solidarity (MoSS) announced in early October 2012 that the ministry had approved requests by 281 associations for the receipt of 600 million Egyptian pounds in foreign funds in the first seven months of the same year, while rejecting requests for a total of 96 million Egyptian pounds. Former US ambassador, Ann Patterson told Congress in Washington DC that the US government had spent US\$40 million in support of civil society organizations since the 25 January revolution. Actually, over the previous 34 years (between 1975 and 2009) the largest recipient of US aid was the Egyptian government itself and not civil society organizations.¹³ Compared to about US\$27 billion received by the government, Egyptian CSOs as well as programmes for good governance

¹² CNN in Arabic, "Egypt: Postponement of Associations' case for Absent Foreign Defendants", 27 March 2012, available at goo.gl/u6GbOj

¹³ Mohamed Rammah, "US Funds of US\$40 million to Civil Society", *Al Tahrir*, 4 August 2011, available in Arabic at goo.gl/BXZxXQ

and democracy promotion received only US\$1.13 billion.¹⁴ Not all this money went to CSOs as governmental agencies such as the ministries of local development and administrative development also received a portion of these funds for health and education projects, in which some CSOs collaborated.¹⁵

In view of the nature of institutions that have been charged, and their political affiliations to parties or institutions in their home countries, especially the American International Republican Institute and the National Democratic Institute and the German Konrad Adenauer Foundation, we can conclude that the objective of the Egyptian government at the time was to restrict the role of civil society in Egypt by attacking such influential foreign organizations. This also fuelled a narrative for domestic consumption that these institutions served as arms of an international conspiracy aimed at Egypt and its stability.

This narrative was articulated by Minister of Planning and International Cooperation Fayza Abul-Naga, who said that from March to June 2011, CSOs received US\$175 million, while their funding in four years (2006 to 2010) did not exceed US\$60 million. According to her claims, the objective was to "violate Egyptian laws and carry out political rather than human rights activities to dismantle Egyptian society and provoke sedition." With increasing US and European pressure on E on Egypt, especially by the American side, which repeatedly threatened to cut down aid to Egypt, the foreign organizations' crisis was partly resolved.¹⁶ Charged foreign workers were released on bail and allowed to leave the country, though most were condemned and sentenced in absentia later on.¹⁷

The regime's view of the function of human rights organizations is best illustrated in a report by a fact-finding committee on the January Revolution. The committee was formed in July 2011 and submitted its report a month later. The report, on which the foreign funding case was based, concluded that funding of civil society in 2010 contributed to the "chaos" in 2011. It can be inferred from the perspective of the report that the State was unwilling to experience a repetition of this "chaos". The report recommended that the MoSS should no longer be the only body to supervise foreign funding and that a committee should be formed to consider security and social dimensions of funding permits.¹⁸

Concerns of civil society organizations increased as the regime escalated its hostile rhetoric against them, accusing them of implementing foreign agendas to destabilize the country, or promoting values

¹⁴ Mohamed Elagati, *Foreign Funding of Civil Society in Egypt after 25 January Revolution: Reality, Challenges and Criteria*, AFA, Cairo, June 2013, p. 20 (hereafter Elagati, *Foreign Funding*)

¹⁵ Mohamed Elagati, *Foreign Funding*

¹⁶ Gehad Gamal, "Impact of CSOs on Egyptian National Security after the 25 January Revolution", Arab Democratic Center, 9 January 2016, available in Arabic at goo.gl/ZcMCM6

¹⁷ BBC Arabic Service, "Egypt Cancels Travel Ban on Defendants in Foreign Funding Case", 30 March 2012, available at goo.gl/ecUfHa

¹⁸ Interview with Mohamed Zaree, Cairo Institute for Human Rights Studies, Cairo, September 2016.

incompatible with Egyptian society and beliefs. The foreign funding case of civil society organizations (case no.173 of 2011) was flagged both during the rule of the military council (2011-2012) or that of deposed President Mohamed Morsi (2012-2013) in what was seen as a continued pressure on human rights organizations. In 2013, the case was divided into two parts: the first focused on foreign organizations, where defendants were sentenced by the Cairo Criminal Court on 4 June 2013, while the second concerned local organizations, mentioned in the fact-finding report on foreign funding of civil society organizations.¹⁹

This pressure continued until the overthrow of President Morsi and the forceful removal of the Muslim Brotherhood from the political scene in July 2013. Under the pretext of return to stability, the new regime undertook several measures to narrow and re-nationalize public space, thus paralyzing the revolutionary drive and weakening civil society actors.

The concerns of human rights organizations were exacerbated by successive measures such as the MoSS' announcement in July 2014²⁰ of the need to register organizations and entities that carry out NGO activities under Law No. 84 of 2002. When asked about those organizations, the Minister of Social Solidarity mentioned law firms and companies working in the field of human rights, which, according to the minister, receive funds and carry out activities without state supervision.²¹ On 10 November 2014, a three-month MoSS deadline for organizations working in the field of human rights to reconcile their legal status came to an end. However, no legal measures were taken against those organizations as a result of international pressure. Egypt was also due to react to a Universal Periodic Review of its human rights situation in the Human Rights Council few months later. State hostility towards rights groups did not end there. In December 2014, the first two travel bans were imposed on human rights workers, involving Ahmed Ghoneim and Hussamuddin Ali of the Egyptian Democratic Institute. Many others would face the same ban in the following years.²²

These multiple indicators convinced a few rights organizations that the regime was determined to close them down and not merely restrict their work. Some human rights advocates attributed this to the fears of the post-July 2013 regime that leaving a free space for civil society may encourage more activities and become again a threat to the regime and its stability. The same advocates thought that the only factor that restrained the regime repressive tendency in this regard was the extent of the international reaction to their behaviour.²³

¹⁹ Arabia Net, "Egypt: Prison Sentences Against Defendants in the Foreign Funding Case", 4 June 2013, available in Arabic at goo.gl/Ahgf9q

²⁰ Mada Masr, "MoSS Gives CSOs a One Month Extension of Ultimatum", 31 August 2014, available in Arabic at goo.gl/AujWaJ

²¹ Interview with Mohamed Zaree.

