



REPORT ARAB POLITICS BEYOND THE UPRISINGS

Egypt's Human Rights Movement

Repression, Resistance, and Co-optation

APRIL 18, 2017 — KHALED MANSOUR

Since the mid-1980s, the number of Egyptian nongovernmental organizations (NGOs) focusing on human rights has grown rapidly. But despite the proliferation of organizations, the human rights movement in Egypt has never been very effective, and is now especially unmoored. This report traces the sources of these problems in the history of human rights activism in Egypt. The author shows that even as the government has at times allowed NGOs a modicum of independence, it has mostly regarded them with contempt and suspicion. Additionally, Egyptian human rights organizations never formed strong bonds with trade unions and other parts of civil society. They have thus been especially vulnerable to failure. Now, the security-dominated regime of President Abdel Fattah el-Sisi is leading a fresh crackdown on human rights NGOs. For Egypt, mired in political dysfunction and economic malaise, this is a practical as well as a moral blunder. The inclusion of human rights in policy and politics, the author argues, is essential to the country's advancement.

In the last few months of 2016, the Egyptian government and security agencies worked together to freeze the assets of at least six prominent human rights defenders and three human rights organizations. In the same year at least fifteen human rights activists were banned from leaving the country, and several were summoned for interrogation. These organizations and individuals face possible charges of undermining state institutions and receiving foreign funds to harm national security. These charges could lead to lengthy prison terms and hefty fines if the ruling regime in Egypt continues to escalate its unprecedented crackdown on the freedom of civil and political action in general, and on the human rights movement in particular.

A new bill that the parliament passed in November 2016 could effectively paralyze both services-oriented and advocacy civil society organizations (CSOs) in Egypt to an extent that, a UN expert warned, it would “devastate the country’s civil society for generations to come and turn it into a government puppet.”¹

This crackdown is but the latest chapter in Egypt’s troubled history with human rights. Rule-of-law and citizenship in modern Egypt have most often been unstable institutions and concepts, co-opted to serve largely authoritarian regimes ranging from the nationalist to the kleptocratic and from the state socialist to the crony capitalist.

Though the human rights movement of Egypt has often been restricted to a tight corner of operations due to government laws and policies and judicial and security harassment, it has traveled far since it emerged in the mid-1980s. In its three-and-a-half decade lifespan, it has had varying degrees of success in issues and causes it championed. Human rights activists contributed, even if in small ways and from the tight corner to which they were constrained, to the uprising of 2011 and the removal of former president Hosni Mubarak. They proceeded to have an unprecedented impact during Egypt’s short-lived democratic experiment (president 2011–13).

But this period of relative freedom, during which many new human rights organizations were established, now looks like little more than a detour from Egypt's main highway of authoritarianism. Security institutions, state bureaucracies, and their regional and business allies regained full control after the removal in 2013 of Mohamed Morsi's government—which itself was not ultimately a big supporter of the human rights movement.

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Now, as a suffocating new regime has taken over, independent and credible human rights organizations are still numerous. But like ships tossed from port by a storm, they float unmoored, damaged and directionless, notwithstanding the bravery and integrity of the remaining crews and captains. The “movement” now seems barely deserving of the title. This is not just a tragedy for human rights in Egypt, I argue, but a dangerous situation for the development of the country in general. The weak situation of human rights is both a cause and a symptom of a country's broader crisis: despite appearances of relative stability in a tumultuous region, Egypt is on the verge of losing its way economically, politically, and socially in a more severe sense than it has in a very long time. It is becoming ever clearer that its authoritarianism leads nowhere.

The fact that the human rights movement in Egypt has ended up in such a weakened state is not an accident, but rather the result of a specific history in a country whose governments have long treated it with suspicion and even contempt. Successive Egyptian regimes have viewed the human rights movement—and civil society more broadly—in crude terms. At best it was a social pressure releaser, at worst, an annoyance that needed to be carefully constrained to keep from growing into a destabilizing danger. The Egyptian state has never recognized the movement, or had a respect for the goals it seeks, as being an integral part of becoming a better-developed society.

Movements with similar goals have fared relatively better in Morocco and Tunisia. In Morocco, a gradual political reform from the top, beginning in the mid 1990s, helped strengthen human rights organizations to varying degrees. And in Tunisia, a more robust trade union and women's movements from the late 1950s accomplished the same, allowing human rights-oriented civil society to acquire a front-row seat in the political transition drama that ensued after the December 2010 uprising—even after decades of ceaseless security, legal, and political siege. In both Morocco and Tunisia, organic relations grew between the human rights movements on the one hand and the rest of civil and political

societies on the other hand. This did not take place in Egypt, where the human rights movement existed within a restrictive political space and had no influential segments of the civil society to coordinate with, while trade unions and political parties had been eviscerated for decades and co-opted by the state.²

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Briefly comparing these countries' experiences shows that the ability to form a robust human rights movement relies on much more complicated variables than the status of human rights in a country at any given moment. More so, it depends on the strengths of a country's social and political connective tissue—those bonds that preserve some relationship between the state, communities, religious institutions, the private sector, and most of all, civil society.³ Examining Egyptian history shows how these bonds were systematically weakened, all but ensuring that the country's human rights movement would face almost insurmountable obstacles, even as organizations proliferated in the brief period of openness following the 2011 revolution.



ACTIVISTS AT A PRESS CONFERENCE PROTESTING THE GOVERNMENT ORDER TO SHUT DOWN AL NADEEM CENTER FOR REHABILITATION OF VICTIMS OF VIOLENCE, AN EGYPTIAN NGO THAT PROVIDES MEDICAL SERVICES AND COUNSELING TO VICTIMS OF POLICE TORTURE AND OTHER VIOLENCE. SOURCE: EIPR TWITTER.

This destruction of the foundations of civil society matters quite a lot for the future of the country. The difficulties of even

narrowly focused rights-based campaigns, like that for expanding better health care (which I discuss later in this report) show how much ground Egypt must cover, based on current trends, to achieve modest improvements in well-being for most of its citizens. It is clear that without a meaningful reform in social and economic policies, the gap will widen between the poor and disenfranchised majority, who are banished from the realm of the political (except when called upon to cast their votes), and the dominant rich minority, which controls resources, wealth, power, and the management of networks of cronyism. Such reform is impossible without civil society and a respect for human rights.