²² The Cairo Institute for Human Rights Studies, "Egypt's Borders have Become a Mass Jail Cell for Activists and Rights Advocates", 8 February 2016, available at www.cihrs.org/?p=18057&lang=en

²³ Interview with Mozn Hassan, Director of Nazra for Feminist Studies, Cairo, September 2016

Several government officials articulated the state animosity in 2014 and 2015. The then Minister of Justice Ahmed Al-Zind, in response to a question on civil society, foreign funding and case 173 of 2011, said: "The issue of foreign funding will be re-opened once again; its turn will come. We do not forget."²⁴ Zind's statement came a few days after a letter by 16 human rights organizations in Egypt to the United Nations High Commissioner for Human Rights expressing deep concern over the increasing frequency of human rights violations committed by the Egyptian authorities in a violent and shocking manner. The organizations said that the authorities were using the war on terror as a pretext for abuses in an undeclared state of emergency.²⁵ On the same day the letter was sent, the European Parliament issued an urgent statement, in which it recommended to EU countries to withdraw aid to Egypt following the killing of Italian graduate student Julio Regini in Cairo in early 2016. The EU Parliament expressed serious concern that the Regini's case was not an exception and placed it in the context of the significant increase in torture and death reports in Egyptian police detention centres and forced disappearances in Egypt.²⁶

The foreign funding case became a tool of pressure used by the regime at will to restrict the work of human rights organizations. Although the case was opened in 2011, none of the Egyptian human rights advocates were summoned for interrogation until 2015. Then the state began to detain some rights activists, banned nearly 29 of them from travelling, froze the assets of ten of them in addition to seven rights groups,²⁷ and arrested some after returning from travel.²⁸ All these measures were imposed without any reasonable legal grounds. Options became limited for many CSOs but primarily for rights groups under this crackdown. The most important strategies were cutting down on their activities or working from outside Egypt.

Finally, we can attribute the persistent government concern regarding freedom of association to the strong belief by successive regimes that a free civil society could help encourage reform, expose failures, change values, all of which may undermine the authoritarian foundations of ruling regimes in Egypt. These regimes also believed in a litany of conspiracy theories that prevailed among the influential security agencies.

- Reform: All constitutional guarantees of civil society's freedom of action had been mere formalities, emptied of all meaning by actual legislations. The root of this concern by the

²⁴ El Dostour, "Foreign Funding, an Issue for Every Government", 20 March 2016, available in Arabic at goo.gl/zRUUMw

²⁵ The Egyptian Initiative for Personal Rights, "16 Egyptian Rights Organizations Address High Commissioner for Human Rights on the situation in Egypt, Demanding Adoption of their Recommendations", 10 March 2016, available in Arabic at goo.gl/niUnVe

²⁶ BBC Arabic, "European Parliament Calls upon Egypt to Promptly Investigate the Torture and Murder of Italian Student Regini", 10 March 2016, available at goo.gl/lwO8Zg

²⁷ Cairo Institute for Human Rights Studies, "First Appeal Hearing Tomorrow in case 173/2011 for NGO Workers Sentenced in Politically-Motivated Trial Falling Below Minimum Standards of Fairness", 31 January 2018, available at www.cihrs.org/?p=20987&lang=en

²⁸ Moustafa Abdel Razek, "High State Security Court Renews Detention of Ismail Aleskandarani for 15 Days", Dot Masr, 10 December 2015, goo.gl/h1TTBm

state was the fear of citizenship truly becoming a basis for politics in Egypt. Even constitutional amendments, for example in 2005 and 2006, which stated that citizenship was the basis of governance, were merely ink on paper. Similar to its authoritarian attitude in the political and economic fields to abort any reforms, the state dealt with civil society in a way that prevented it from enacting its role and allowing it the space necessary for its work because this could contribute to leading sectors of society to a real change and its unpredictable consequences, feared by the successive regimes.

- Exposing the regime: in addition to its ability to lead change, an active civil society could expose the failures of the regime, both internally and abroad. Exposing economic, social and political failures, as well as documenting and reporting human rights violations, would fuel opposition to the regime, both internally and externally, with consequent loss of domestic and international legitimacy.
- Concerns regarding change in values: those are the usual fears that affect conservative regimes, whether religious or chauvinist. They consider that western liberal policies, which promote and value civil society, human rights and citizenship, as a threat to local societal and ideological values, the maintenance of which remains one of the pillars of the legitimacy and survival of the state. Many such regimes, including the Egyptian one, are suspicious towards civil society activism and see it as breach through which anti-authoritarian values could infiltrate the society.
- Conspiracy: closed systems usually believe in conspiracy theories or adopt them to convince their peoples that their remaining in power is inevitable to counter the world's designs against the homeland. Given how rights groups in particular and all CSOs in general work in the areas of development, human rights, and democracy, and the fact that the main funders of their activities are Western governments and foundations, fuels the conspiracy-dependent mentality of decision makers in closed systems.²⁹
- Interests: the rights movement strongly threatens the interests of various stakeholders in the status quo (within the state organs or among allied social groups). A vibrant organization and defence of economic rights and more equitability, for example, is a direct risk to existing economic arrangements.

²⁹ Sada ElBalad, "Heated Debate between El Makrehi and a Rights Activist on Foreign Funding Case", 21 March 2016, available at goo.gl/MX8CaI

II: State Strategies in Dealing with Rights Groups: Legal Control and Security Threats

In the late 1990s, CSOs worked hard to repeal Law 32 of 1964. The government enacted Law No. 84 of 2002, a legislation that was not radically different from the previous one, indicating the state's deep-seated conviction that it should maintain control over CSOs. The law required organizations to register in the MoSS, which several organizations did, based on their wish not to engage in activities considered illegal by the state. Others preferred to continue working under other legal arrangements. At the time, it seemed that the state was exercising a strategy of leaving a narrow and controlled space for movement, subject to interference and harassment according to the wishes and preferences of the regime.³⁰ This period witnessed a growth in the field of human rights, with an increasing number and diversity of activities and their legal personality. In this section, we review the most important strategies of the Egyptian state in dealing with human rights organizations.