The Historical and Political Context

The heart of the continuing political crisis in Egypt is the state's ceaseless emaciation and co-optation of the political and civil societies: political parties, trade unions, religious institutions, philanthropic activities, charities, and advocacy organizations. The state bureaucracy, led by the army and other security agencies, has played a pivotal role in this premeditated gutting of competing entities. Its efforts began in 1952 when army officers deposed King Farouk, ended the monarchy, and then shut down or co-opted almost all forms of peaceful protest and organization, swallowing the society into a state-led hodgepodge project of Arab nationalism and Egyptian-style state socialism.

Gamal Abdul Nasser's regime cracked after the 1967 defeat in Egypt's war with Israel, and only ended with his death in 1970, at which point Anwar Sadat assumed the presidency. Sadat and his successor Hosni Mubarak (president 1981–2011) gradually abrogated the unwritten contract under which the people had been guaranteed a minimum of social and economic rights (free education and health care, subsidized housing, controlled rents, and guaranteed state employment for graduates, to name a few) in exchange for giving up most of their civil and political rights. CSOs stepped up their networks of services and care to stem the widening gaps between social needs and dwindling government services. These organizations included the long-established, like Ansarul Sunna Society or Caritas, and foreign organizations like CARE—not to mention the politically motivated affiliates of the Muslim Brotherhood.

As the state started a slow—and disorderly and opaque—transition to a market economy in the mid-1970s, social and economic services started to deteriorate and they were no longer portrayed by the state as rights. Government officials started to complain about a population explosion problem rather than an economic production or a resource distribution challenge. By the early 1980s, Egyptians had clearly lost their access to quality social and economic services from the state—which came on top of the continued denial of their political and civil rights. A lot of these services became the domain of CSOs, some religiously motivated, some politically motivated and others focused on geographical or ethnic groups. But as Egyptians took over roles that the state used to play, they still could not freely organize into trade unions

or nongovernmental associations, they lacked free media, and they had a very short and frequently interrupted experience of relatively free multiparty democracy in the late 1970s and early 1980s (though this never extended to the presidency).

It was under these circumstances in the mid-1980s that the first human rights organization was born in Egypt. The Egyptian Organization for Human Rights (EOHR) was led by leftists, Nasserites and Arab nationalists who started to think that a new social contract should be brokered with the state that did not forfeit civil and political rights for the sake of social and economic rights—the latter of which the state no longer guaranteed anyway. It was a difficult birth and a tough evolution on a zigzagging road, as I will explain in later sections.

Egyptians became increasingly disgruntled in the late 1980s, but the state was able to meet some of the economic demands in the early 1990s thanks to economic windfalls and cancelled loan payments that the government gained from its political position against the Iraqi invasion of Kuwait, and its subsequent joining of the international coalition in the war against Saddam Hussein in 1991.

Those windfalls didn't last, and by the turn of the new century, Mubarak and his aging ministers had been regurgitating promises of greater political and economic dividends for more than twenty years—and they never came through. Egyptians had already taken to the streets in 2000 in support of the Palestinian Second Intifada, and in 2003, to protest against the United States' invasion of Iraq. But their anger at domestic conditions took longer to crystalize into public actions as their discontent deepened. Political scientist Eberhard Kienle argues that neoliberal transformations in poorer Arab countries like Egypt in the 1990s and the first decade of this century helped create

“ingredients for unrest ... for quite some time as rulers were less and less able to meet the expectations and indeed demands of their populations. For more than two decades, globalization and related economic reforms tended to increase the income and wealth of some constituencies while leaving behind, impoverishing or locking into lasting destitution others. ... Public-sector workers and civil servants, as well as employers in the noncompetitive parts of the private sector, increasingly fell behind. ... Restrictions on the freedom of expression and political participation incarnated in government-dependent media, censorship, rigged elections (or their complete absence) and the repression of strikes and other forms of collective action left the losers with little hope of making their voices heard and influencing policies.”⁴

Egypt's macroeconomic indicators were encouraging from 2005 to 2010—especially the GDP growth rate, which averaged about 6 percent annually during the period.⁵ But other indicators such as inequality, youth unemployment, high malnutrition rates, and deteriorating health and educational services caused grave concerns. These developments could be largely attributed to a declining public investment in social and infrastructure projects. Neoliberal policies cut

down subsidies, increased inflation, and affected basic social services. Social safety nets to mitigate the harmful impact of this economic transformation were never adequately installed.

Similar developments took place in other Arab countries resulting in rampant poverty and corruption, like Syria, Tunisia, and Yemen. Various Arab republics, under domestic and international economic pressures, had shyly and slowly shifted toward ostensibly open market policies (for Egypt, beginning in the late 1970s) and then at a faster pace later on, especially in the decade preceding the Arab uprisings. Networks of corruption and cronyism acquired more control. In the absence of organized political action and with the co-optation of trade unions in most of these countries (Tunisia being a marked exception), only Islamists were able to persist as political threats to regimes, partly due to state permissiveness and partly due to their tenacity and good organization.

The Arab uprisings were surprising to many, but not necessarily for close watchers of the region who were observing how social and economic inequalities were rising dramatically. The authors Rabab El-Mahdi and Bahgat Korany argue that it was possible to predict an upheaval in Egypt if one wore the right theoretical lenses.⁶

Despite all of this, Mubarak stayed in power for three decades. The late political economist Samer Soliman argues in his seminal work, *The Strong Regime and the Weak State*, that the repressive regime had just enough agility to keep the frail state alive through changing conditions.⁷ He claims that Mubarak was able to placate certain important sectors (state bureaucracy, judiciary, the police, etc.) through special funds and benefits as long as the state had surplus resources (through cutting down budget lines for social services or through loans). Soliman attributes Mubarak's downfall to the decreasing surplus he could use to placate his allies, because although GDP was growing well, the state revenues were rapidly decreasing, especially since the taxation system was fraying and corruption was rampant.