1. Legislations

During the Mubarak era, the security state apparatuses allowed collective public action without a legal umbrella, thus retaining the right to strike at any actor or organization if it crossed the red lines set by the regime. This was manifested in allowing members of the Muslim Brotherhood to run as independent candidates in parliamentary elections, using "Islam is the solution" as their slogan, despite the fact that the group was officially banned. Human rights organizations worked in a similar framework under a restrictive law that left some space for their work, sometimes in coordination with relevant state bureaucracies, especially security agencies.

Law No. 84 of 2002 provided the administrative body, that is the Ministry of Social Affairs (MoSA), with almost absolute authority, beginning with the approval of registration, suspension of activity, as well as approval of foreign funding and joining international networks and alliances. It also imposed severe penalties and stipulated the collective punishment of organizations by dissolution for a breach by one or more of its members, even if they could pinpoint the responsible individual/s. The law, like many Egyptian laws, suffered from vague, arbitrary and ambiguous formulations that cannot be proved or clearly defined, such as "political activity" and "public order"; vagueness became absolute when certain articles or sentences ended the enumeration of categories with the clause "and likewise" which made it possible for the regime to selectively use the law and target any CSO, for any action that can be seen by the ministry or by a court to be similar to an incriminated act included in the law.³¹ Most of Mubarak's three decades in power passed with Egypt under emergency rule, which strengthened the grip of the state. CSOs had to obtain permission from the MoSA to receive foreign funding, thus

³⁰ Interview with Ragia Omran, member of the National Council for Human Rights, Cairo, September 2016.

³¹ Mohamed Elagati, "Amendment of NGO law, Recommendations for Democratic Transition in Egypt", AFA, 2011, p. 4, available in Arabic at bit.ly/2nTC5nM

threatening their sustainability, since local funding was almost totally non-existent. The law required organizations to provide accounting records of all donations received as well as expenditures. Breaches by NGO staff were punishable by imprisonment and/or fines.³²

After the January 2011 revolution, public activism spread and took root especially in 2011 and 2012 in the form of youth organizations and initiatives. This rising activism benefited from a destabilized order as various networks of Mubarak regime crumbled after his downfall. A court order also stripped senior members of the hitherto ruling National Democratic Party from their political rights. New elite networks appeared including various public figures who took part in the revolutionary protests and who had been closer to established CSOs for years during public mobilization that intensified from 2005 until the revolution in January 2011. The revolutionary atmosphere foregrounded human rights concepts and values especially economic and social rights, rather than the usual focus on political and civil rights. Campaigns for the rights to housing, education and health care were organized (some of them in Cairo vast slums).³³

But soon, the security establishment was able to recover to strike back and crack down on NGOs including through a repressive bill for a new law on associations.³⁴

The Muslim Brotherhood clashed with the human rights community when it came to power, given the incompatibility between the group's views of the state and the those of many human rights organizations.³⁵ The associations' bill was not markedly different from the existing law except only in detailing articles suitable for the Muslim Brotherhood and the creation of the so-called Coordination Committee with a strong representation of security bodies to control certain aspects of the work of civil society, especially foreign funding. Despite some positive changes in the bill, it remained very restrictive with the usual toolbox of controls and ambiguous language in its articles such as "national unity", "public order" and "public morals", that can be invoked as grounds to reject or object to the establishment of associations.³⁶

After several drafts, many sessions of negotiations and four regimes in six years (the Military Council, the Muslim Brotherhood, the Interim Presidency, and the Sisi regime that took power in mid-2014), the draft law approved by Parliament in November 2016 maintained the same approach. The proposed

³² Mohamed ElAgati, "Undermining Standards of Good Governance: Egypt's NGO Law and Its Impact on the Transparency and Accountability of CSOs", *The International Journal of Not-for-Profit Law*, 2 April 2007, available at goo.gl/Clc5cs (hereafter Mohamed ElAgati, "Undermining Standards").

³³ Mohamed ElAgati, "Undermining Standards".

³⁴ Mohamed Elagati, "Egypt in the Stage of Transforming into New Authoritarianism: The New NGO Law", *Shorouk*, 21 January 2012, available in Arabic at goo.gl/9eDwbX

³⁵ Interview with Mozn Hassan.

³⁶ Mohamed Elagati, "Draft NGO Law: A Legislation to Reproduce Despotism", *Shorouk*, 17 February 2013, available in Arabic at goo.gl/CZlKMy

Coordinating Committee became part of the law with representatives of security agencies to consider the approval of funds to CSOs, especially from foreign sources. The Committee even became an independent body, which must approve some of the MoSS decisions.³⁷

However, during those six years from 2011 to 2017, there were compromises on the issue of associations, perhaps the most important of which was the outcome of the MoSS work led by former Minister Ahmed Al-Borai. Through consultations with various CSOs in the second half of 2013, Borai had developed a new bill. The ministry had formed a committee, in which a number of CSOs took part in July 2013, and together they drafted that bill which Borai presented to the UN High Commissioner for Human Rights. The bill, which some activists described as the best in the history of Egypt's civil society, never became law though it had relatively and adequately addressed the concerns of both the state and the CSOs.³⁸ The government replaced it by another draft tabled in the Parliament, which was considered a worse version of the infamous Law No. 32 of 1964. Some argued the Borai bill was only a means for the government to improve its international image after the ousting of former President Morsi. It helped create the impression that the regime was leading Egypt into a democratic transition. The role of the bill ended after international recognition of the new regime was assured.³⁹

The International Center for Non-Profit Laws in Washington classifies restrictions on CSOs under eight categories, seven of which apply under successive Egyptian laws before and after the January 2011 revolution. Those restrictions are primarily concerned with difficulties in registration and acquisition of a legal personality and the inability to easily obtain foreign financing. The current law requires approval rather than notification, which is the norm in democratic regimes. Restrictions also include the administration's right to dissolve an NGO. It is legally customary that those who have reasons for the dissolutions of associations to resort to the courts, but the Egyptian law grants the MoSS the right to dissolve an association after consultation with the CSOs' union and listening to counter arguments from the association concerned. The dissolution itself remains within the MoSS remit, and thus constitutes an imminent threat to be used against associations. The MoSS can also delegate this prerogative to dissolve associations to executive bodies in governorates, represented by the governor. In addition, CSOs are not allowed to work in certain fields deemed "political" by the Egyptian law. This is another weapon in the state's arsenal against NGOs. Laws and executive regulations impose a large number of bureaucratic obstacles on associations since it authorizes administrative bodies, i.e. the MoSS and other government agencies, to exercise constant monitoring

³⁷ Article 52 of the government NGO bill stated that "in case of a breach by an organization of any of the provisions of this law or regulations pertaining to activities, the minister concerned, after the approval of the coordination committee, can issue a decision to stop the breaching activity or withdraw the activity license". See Iman Raslan, "We Publish the Draft of the new NGO Bill after Government Approved it", *Al Youm Al Sabe'e*, 9 September 2016, available in Arabic at goo.gl/SSUOi7

³⁸ Interview with Mohamed Zaree..

³⁹ The Egyptian Initiative for Personal Rights, "Draft Law Subjects NGOs to Government and Security Control", 9 July 2014, available in Arabic at goo.gl/3hJAiH

of organizations. The government also supported the formation of loyal CSOs in an attempt to attract funding. Finally, the law imposes criminal penalties, including imprisonment, against individuals who may join unsanctioned organizations.

2. Security Agencies and Foreign Funding

Although the MoSS is the body entrusted with dealing with NGOs in Egypt in terms of registration and monitoring of activity, it often, especially in the case of human rights organizations, acts as a front for security agencies according to MoSS employees. At the turn of the century, the MoSS still attached letters from security agencies to correspondences it had with CSOs.⁴⁰

Critics of NGOs have not challenged foreign funding in absolute terms, but rather focused their criticism and security measures against human rights organizations, especially those which work on raising awareness about violations, exposing government failures, or advocate rights and freedoms in general. These have been all the kind of activities and organizations that Arab governments long wanted to curtail, and this is why they were vilified by governments under the pretext that foreign funding was amounted to interferes in internal affairs.⁴¹

Law No. 84 of 2002 and the current Law allow human rights organizations to receive foreign funds, but it contains many obstacles and restrictions that give the government full control over the flow of such funds. Under both laws, to receive foreign funds, an NGO must have the approval of the MoSS and/or the Coordination Committee, which the laws granted broad discretion in reviewing and approving applications. For example, there is a period of 60 days for the government to reply to permit requests; however, silence or non-response means an effective rejection. The laws distinguished between foreign and domestic funding with the latter not requiring an MoSS approval.⁴²

In addition to legal and administrative obstacles, illegal government practices have been a greater impediment to the flow and transparency of funding and thus the functioning of organizations. Among those legal practices until the current law was enacted was the implicit control by security bodies over funding decisions. According to human rights advocates, the approval of funding often involved coordination with and taking the opinion of security bodies, which was considered an indispensable green light to MoSS to formally approve the funding, regardless of the law which gave MoSS exclusive jurisdiction. The current law went ahead and formalized this role by security agencies by including their representatives in the Coordination Committee that decides on foreign funding.⁴³

⁴⁰ Mohamed ElAgati, "Undermining Standards".

⁴¹ Interview with Mohamed Zaree.

⁴² Mohamed ElAgati, "Egypt", *The International Journal of Not-for-Profit Law*, 12:3, May 2010, available at goo.gl/t6Cx Cv

⁴³ Mohamed ElAgati, "Egypt"

There are no clear criteria for approving or rejecting requests for foreign funding. Some grants are approved to organizations while they were rejected for others, although the donor and the theme of the project to be implemented may be the same.⁴⁴

All in all, the regime and its executive organs determine the relationship between the state and civil society. The law applies to organizations that carry out activities that may encourage opposition to the regime or that may increase demands for accountability and transparency, or those who are managed by individuals who are considered part of the opposition. However, if organizations are working in service provision or work outside the political and human rights field, the executive authorities often become more flexible, and at times cooperative.

When discussing the relationship between the state and human rights organizations, we must bear in mind that state policies result from various interactions among state various institutions, and thus we cannot surmise a coherent state position regarding civil society, which is also heterogeneous. However, we can highlight indicators that best describe the relationship between human rights organizations and state components. For example, the regime does not apply the same criteria to all CSOs. Rights organizations differ from development, aid, or formally non-political organizations. The CSO type of activity is therefore an important determinant of how the regime deals with it. The ministries of environment, youth and sports have provided direct support and cooperated with many CSOs in their relative fields. Such CSOs did not suffer from the heavy-handed interpretations of the governing laws and regulations. The political orientation of CSO members or leaders also influences the relationship with the state. People who run CSOs, but are not in the opposition, may enjoy more flexibility when the regulations are applied to their institutions.⁴⁵

No doubt that there is a need to enhance CSO good governance in Egypt in order to augment their capacity to work more effectively and transparently. Transparency is vital to maintain credibility and encourage participation for more support to advocacy campaigns. However, the legal reality imposed by these restrictive laws puts registered CSOs in a diabolic dilemma: either fully comply with all legal rules and regulations that allow very intrusive intervention by MoSS employees and thus become far less effective or circumvent some of these laws and regulations (and consequently fail to follow the rules of transparency and good governance), thus formally also undermining the organization's credibility and puts itself at risk of legal prosecution and penalties. The other option, which has been adopted by a majority of independent human rights organizations, has been to work as law firms or as

⁴⁴ Interview with Mohamed Zaree.