By the end of 2010 in Egypt, a new parliament that completely excluded any form of opposition (and shut out the Brotherhood who had won eighty-eight seats a few years earlier) nailed shut the last opening for political mediation and expression by large sectors of those affected by the fast-paced and badly concocted neoliberal policies. The regime asserted control of most media outfits, banned protests and strikes, besieged trade unions, and emaciated political parties, and independent CSOs. For Egyptians, the last straw was the 2010 parliamentary elections in which the ruling National Democratic Party (NDP) and its supporters won 97 percent of the votes. Illegally organized public protests became a daily occurrence but lacked wide popular support and political leadership.

The angry crowds that filled the streets of Cairo in January 2011, the burning down of police stations, and the amazingly fast apparent collapse of the policing apparatus were part of an unprecedented mass movement against the Mubarak regime, its repressive strategies, and its deepening failure in social and economic policies. But they were also the

culmination of simmering anger at the huge and widening gap between the haves and the have-nots.

After Mubarak stepped down on February 11, 2011, the military took over the country for eighteen months. An Islamist-dominated parliament was inaugurated in early 2012. Newly established secular parties won a few seats, while the Brotherhood and the Salafis ended up with nearly 70 percent of the seats. The first truly democratically elected parliament in Egypt in nearly sixty years was disbanded a few months later when a high court ruled the election law unconstitutional. The Muslim Brotherhood's Mohamed Morsi was narrowly elected president in a June 2012 runoff, and his ascension to the presidency saw the transfer of effective authority from the military. The twelve-month presidency of Morsi was a rollercoaster ride in which he tried to placate and work with security agencies and the army, but excluded the younger generation of the Brotherhood. He also antagonized the so-called revolutionary youth groups of the left, themselves a weak and disorganized political force. After the military deposed Morsi following massive public protests, an interim president assumed power for a year until, in May 2014, Minister of Defense Abdel Fattah el-Sisi won a landslide victory in elections that followed some of the worst and bloodiest political violence in Egypt's modern history.⁸

The angry crowds that filled the streets of Cairo in January 2011 and the burning down of police stations were a rejection of Mubarak. But they were also the culmination of simmering anger at the huge and widening gap between the haves and the have-nots.

In the years since the Morsi's ouster, the military and security agencies have dominated politics. The gains made in 2011–13 by civil society and the human rights movement (which I describe more in the next section) shrank rapidly. Sisi's regime promulgated, by decree, one repressive law after another, politicized the judiciary, established effective impunity for police forces, and led a massive media demonization campaign against any form of opposition. The latter primarily focused on the Brotherhood but later extended to repress the April 6 Youth Movement—a revolutionary body that formed in 2008—and then the human rights movement. This came at a time of violations of human rights that were unprecedented in scope and intensity, including alleged extrajudicial killings by security forces, systematic and horrific torture in places of detention, lengthy and illegal “preventive detention” of thousands of people, forced disappearance, and abuse in prisons.⁹

To fully appreciate the scope of what has been lost in these years of authoritarian regression, it is necessary to review the evolution of civil society in Egypt, especially that of the human rights movement, how the state interacted with it, and how the movement dealt with its challenging environment.

The Evolution of Egypt's Civil Society and State Control

The Egyptian military led by Nasser in the 1950s had succeeded in changing the state structure, ending feudalism, initiating ambitious state-run development plans (at least until 1965), and spreading educational and health services to large sectors of the population that had been deprived of it. But in the meantime, the regime shut down public participation (after a short failed experiment with the Muslim Brotherhood as allies in 1952–54). This is why it was easy for Sadat in the 1970s and Mubarak in the 1980s and 1990s to quickly wipe out the gains achieved under Nasser in terms of social and economic opportunities for the lower classes.

Gradually one of the most important state strategies for social control became figuring out how to besiege and domesticate—or even corrupt—CSOs, political parties, and trade and professional unions. The state feared that they could challenge the burgeoning networks of power and wealth. Fewer and fewer social forces were organized enough to defend the interests of the more disenfranchised sectors and to advocate for different social and economic policies.

The first serious legal framework to regulate civil society in modern Egypt was Law 384 of 1956, which was tightened in Law 32 of 1964. The law allowed the government to intervene in the granular details of CSOs' work, and confirmed the determination of Nasser's regime to subjugate civil society to full state control.¹⁰ The current Law 84 of 2002 is similar. These laws gave the government (as represented by the ministry of social affairs) the right to supervise CSOs, and in certain cases request that a court dissolve them. They forced organizations to maintain all records and photos of their members on file in their offices, gave the concerned cabinet minister the right to dissolve and reappoint members of CSOs' boards, and barred CSOs from working on "religious" and "political" issues without clearly defining either field.

Most CSOs were focused on social services until the early 1980s, when human rights organizations started to appear. By 2016, Egypt had more than forty-six thousand registered CSOs under Law 84, most of them very small in geographic or functional scope and many dormant. A majority of these organizations were service providers or charities (largely in the fields of healthcare and education, or care targeted to certain population sectors such as the elderly, the youth and children). A very small number of these organizations focused on advocacy and human rights; less than fifty according to my own tally. And still the majority of the independent and influential amongst them—a number that I would put at

around ten based on the regular participation in the Egyptian Forum of Independent Human Rights Organizations that the Cairo Institute for Human Rights Studies hosted—declined to register under the restrictive law, preferring to work as law firms, or nonprofit (or even for-profit) companies.

Almost a third of the forty-six thousand registered CSOs appeared after 2011 due to increasing governmental tolerance in the tumultuous quasi-democratic detour of 2011–13:

Year	Number of CSOs
1925	300
1950	2,000
1970	7,000
1980	8,420
1990	12,832
2000	16,000
2011	31,000
2014	46,2000
2016	46,845 ¹¹

Egyptian human rights organizations multiplied in the first decade of the twenty-first century and started to pay more attention to social and economic rights instead of their earlier, almost exclusive focus on civil and political rights. They started to link impoverishment and inequality as well as repression of minorities to repressive social policies and neoliberal economic policies. However, the many critical reports¹² and analyses produced by these organizations in that decade were never translated into a political force for change, nor did they markedly affect state policies because the political space in Egypt (and also in Tunisia and other Arab republics) stayed torn between statist forces and Islamists or sectarian factions.

There are various actors in the human rights movement (professional nongovernmental organizations, research and advocacy organizations, loose networks, and individuals) that did not play a leading role in the 2011 uprising. Nevertheless, they had spent years providing a space for training and jobs for activists. The movement helped frame activists' demands, influenced their discourse, and represented their causes domestically and internationally. Activists who led confrontations with security forces on the ground and entered politics in the following months belonged, in many instances, to networks that overlapped and intersected with the human rights movement. But most of them acquired their political skills and networks from direct action on the ground through sit-ins, strikes, and workers' struggles.¹³

After the uprising, and especially in 2011–13, several nongovernmental human rights organizations engaged in serious negotiations and advocacy together with social movements and other components of the civil society on security sector reform, transitional justice, health insurance legislation, and housing policies, to name a few examples. Other organizations continued to document violations, support labor struggles, critique economic policies, work on budget transparency, and oppose legislation on settling corruption cases with Mubarak-era businessmen.¹⁴ This participation reached a zenith in late 2013 and early 2014. But by then the military-dominated government had gradually begun to close down the public space, until street actions and public dissent almost ceased (or became limited to social media platforms). Rights-based approaches to policy and politics have become increasingly silenced by war-cries of counterterrorism and a hypernationalist discourse, especially by a media that has become, since 2013, largely controlled by the regime. The ease by which the military-dominated government cornered the human rights movement also revealed the structural weakness of all such organizations under authoritarian regimes. In the absence of genuine membership organizations and the lack of other social forces that are autonomous from the state and willing to support human rights organizations and integrate rights-based approaches, human rights defenders become easy to silence. Their only means of resistance are their courage, their perseverance, and the unshakeable commitment of many long-time defenders.

Negotiating Legal Regulation

In early 2012, almost halfway through the thirty months of hope and open channels between the human rights movement and state institutions in 2011–13, several organizations presented a draft bill on associations to the parliament. But the Islamist-dominated legislative assembly itself was dissolved in 2012 by a constitutional court whose members were appointed by the old regime. That the honeymoon lasted even this long was due to the facts that most members of parliament were outside the control of security agencies, and that even some actors within these agencies saw CSOs as a possible ally in the agencies' smoldering conflict with the Muslim Brotherhood.

During the deliberations on the association law, parliament welcomed civil society to debate with them for the first time in decades. Representatives from civil society exchanged arguments with Fayza Abou el-Naga, minister of international cooperation and a staunch opponent of CSOs. Human rights activists including renowned figures such as Bahey Eldin Hassan and Hossam Bahgat presented a bill supported by thirty-nine organizations and tabled by two members of parliament, Ziad El Aleemi and Amr Hamzawy.¹⁵ The Supreme Council of the Armed Forces (SCAF), which exercised executive power, countered with a different bill in April 2012.¹⁶ Human rights activists alleged that former Mubarak officials prepared the government draft, led by former prime minister Kamal Ganzouri, who continued to be close to the military, Abou el-Naga (who became Sisi's national security adviser after he became president in 2014) and former minister of social solidarity Ali Mosailhi (who became a member of parliament in 2016). Several nongovernmental organizations (NGOs) said the government bill was identical to a draft that Mosailhi presented to parliament in 2010.¹⁷

The government bill was yet another attempt by Egypt's patriarchal elite to control civil society rather than regulate the field and bring about more transparency. It viewed NGO board members and staff as public servants and their funds as public funds—a view that violated established Egyptian jurisprudence. It gave the government the right to intervene in the formation of an NGO's general assembly, how it called for a meeting, when it met, how members could join and leave, and how the board was elected and functions assigned. It went so far as allowing the government to freeze an NGO and seek a judicial order of dissolution if it deemed the NGO in violation of the law, or considered it no longer capable of performing its duties. The bill banned the receipt of foreign funds without prior government approval and retained the same prison penalties from Law 84 of 2002, while hiking the fines. It also brought unspecified state institutions (largely understood to refer to security agencies) into a coordination committee to decide on foreign funding.

The government bill was totally hostile to the basic concepts of how any regulated civil society could freely function while complying with reasonable requirements for transparency and accountability. The bill ensured full control by the Ministry of Social Solidarity (MoSS) and security agencies of the functioning of civil society associations and treated CSOs as if they were extensions of the state bureaucracy, accountable to the state, which could outline the vision and strategy of the CSOs at will.¹⁸ This restrictive bill never materialized into a law, probably as a result of the critical campaign led by human rights organizations, which came four months after security forces stormed five national and foreign CSOs on December 29, 2011, arresting forty-three staff members, and later indicting them. A media smear campaign ensued, accusing human rights defenders in particular and advocacy NGOs in general of being foreign agents and conspiring to undermine the stability of the state. Reportedly following pressure from the United States, the Egyptian military allowed the foreign suspects (mostly Americans) to leave the country on bail. In June 2013, all forty-three suspects were sentenced to spend one to five years in prison (eleven of the sentences were suspended).¹⁹

The legal tussle between the regime and the independent human rights organizations²⁰ did not change much during Morsi's year in power. The Muslim Brotherhood was more welcoming of dialogue and open to compromise than the old regime, but their ethos was authoritarian and they probably did not want to risk some hard-gained political capital they thought they had accumulated with security agencies, for the sake of those predominantly secular organizations. The Freedom and Justice party, the Brotherhood's political arm, drafted a new NGO bill that was not radically different from the one the Mubarak acolytes had put together. Like previous attempts at drafting and legislating a new bill, this one also never turned into a law due to differences between the anti-Brotherhood state bureaucracy, which pushed for a different version, and the NGOs, which criticized both iterations.²¹