⁴⁵ Interview with Mohamed Zaree.

commercial companies outside the remit and the “benefits” of the law on associations. But these companies are owned by individuals and their governance systems are ultimately voluntary.⁴⁶

3. Defamation

During political transitions in Egypt, media organizations almost completely identify with the views of the ruling regime. Depending on the reigning ideology of the ruling regime, mass media platforms accused human rights defenders of being agents for the “Crusading” West in its war on Islam or of being western agents manipulated to weaken Egypt and infiltrate its national security. The security-minded mentality that dominates the state bureaucracy when it comes to civil society probably shapes the views of pro-government media which largely promoted a demagogic discourse against rights advocates. The most important features of that campaign of vilification include:

- The ease and impunity with which media spread accusations against human rights organizations and defenders without evidence or proof.
- The spread of a campaign of distortion and intimidation to TV talk shows, which accused human rights defenders and organization of receiving foreign funds, even though the law does not criminalize it.
- The sharp shifts in the attitude of journalists and TV personalities from praising human rights organizations to damning them. For example, they praised them during the rule of the Muslim Brotherhood, describing them as patriots standing against extremism and using their reports to criticize the Morsi presidency. Then some of these very media platforms turned those same activists into foreign agents, traitors and fifth columnists, if they opposed the government after the Muslim Brotherhood rule was brought to an end by force.
- The spread of that hostile rhetoric to social media platforms, where it is repackaged by so-called influencers to their followers.⁴⁷

4. Hegemony: The National Council of Human Rights

Successive Egyptian regimes used a policy of sticks and carrots with human rights organizations. If they complied with government unwritten rules and demands they can work. If not, they then face a very unbalanced confrontation with the state, whose organs have enough tools to obstruct any organization.

Several years of democracy promotion in the region followed the 9/11 attacks. Democracy promotion and support for human rights had become part of the multi-level war on terrorism. Egypt worked to

⁴⁶ Mohamed ElAgati, “Undermining Standards”.

⁴⁷ Following comments on the accounts of 5 workers in the field of human rights on twitter, we found 16 comments of the same content and almost the same formulation, 10 of whom are anonymous.

improve its image internationally. As part of this effort, it set up a National Council for Human Rights (NCHR) in line with the Paris principles, which called for the formation of such councils.

In 2003, Law No. 94 was issued to establish the NCHR stating in Article 1 that the Council aims to "promote and develop the protection of human rights... raise awareness thereof and contribute to ensuring their exercise. The Council has a legal personality, its main office is in the city of Cairo, has the right to open branches and offices in the governorates... and enjoys independence in the exercise of its functions, activities and mandate." In Article 2, the law stipulated that "the Council shall be composed of a president, a vice president and 25 members of public figures who are well-known for their expertise and concern with human rights, or who are distinguished by their contribution to this field. The formation of the Council is decreed by a Shura council decision for a three-years term."⁴⁸ According to the law, the NCHR and its formation were under the Shura Council, one of the two chambers of parliament during the Mubarak era, an arrangement that detracted from the independence of the Council and the scope of its work.

A law was supposed to follow the establishment of the NCHR to facilitate its work, such as to give it the power to visit prisons without a prior notification, but this never occurred. The role of the Council has become advisory and it cannot force the Government or the Council of Ministers to act upon its recommendations or to consult with it, or even provide information required for NCHR to carry out its mandate. Some believe that NCHR's recommendations do not have much influence, especially from the Ministry of the Interior, which had been more responsive when the NCHR was first established, probably to improve the image of the state internationally in the 2000s.⁴⁹

Despite the weak influence of national councils for human rights in the region in view of the nature and characteristics of the laws that established them, many believe that they must exist as national mechanisms, and that they must have powers, although the current situation in Egypt has turned this institution into a mere consultative entity without real powers. There is disagreement within the Egyptian human rights movement on the membership of the NCHR. While a number of activists resigned or declined membership offers like Negad Al Borai and Hossam Bahgat, others, who enjoy credibility in the human rights community, accepted on grounds that entering the Council does not mean that the organization or the human rights movement, in which this person is active, would be undermined by the mandate of the council.⁵⁰

The composition of the Council always reflected the nature of the ruling political regime and the balance among its constituent factions. Since its establishment in 2003, the composition of the council

⁴⁸ Human Rights Public Library, "Law 94/2003 on the Formation of the National Human Rights Council", available in Arabic at goo.gl/GuWJfb

⁴⁹ Interview with Ragia Omran.

⁵⁰ Interview with Mozn Hassan.

has changed several times. For example, its members chosen for the first time after the January 25 revolution included several independent human rights defenders, which led the Council to issue unusually powerful reports such as the one on the events of the Maspero protest in Cairo.⁵¹ The NCHR report strongly challenged the official version of the protest.⁵² In 2012, there was a conflict within the Council between two main factions: what can be called the "secular" group as opposed to the Islamist trend. The controversy broke out in December 2012 after former President Morsi issued a constitutional declaration that sparked wide controversy and caused the resignation of a number of Council members, including the late rights activist and lawyer Ahmed Saif al-Islam after "the Islamists decided that the Council should play a greater political role than the prescribed human rights role."⁵³