For almost a year after the Muslim Brotherhood was removed from power in July 2013, the whole issue of reforming legal regulations governing CSOs apparently became a secondary concern for the state. The state's repressive machinery was almost totally focused on the Brotherhood members and supporters following the Rabaa Massacre of August 2013, when the army killed upwards of eight hundred pro-Morsi demonstrators (the precise number of deaths is disputed). The so-called democratic faction in the military-dominated government of interim president Adly Mansour attempted to introduce a new CSO bill in late 2013 but it was quickly derailed. The faction, made up of liberals, leftists, and Nasserists was fast removed from power, and the regime went ahead to regain a new form of unchecked authoritarianism. Just several months later the new minister for social solidarity, Ghada Wali, warned all "entities" engaged in NGO-like work to register under Law 84 within forty-five days or face legal sanctions. In one of his last-ditch attempts to mend bridges with the regime before he himself had to go into exile, Bahey Eldin Hassan, the most experienced and one of the longest-serving human rights defenders in Egypt, met with Prime Minister Ibrahim Mahlab. Hassan did so on behalf of organizations that rejected the ministerial decision and a new draft bill prepared by Wali's advisers that was similar to the existing law, but went even further,²² denying many of the NGOs from registering as law firms or companies—a tactic they had deployed against the restrictive association law for many years. Wali's threats did not lead to much. At least one prominent NGO did try to register under the law, but its repeated requests were not accepted by the government.



LEFT: A FLYER FOR AN EVENT HOSTED BY EIPR ON THE ROLE OF CUSTOMARY RECONCILIATION IN SECTARIAN DISPUTE AND STATE RESPONSIBILITY.

RIGHT: A FLYER FOR A PANEL DISCUSSION ON THE TOPIC OF "PUBLIC DECENCY" HOSTED BY EIPR'S FORUM ON RELIGION AND FREEDOMS. SOURCE: EIPR FACEBOOK.

In September 2016, the council of ministers approved a new bill to be tabled at the parliament. Its overall philosophy was summarized in October 2016 by the United Nations Special Rapporteur on freedom of peaceful assembly and of association, Maina Kiai: The draft law “limits NGO work to ‘development and social objectives,’ and imposes a high level of minimum capital required to set up an NGO. Other new elements introduced by the draft law include the establishment of a specific tax for foreign funding, the banning of activists who have received a prison sentence for forming their own NGOs, and requiring the NGOs to conduct work that meets social needs.”²³

Wali had long made her position on the law clear. “We support active organizations that work for the public interest voluntarily to serve and develop the community,” she said in a newspaper interview. The newspaper, *Al-Shorouk*, reported the minister’s insistence that just forty-four human rights NGOs had been asked to register, arguing that they should do so because they received foreign funding, were unaccountable, and did not pay taxes.²⁴

Foreign Funding

During the period from 2014 to 2016, the regime entered a war of attrition with human rights defenders and NGOs since it felt more empowered as it mended relations with Western backers such as Germany, France and the United States. In this war, foreign funding for human rights organizations was a central weapon in the hands of the regime. Pro-state media platforms used it to vilify human rights organizations as foreign agents, while the judiciary pursued organizations for allegations of breaking the law and using foreign funding to undermine state institutions and harm national security.

The case that led to the indictments of forty-three people in 2013 was reopened and before the end of 2016 about fifteen human rights defenders were banned from leaving the country, while three independent human rights defenders and five organizations had their assets frozen.²⁵ NGOs that were suspected of being affiliated with or sympathetic to the Muslim Brotherhood—mostly working on development and social services—had already suffered a harsh crackdown in 2014, when the government froze the assets of more than one thousand societies and branches. Some of these associations had been providing health and educational services for millions of peoples for years. They included two that were in fact founded before the Muslim Brotherhood, al-Jam‘iya al-Shar‘iya (the Sharia Society) established in 1912, and the Jama‘iat Ansar al-Sunnah al-Mohammediyah (The Association of Supporters of the Practice of Prophet Mohammad) established in 1926. These organizations played a vital role as the state had withdrawn for many years from social services in health, education, support for the poor and the unemployed, childcare, and services for the elderly.²⁶



AMNESTY INTERNATIONAL AND HUMAN RIGHTS WATCH CO-PRODUCED THIS VIDEO IN NOVEMBER 2016 URGING THE GOVERNMENT OF EGYPT TO LIFT TRAVEL BANS ON HUMAN RIGHTS ACTIVISTS. SOURCE: AMNESTY INTERNATIONAL.

One could argue that states should maintain a regime of oversight over transaction of funds and relations between local actors and foreign powers, this being a foundational part of international law and the rights of sovereign states to ensure that only domestic forces directly shape the political developments in the country. But this argument has been extensively abused by authoritarian states that make it difficult to raise local funds and almost impossible to raise foreign funds.²⁷ Several human rights organizations registered as companies to avoid the associations law and its various restrictions, especially on foreign funding, but this in turn raised issues about transparency and accountability.

The source of funding is critical for the credibility of human rights organizations “in the eyes of those whom they are supposed to be supporting, especially where most of the funding was foreign, hence a source of political (and possibly legal) liability,” as political economist Amr Adly has written.²⁸ Foreign funding carries a risk of clientelism that could undermine what should be the genuinely domestic nature of a CSO, its priorities and its accountability. As Adly warned: “Dependency on foreign funding would make these NGOs develop structures, agendas and programs that fit the interests of their patrons, be they foreign governments or private foundations, rather than addressing real problems in their proper contexts.”

However, as far as the independent human rights organizations that were studied for this report, these concerns did not largely seem to apply. As a matter of fact, in addition to my personal experience and affiliation with this movement for several years, Adly has shown that the exact opposite could be said of several organizations. The foreign-funded Egyptian

NGOs, some of which draw some funding from mainstream northern foundations, adopted a strong anti-neoliberal stance in clear opposition to the policies of successive Egyptian governments and international financial institutions such as the IMF and the World Bank.²⁹

The Human Rights Movement: A “Head without a Body”?

Even though the human rights movement has succeeded in defending the rights of thousands of people through legal aid, won some social and economic benefits through strategic or constitutional litigation, and built some ties with various social movements, it has remained like a “head without a body”³⁰ because it could not establish an organic relationship with a large social base.

However, the root of this failure to build a social and political base for the human rights movement should not be blamed on the constituent parts of this movement alone. The root cause has been the persistent policies and positions of successive Egyptian regimes, which have impoverished and almost eviscerated social and political participation.

Moreover, the human rights movement, though it emerged in the mid-1980s, did not really mature until the late 1990s and the first decade of the twenty-first century. The movement also suffered from some of the side effects of professionalization, and the transformation from groups of activists into NGOs with all the attendant political and institutional implications, including the evolution of barriers between its leading and well-established organizations and the weak but extant broader civil society and social movements. There was, as Adly has written, a lack of “common identity among the components of the two movements and hence the potential or actual divergence in interests, goals, outlooks, and rhetoric in a way that undermines or at least limits their interaction as components of a single movement aiming at social and economic change.”³¹ This lack of a common identity and the divergence in goals also blocked the evolution of an organic relationship between the human rights movement and the rest of civil society.

The tightly controlled space allocated to civil society under Mubarak has almost disappeared under the regime that took control in late 2013, with the thirty months after the 2011 revolution now looking—at least to many within the security agencies—more like a detour.

Human Rights Movement in Practice: Advocating for a New Health Insurance System

The grim history of human rights in Egypt is not without a few successes on the part of activists. Over the years, human rights activists have succeeded in affecting the public discourse with their regular reports, advocacy, and campaigns on violations of civil and political rights. They have also succeeded in popularizing certain concepts and terminology, especially for social and economic rights, such as empowerment, transparency, social safety networks, and participatory policymaking. Still though, these activists were unable to markedly affect actual economic and social policies. Neither could they decrease the persistently egregious civil and rights violations such as torture, religious persecution, and the impunity of security forces.

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The Egyptian uprising did not, after all, succeed in changing the dominant economic and social institutions nor genuinely undermine the unaccountable control of security agencies over civil and political life. On the contrary, and especially after the military takeover in 2013, revolutionary leaders—especially among the young members of CSOs, activist workers, senior members of protest movements (such as April 6)—ended up in jail or faced constant legal harassment. Ultimately, the short-lived transition of 2011–13 brought no real reform of security agencies, the judiciary, the state-owned media, most of the established business networks and monopolies, religious institutions, state-sponsored cultural organizations, or—above all—the military establishment.

The human rights movement's attempt at fixing the crumbling national health care system is one example of a moderately successful effort to intervene in the arena of socioeconomic policy. The movement has long intervened in defense of social and economic rights using various mobilizations, litigation, and advocacy mechanisms. These efforts include a case that raised the minimum wages, and reports and analyses that supported the labor movement, and detailed policy recommendations for fixing some of the state social services. But the outcomes of all these efforts were ambiguous, because recommendations were rarely translated into policies and laws. The campaign for health care is a relative exception, where rights advocates made something of an impact. As such, the campaign illustrates how important the human rights movement can be to achieving basic advancements in well-being for all Egyptians—even in cases that may not involve the most headline-grabbing topics that one might associate with human rights.



AN ONLINE PORTAL CREATED BY EGYPTIAN CIVIL SOCIETY ORGANIZATIONS FOR SOCIAL EVALUATIONS OF EGYPTIAN HOSPITALS BY CONSUMERS OF PUBLIC AND PRIVATE HEALTH CARE SERVICES.

The government's share of total spending on health care in Egypt was about 38 percent in 2014, compared to nearly 57 percent in Tunisia, 77 percent in Turkey and nearly 61 percent on average for the Middle East and North Africa region.³² This means Egyptians' out-of-pocket health expenditure exceeded 61 percent of the total national bill, a huge burden that is largely attributed to the low health insurance coverage of only 45 percent of the population. Even those Egyptians who have insurance may pay for health care, considering the low quality and shortage of government health services. The government claimed that health insurance coverage rose to 58 percent in 2012 because the coverage was expanded to cover almost fifteen million preschool children, six million female heads of households, and an unknown number of farmers.³³ But it is very doubtful that the stressed state health care system can indeed expand to cover these twenty-one million or more individuals while it is facing difficulties in covering its current caseload. Egyptian health care experts fear that this expansion (effected in large part through presidential decrees) is part of the regime's political propaganda more than a meaningful policy transformation that would make real human and financial resources available to the supposed beneficiaries. Just forty hospitals are supposed to provide health care to nearly sixty million people. And even then, the facilities are not well distributed geographically in the country.³⁴

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Egypt's state health insurance budget for the fiscal year 2013–14 was about 5.6 billion Egyptian pounds increasing to 7.8 billion pounds in the 2015–16 budget. Setting aside the dramatically fluctuating exchange rates (the pound has declined by more than 100 percent against the dollar in these two years) it is doubtful that this increase is based on solid calculations since the rate of actual paid subscriptions is very low (about 14 percent among the newly born and 56

percent for school children) despite the low annual premium of eight Egyptian pounds. Even if the state makes the new budget available it will not be sufficient to finance the planned expansions in health care coverage and improve the quality of the existing service. The chairman of the Health Insurance Authority (HIA) complained in late 2015 that subscriptions do not exceed 3.7 billion pounds and the balance of the budget is covered through revenues accrued from medical services offered at higher rates by the authority's hospitals and medical facilities (about 2.8 billion pounds) and another five hundred million pounds from tobacco tax.³⁵

Several CSOs, led by the Egyptian Initiative for Personal Rights (EIPR), which I personally ran in 2014, have been advocating with the state and even working hand in hand with the government for years to reform this collapsing health care system. EIPR helped draft a comprehensive health insurance bill, under which the chronic shortage of funds and debilitated infrastructure could be addressed by separating the funding mechanisms from the service provision. Private health care providers could help service the insured by the state under contracts with the HIA. A new subscription and funding system is to be established with contributions from individuals, employers, and pensioners, in addition to special taxes on tobacco, alcohol, cement, steel, and car and other factories (usually polluting industries or products that saddle the state and society with additional health costs). A separate agency would supervise the contracting and service quality of all providers (public and private).