However, the Council changed again less than two months after the overthrow of Morsi, when Prime Minister Hazem El Beblawi issued a decree to select new members replacing Islamists with a mixture of rights activists and former Islamists. Some rights advocates refused to join the Council while others decided it was worth trying. Others joined but withdrew a few months later, as was the case with lawyers Negad Al Borai and Ragaie Atteya, for different reasons. The Council was chaired by Mohammed Fayek, former Minister of Information under Nasser, while former Ambassador Mukhles Qutb remained secretary general, a position he had occupied since the formation of the Council. None of the Council members including the President and Vice President- worked full-time, while the daily workload was managed by a general secretariat of staff and researchers appointed and managed by the Secretary General, who is also responsible for funding, issuing statements, organizing events and supervising the production of reports either prepared by Council members or fact-finding missions composed of staff members.⁵⁴

The Council faced many criticisms, the most important of which was in 2013 after the killing of hundreds of protesters by security forces which forcibly disbanded large sit-ins in Rabaa and Nahdha squares in support of deposed President Morsi. The same period witnessed attacks on dozens of churches and Christian buildings, as well as violent clashes between security forces and Muslim Brotherhood protesters. However, the Council report appeared biased as it justified the practices by the regime and its security forces.⁵⁵ A report issued by the Council following a visit by a delegation to the high security Scorpion prison was criticized on the basis of a number of complaints indicating ill-

⁵¹ On 9 October 2011, 27 demonstrators and one soldier were killed when military police and security forces dispersed a peaceful demonstration in support of the rights of the Coptic minority in front of the Egyptian TV and Radio building (aka Maspero). See Egyptian Initiative for Personal Rights, "Maspero Events: The State Incites Factional Violence and Entrenches Extrajudicial Killing", 16 October 2011, available in Arabic at goo.gl/KjADz8

⁵² National Council for Human Rights, "Council Report on Maspero Events", 2 November 2011, available in Arabic at goo.gl/s9Y3R4

⁵³ Mohamed Hammama, "Who Benefits from the National Council for Human Rights", *Mada Masr*, 3 September 2015, goo.gl/99jSmo (hereafter Mohamed Hammama, "Who Benefits").

⁵⁴ Mohamed Hammama, "Who Benefits".

⁵⁵ National Council for Human Rights, "The Tenth Annual Report: 2013-2014," available in Arabic at goo.gl/Q0RC8T

treatment and abuse of prisoners, as well as allegations of forced disappearance of a number of citizens. When it was issued, the Council report concluded that the notorious prison conditions were good.⁵⁶

The Council challenged the Government's decision that human rights organizations must register with the MoSS or else be shut down. It is believed that relevant Council's efforts contributed to the suspension of the implementation of that MoSS resolution. The Council also addressed the issue of enforced disappearance and issued a report that may have contributed to the Ministry of Interior beginning to disclose the whereabouts of some of the names of those in its custody.⁵⁷

5. Control through Government-Organized NGOs (GONGOs)

These Government-Organized NGOs (GONGOs) are the organizations whose management is determined and almost run by the government. They carry out activities similar to voluntary non-governmental CSOs. GONGOs can also be established by individuals who are loyal to the ruling regime, some of whom are former state officials. These GONGOs are compatible with a state that sees civil society as an appendage and its organizations as a tool in service of a state, which engineers society from above.

GONGOs are no longer confined to defensive or advocacy roles. Instead, states rely on them to play a variety of developmental, social service and diplomatic roles, especially considering their ability to penetrate domestic and international domains that government institutions may not be able to reach. GONGOs can network with international NGOs, attract new sources of funding, and communicate directly with the public in other countries. The external role of these organizations has grown around the world, since they are being used by the state as tools for foreign policy implementation within the scope of Public Diplomacy, Second Track Diplomacy and Multiple Diplomacy, all of which depend on informal actors, foremost among which are NGOs, to carry out activities abroad, with the aim of supporting their own country's foreign policy.⁵⁸

Most of these organizations lack professionalism, good governance and transparency, which is reflected on their performance and the reaction of their clients. They are mainly composed of former or current officials or persons close to the authorities. All of this undermines the credibility of these institutions as evident when they take part in international events, where their reports and activities receive little to no attention. They often justify human rights violations and defend government decisions in that regard using weak arguments such the security situation prerogatives. GONGOs' lack

⁵⁶ Mohamed Hammama, "Who Benefits".

⁵⁷ Interview with George Ishak.

⁵⁸ Regional Center for Strategic Studies, "Why Have the Roles of GONGOs Escalated in the Region?" 12 January 2016, available in Arabic at goo.gl/q6XvcY

of credibility is also caused by their ignorance of human rights discursive practices and basic covenants, reflecting more the mentality and culture of an authoritarian regime. It is therefore argued that GONGOs are ineffective on the Egyptian or international scene, especially on issues of human rights, and that they lack the necessary credibility to shape public opinion, for which the state had sought to establish them in the first place. In Egypt's last Universal Periodic Review at the UN Human Rights Council in 2014, 10 independent CSOs announced that they would not attend for fear of retaliation by the state, while one GONGO went to Geneva and organized a side event, which was attended by only two people.⁵⁹

III: Strategies of Human Rights Organizations in Dealing with the State: Between Action and Reaction

The relationship between human rights organizations and the state under Mubarak with his conditional authoritarianism has been characterized by the availability of a restricted space for these CSOs to operate. The authorities sometimes attempted to narrow this margin, while organizations always tried to expand it. In other words, the conflict concerned the available space for work and the ceiling of freedoms related to it. But under the authoritarian regime with its oppressive measures since July 2013,⁶⁰ rights organizations adopted a survival strategy trying to stay open for as long as possible.⁶¹

The most important five strategies of human rights organizations in dealing with restrictions imposed on its work by the state were:

1. Bypassing State Registration (Working through Companies)

Many organizations did not register as NGOs under the relevant law and chose to operate under other laws that allow human rights advocates a legitimate space to work in an organized manner, without the restrictions imposed under the NGO law. Most independent human rights NGOs became thus registered as private companies or legal firms. Despite the ferocious measures in 2016 and 2017, which included travel bans and freezing assets, those organizations seemed determined to continue working through those alternative organizational forms. On the other hand, some believe that human rights activism no longer needs formal organizational structures that call for legal registration.

⁵⁹ Interview with Mohamed Zaree.

⁶⁰ Between Mubarak's authoritarianism (1981-2011) and the authoritarianism of the regime in power since July 2013 after forcibly ending the one-year rule of the Muslim Brothers, there were two years of unusual openness (2011-2013), during which state security agencies and anti-civil society institutions within the state were at their weakest, regardless of the trial of foreign NGOs (all of which did not specifically work in the field of rights, but rather in democracy and free media promotion).

⁶¹ Interviews with Mozn Hassa and Mohamed Zaree.

According to Ragia Omran, who is an NCHR member, human rights activism can be carried out through an email account and social media platforms.⁶²

2. Formation of Alliances and Networking (Joint work)

Networking is an essential function aiming at partnership, collaboration and coordination as a means to reach an end or goal. Therefore, several organizations saw a need to reconsider the importance of networking as a concept and the necessity of establishing networks and alliances, especially in civil society, considering the increasing number of civil society organizations.

The Front for the Defence of Egypt's Demonstrators is a model of the feasibility and effectiveness of networking.⁶³

The Front continued to enjoy dynamic and organizational advantages before and after the January 2011 revolution because of its flexibility in networking. It defines itself as a coalition whose members are willing to volunteer to provide legal and information support to Egyptians who participate in peaceful gatherings such as strikes, sit-ins, protests and demonstrations. It was formed before the January 2011 revolution by human rights advocates and organizations including the Hisham Mubarak Law Center, Al-Nadeem Center, and the Freedom Committees in professional trade unions for journalists and lawyers or in political parties such as Al-Tagammu and Al-Wafd. After the 2011 revolution, it was also joined by supporters from new political parties such as the Popular Alliance, Bread and Freedom, and the Egyptian Social Democratic Party. The Front provided prompt legal support to those subjected to rights violations for exercising their legitimate rights, in particular peaceful assembly, as well as providing information support and documentation of any violations by the state in these cases. The Front welcomed the participation of all lawyers, organizations and individuals who wanted to volunteer and contribute to its work; its membership included individuals from 34 organizations and human rights and legal organizations and institutions in addition to a large number of volunteers and activists.

3. Litigation

Litigation has been one of the most important strategies of human rights and other civil society organizations in their struggle with successive governments even before the January 2011 revolution. It was the judiciary that ruled that the NGO Law No. 153 of 1999 was unconstitutional, and that ruled to release activists and employees who were arrested for their work in such organizations. Despite criticism by several human rights organizations of the judicial decisions in many cases because the proceedings lacked minimum standards of a fair trial, especially after the return of authoritarianism

⁶² Interview with Ragia Omran.

⁶³ Heba Abdelsattar, "The Front for Defense of Egypt Demonstrators: The Unknown Soldier of the Revolution", *Ahram*, 24 February 2011, available in Arabic at goo.gl/FMJESN

with a new face by the end of 2013, they continued to urge the judiciary to play their role. For example, they asked the state's Supreme Judicial Council to engage in all stages of the investigation of the infamous foreign funding case after certain judges were chosen to investigate the case, and the leaking of false, untrue or out of context confidential information from the judicial files to media platforms known to be close to the ruling regime. Such leaks were used to defame defendants and human rights organizations and to accuse them of plotting to destabilize the country.⁶⁴

The judiciary and the law, despite criticism mentioned earlier in this paper, are still a refuge for independent CSOs. Caritas Egypt Charity Association, for example, managed to obtain a ruling against the MoSS in the Administrative Court after the ministry refused to accept or reject a request by Caritas to receive foreign funds from a donor. The Administrative Court rejected the MoSS claims that it had effectively rejected the grant because it was harmful to national security and state higher interests. The court went on to assert that these reasons were “vague rhetoric, with no evidence to back their veracity.”⁶⁵

4. International coordination

In the context of globalization, which has rendered nation states' borders sometimes into mere lines on maps, the state can no longer control all acts that extend across borders. As a result, coordination among national organizations and their counterparts abroad increased and strengthened to exchange expertise and access material and non-material support. International organizations have developed several mechanisms for cooperation with NGOs. This cooperation can be formal or informal, operational and focused on field work, or more related to policy formulation and advocacy. This opened several options to interested NGOs including cooperation with various UN organizations, accreditation with the UN Secretariat, or cooperation with international NGOs. Such cooperation is sometimes seen as one of the tactics for local organizations to obtain a degree of protection in view of the international status of their partners.⁶⁶

5. Reducing activity or expatriation

The prosecution and persecution of rights NGOs escalated as of mid-2014 including the raiding of offices, the arbitrary illegal detention of activists and employees of these institutions, travel ban and freezing of assets. This led some organizations operating in Egypt to reduce their activity to ensure survival and in the hope of not further provoking security agencies that seemed ready to pounce against any human rights or development work by CSOs in Egypt. A much smaller number of

⁶⁴ Twenty rights organizations accuse the Egyptian government of besieging organizations and seeking their dissolution. <http://goo.gl/fPlfP1>

⁶⁵ Court ruling grants civil society organizations the right to receive foreign funding contributing to development, Al Hayat website, 11 September 2016, <https://goo.gl/cGHmMY>

⁶⁶ Practical guide for working with international organizations, International Mandate, <https://goo.gl/hwqeQ9>

organizations have moved their headquarters or some of their activities abroad, such as the Cairo Institute for Human Rights Studies, which transferred its regional operations to Tunisia.