LEFT: A FLYER FOR A CONFERENCE ON HUMAN RIGHTS IN EGYPT, HOSTED BY A NUMBER OF EGYPTIAN HUMAN RIGHTS ORGANIZATIONS INCLUDING EIPR, NATIONAL GROUP FOR HUMAN RIGHTS AND LAW, THE EGYPTIAN CENTER FOR ECONOMIC AND SOCIAL RIGHTS AND THE CAIRO INSTITUTE FOR HUMAN RIGHTS STUDIES.

RIGHT: EIPR'S CAMPAIGN ON THE INTERNATIONAL TRANSGENDER DAY OF VISIBILITY.

EIPR was an active member in a high-level ministerial committee that has been working on this reform for years. The regime does not mind using the free expertise of CSO experts (and bragging about it sometimes), but it would not allow the same CSOs to hold the government to account or to help revive and support patients' rights associations. The regime knows that fixing the financing and structural problems of the health care system would not work without effective governance and accountability. Such governance requires civil society oversight through free media and ensuring the rights of patients to organize as consumers or for CSOs to raise their concerns, together with decentralizing the system and enabling local councils and municipalities to have a say. Social media campaigns indicate public interest in

mobilizing around these issues and standing up to a pervasive decline in services.³⁶ The portal for social evaluations of Egyptian hospitals—a CSO initiative to channel pressure from consumers of public and private health care services—is a good step, but does not go far enough.³⁷

The issue here is that a functioning strategic social service like health care in a country like Egypt (and similar countries in the region) where democratic channels are lacking or manipulated (Lebanon is a good example of an ostensible democracy that does not pay much attention to social services) requires accountability by a vibrant civil society where CSOs can mobilize patients for their rights. Without such an active role, the planned health insurance premiums will turn into compulsory fees similar to those paid by members of state-dominated trade unions, or garbage collection fees paid to the state as part of electricity bills—neither trade union protection nor effective street garbage removal is received in return.

Conclusion

Since the mid-1950s, Egypt's successive authoritarian ruling regimes worked hard to either co-opt or vilify civil society as part of a general anti-politics strategy. The current regime wants to limit civil society to philanthropic activities and provision of services and to have state agencies closely watch CSOs.

The 2011 uprising in Egypt, unlike Tunisia, did not end a regime but simply helped reorder the ruling block. In less than three years, the army and security services came into full control of the government, much more so than they ever were during the Mubarak era. But even if Egypt has moved from controlled authoritarianism with small margins of freedom of action under Mubarak to a very repressive version of authoritarianism under Sisi, the national, regional, and global economic and political conditions could prove very challenging for such a regime and would continue to provide an opportunity for civil society actors.

There is little doubt that the regime crackdown on human rights organizations, which reached unprecedented levels by the end of 2016, will continue and even escalate to silence some of the few remaining critical voices in the public domain. In a region where several states and countries are melting down into civil war with regional and international interventions, and with a global shift toward right-wing populism and protectionism, it is unlikely that the regime will face any meaningful external pressure to improve its deteriorating human rights record or stop harassing the beleaguered human rights movement.

In any case, the regime will more likely than not have to become increasingly more repressive to face opposition to its policies, such as its speedy removal of subsidies and implementation of neoliberal policies. But even with higher levels of

policing and a pliable judiciary, it will still have to buy the allegiance of certain social sectors and state institutions—a measure that is becoming increasingly difficult in light of the deteriorating economic conditions (problems include lower state revenues, lower foreign investments, and lower remittances).

The current populist and neoliberal policies of the Egyptian regime, along with its shrinking of the space for civil society, assume that economic and social problems can be handled in an apolitical environment where technocrats work undisturbed under the iron hand of the leader. Such an approach ignores the indispensable role of free civil society and open politics, which are necessary to allow citizens with less access to official power to associate freely, organize openly, strike, and protest for more equitable policies.

The promotion of human rights is not a marginal issue—it is a fundamental element of progress in all its dimensions. Though we can only guess at the thought processes of the leaders of the current regime, their actions suggest that, at a basic level, they fail to see this truth. The Egyptian people will be the first but not the only ones to pay the cost for this blindness. It will be extremely difficult, if not impossible, for the regime to make any breakthrough out of its economic and political malaise without an active and effective civil society that pumps fresh blood into the political system, and challenges the regime regularly.

BANNER IMAGE: KEFAYA AND LEFT-WING ACTIVISTS DEMONSTRATED AGAINST TORTURE, SITUATED IN THE EGYPTIAN INTERIOR MINISTRY'S COMPOUND IN LAZOUGHLI SQUARE. (PHOTO BY HOSSAM EL-HAMALAWY, TAKEN ON 26 JUNE, 2005)BY HOSSAM EL-HAMALAWY, VIA FLICKR.

About This Project

This report is part of “Arab Politics beyond the Uprisings: Experiments in an Era of Resurgent Authoritarianism,” a multi-year TCF project supported by the Carnegie Corporation of New York. Studies in this series explore attempts to build institutions and ideologies during a period of resurgent authoritarianism, and at times amidst violent conflict and state collapse. The project documents some of the spaces where change is still emerging, as well as the dynamic forces arrayed against it. The collected essays will be published by TCF Press in June 2017.

Notes

1. See “Egypt NGO Bill Threatens to ‘Devastate’ Civil Society, UN Expert Warns,” UN Office of the High Commissioner for Human Rights, November 23, 2016.
2. The exception is Egypt’s Muslim Brotherhood, whose relationship with the human rights discourse is rather problematic,

to say the least.

3. The term “civil society” has a somewhat controversial origin and is sometimes bandied about without a clear sense of its specific meaning. In this paper, I use it to refer to organizations, associations, networks, and even, in certain cases, individuals that serve various social or indirectly political functions through the provision of services or advocacy, with the objective of changing socioeconomic conditions, policies, norms, and/or behavior. Such a definition would then apply to educational and health charities, human rights organizations, and trade unions.