If working in exile has its advantages, it is certainly not without flaws. The greatest advantage is to work without the pressure of security agencies and their allegations, as well as without interference by executive authorities and their control over activities; in addition to the freedom and ease of movement of funds, which enhances the ability to achieve results. However, a move into exile is a move away from the reality one desires to study and/or change. Working from abroad also provides ground, even if contrived, for defamation and accusation of treason. Finally, many rights advocates strongly believe that civil society activists should struggle and stay in the country instead of leaving it.⁶⁷

Those five strategies share three basic elements:

- Radicalism in dealing with the state: the NGOs focus more on shaming the state rather than trying to communicate with the reform elements that could exist within it.
- Lack of distinction between the state and the government: this resulted from the conduct of state institutions that did not behave as independent and neutral state organs but rather as part of the ruling regime/government.
- Persistent strategies despite changing circumstances: these strategies have been around for a while and there has been no clear change commensurate with the upheavals and changes brought about by the 2011 revolution.

Conclusion

The structures of the modern Egyptian state have always governed the relationship between successive regimes and civil society organizations. The Egyptian state has often considered civil society as satellite formations in the society to serve the state by playing specific roles determined by the state in a top-down approach. The state grants civil society spaces from which it plans to withdraw or to let them be used in favour of a certain development or even political agendas as laid down by the state. Thus, the space available for civil society action has been inversely proportional to the space occupied by the state and its bureaucratic institutions. Therefore, the role of civil society greatly declined during the Nasserite period, not only because of legislative restrictions or repression by security agencies but also because the state believed it played that role itself and that it was the very voice of the people. During the eras of Sadat and Mubarak, and with the change in the structure and nature of the political system and its relation to the economy, a wider space was opened for civil

⁶⁷ Interview with George Ishak.

society, especially in the social services and development sectors. The changing nature of the world order after the end of the cold war and the consequent proliferation of democracy promotion programmes in addition to the struggle by rights activists inside Egypt led to the opening of a limited space for the rights community within civil society.

The historical structure of the state and civil society organizations in Egypt made them easily subject to state control. They were thus subsumed by the state in the Nasserite period. However, with subsequent political transformations, active human rights organizations after their birth in the early 1980s became more radical and professional. Their performance sometimes surpassed that of political parties, a matter which qualified some of them to be a partner, even if in an informal way, in coalitions and alliances in the revolution of January 2011, and thus also one of the targets of the counter revolution in the following years.

Although the various constitutions were mostly enabling for civil society action, the laws have always been rooted in an authoritarian philosophy. The function of relevant laws has not been regulation but rather reinforcing the state's hegemony and control over CSOs and coding the state's ability to monitor and even paralyze whole civil society sectors or specific organizations, if needed. This has resulted in a situation in which a large number of rights CSOs circumvented the NGO law and registered under other laws as law firms or civil companies. In many cases this inevitably contradicted the rules of good governance and transparency within NGOs. Even if some of these organizations (registered under other legal frameworks as companies or firms) implemented voluntary rules of internal governance, they remained subject to the will of the founder/owner who may just ignore these rules if they felt any external threat since they are the legally liable person/s for these institutions. It is almost impossible for rules of good governance to become an integral pillar within such organizations under the existing legislative structure: first because transparency would become a tool for control of organizations by the state and not as a tool for information exchange and accountability to the society; and secondly, because it puts organizations, their founders and workers under constant legal threat.

As a result of the state authoritarian ethos, it has been normal for its officials to consider CSOs, as stated by one official, a "danger". Not adhering to the prescribed role is considered by state institutions to constitute a danger to national security and could even amount to treason. This helps explain the high level of scepticism and suspicion among human rights organizations towards the state in general. This attitude can sometimes reach a level which could impede advocacy for human rights and turn the work of relevant CSOs into mere protest action.

These structural constraints, under the influence of an internal pressure for freedoms and rights and an external pressure for a transition into democracy and more respect for human rights, led Egypt to become a state that tolerates the existence of human rights organizations as long as the state can

maintain control over their working environment, contain them when necessary, and crack down on them if needed. In return, human rights organizations enjoyed a lot of cohesion and flexibility, which enabled them to survive and maintain a high degree of independence, although they could not move the struggle to within state institutions, remaining in the opposition instead of being able to cultivate allies within institutions as do Western organizations as well as Asian, African and Latin American organizations in democratic countries.

In the face of these inherent authoritarian state strategies, which consider human rights organizations as a "danger to Egypt", rules and regulations had to be established to protect the state. Many organizations have consequently adopted a somewhat hostile attitude, which sometimes impeded their very objectives. In this context, organizations ignored some state institutions such as the national councils, which, if allies were cultivated, could provide opportunities for organizations. Instead, these councils were left in the hands of the regime to be fully co-opted and used even sometimes against the organizations themselves.

The way out of this cul-de-sac, provided the political conditions were conducive, could be the enactment of an effective law that regulates the CSOs by ensuring a balance between reasonable government oversight and internal governance procedures, starting from the freedom of associations to decide their internal structure and administration without government interference, up to the freedom to receive funding and grants from abroad, and the freedom to use such funds, in exchange for a reasonable government oversight over the associations. Such a legislative change should contribute to strengthening the internal governance of organizations through procedures and structures that would ensure good governance, including transparency and accountability. The existence of a clear law that allows human rights organizations to work freely and drive them to adopt maximum transparency will also be sufficient to refute allegations that have often been directed at civil society in general, including foreign agency, especially the West, or providing a cover for terrorism, to the rest of the list of those tired accusations.⁶⁸

However, there is no doubt that the roots of the solution are not only in legal texts, but in the political life itself. Without opening up the space for assembly and association to various societal forces, there will be neither mobility nor the necessary energy to reformulate the state structures to reflect the society its meant to govern from the bottom up. In fact, the danger to Egypt and other similar states lies not in what existing regimes claim about foreign conspiracies and external military threats, but rather in the continuation of the status quo, in which a modern democratic state cannot be built. Human rights organizations, for their part, may have to build a wider network with other civil society organizations on a large scale and work to confront political repression and to build alliances with social and political forces that enable them to influence decision-making within state institutions.

⁶⁸ Mohamed ElAgati, "Undermining Standards".

These alliances could also enable rights NGOs to have more influence on the ground by representing certain social groups and adopting their causes.

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