4. Eberhard Kienle, “Egypt without Mubarak, Tunisia after Ben Ali: Theory, History and the Arab Spring,” *Economy and Society* 41, no. 4 (2012): 541–42.

5. “GDP Growth (annual %), Egypt,” World Bank, 2016.

6. Rabab El-Mahdi and Bahgat Korany, *Arab Spring in Egypt* (Cairo: AUC Press, 2012), 2.

7. Samer Soliman, *The Strong Regime and the Weak State* (Cairo: The General Authority for Cultural Palaces, 2013). Arabic.

8. The only credible and detailed local report was issued by the Egyptian Initiative for Personal Rights (EIPR) *The Weeks of Killing: State Violence, Communal Fighting, and Sectarian Attacks in the Summer of 2013* (Cairo: EIPR, 2014). Also see “All According to Plan: The Rab’a Massacre and Mass Killing of Protesters in Egypt,” *Human Rights Watch*, August 2014.

9. There is a wealth of reports by human rights organizations on the deteriorating situation in Egypt in this period. I relied on my own work, which draws on many of these reports and interviews I conducted, to write about how rule-of-law institutions were crumbling in Egypt. For example, see “Behind the Sun: Is This the End of Rule of Law in Egypt?,” *Mada Masr*, February 14, 2016.

10. For a detailed review of legal regulations see Khaled Mansour, “History Shows that Egypt Would Likely Fail to Abolish the Human Rights Movement,” *Mada Masr*, September 14, 2016.

11. The source for figures until 2014 is Amany Kandil, “Changes in Structure and Function: Civil Society after the Revolution in Egypt” (Arabic), The Arab Center for Research and Studies. The number in early 2016 is based on an interview with Minister of Social Solidarity Ghada Wali on Egyptian television channel CBC, available on YouTube.

12. Reports on religious freedom, violations against sexual minorities, right to health, labor rights, freedom of expression, housing rights, etc., have been regularly issued from organizations such as the Egyptian Initiative for Personal Rights, Al Nadeem Center for the Rehabilitation of Victims of Violence, the Arab Network for Human Rights Information, and the Cairo Institute for Human Rights Studies. EIPR led a campaign from 2004 to 2009 for Baha’i rights that led to legal gains, and the issuance of birth certificates and identification cards. The same organization was able through litigation to stop the government in 2008 from privatizing the state health insurance system.

13. Kienle, “Egypt without Mubarak,” 549.

14. See regular reports by Al Nadeem Center, in Arabic, on cases of torture and Cairo Institute for Human Rights Studies’ annual reports for an example of efforts of documentation. See Egypt Center for Economic and Social Rights’ legal efforts to support labour rights including strategic litigation that led to the state High Administrative Court forcing the government to establish minimum wages (see samples of these legal efforts).

15. “MPs Reject a Government Bill and Table a New Associations Law” (Arabic), joint statement by Egyptian human rights

organizations, February 8, 2012.

16. "Mubarak Regime Ministers Lead the MCC into More Confrontations with the People and Democratic Forces"(Arabic), joint statement by Egyptian human rights organizations, January 18, 2012.

17. "A New Bill to Nationalize Civil Society and Integrate It into the State Bureaucracy"(Arabic), joint statement by Egyptian human rights organizations, April 12, 2012.

18. Ibid.

19. "Egyptian Court Convicts Forty-Three NGO Employees," *BBC News*, June 4, 2013.

20. Most of the independent human rights organizations are members of the Independent Egyptian Human Rights Organizations Forum, which brings together about sixteen organizations.

21. "The MB Lay the Cornerstone for a New Police State, Develop Mubarak Mechanisms to Repress Civil Society"(Arabic), joint statement by Egyptian human rights organizations, May 31, 2013.

22. "In a Meeting between the Prime Minister and Bahey Eldin Hassan: 23 Rights Organizations Demand that the Government Stop Fighting Civil Society and Review Its Policy towards NGOs," joint statement by Egyptian human rights organizations, July 24, 2014, <http://eipr.org/pressrelease/2013/05/31/1721>.

23. Maina Kiai, "UN Rights Expert Warns about Growing Restrictions on Civil Society in Egypt," UN Office of the High Commissioner for Human Rights, October 11, 2016.

24. "Ghada Wali: I have Not Dissolved any NGO since I Assumed Office ... The State Will Not Allow Foreign Funding without Oversight" (Arabic), *Al-Shorouk*, February 2, 2016.

25. "Egypt: Lift Abusive and Arbitrary Travel Bans," Amnesty International, November 2, 2016. For asset freezing, see "Egypt: Asset Freeze Is a Shameless Ploy to Silence Human Rights Activism," Amnesty International.

26. "The Freezing of the Funds of 1055 CSOs: a Resolution Exposing the Arbitrariness of the Authorities in Dealing with Civil Society and Creates Social Problems" (Arabic,) January 20, 2014, Egyptian Initiative for Personal Rights.

27. For a reasoned argument on the rights of states to control foreign funding see Annika Poppe and Jonas Wolff, "Foreign Funding Restrictions: Far More than Just an 'Illegitimate Excuse'," *Open Democracy*, April 20, 2016,. For an opposing view, see Hussein Baoumi, "Local Funding Is Not Always the Answer," *Open Democracy*, June 27, 2016.

28. Amr Adly, "The Human Rights Movement and Contentious Politics in Egypt (2004-2014)," Arab Reform Initiative, forthcoming.

29. Adly, "The Human Rights Movement."

30. I owe this expression to political economist Amr Adly who employed it in a yet unpublished paper he wrote.

31. Adly, "The Human Rights Movement."

32. "Health expenditure, public (% of total health expenditure)," World Bank, 2016.

33. Figures derived from an interview by the HIA chairman in *Al-Ahram*, November 28, 2015.

34. Ibid.

35. Ibid.

36. "'Not to Surprise Him if He Showed Up': A Campaign to Expose Negligence in Egyptian Hospitals"(Arabic), *BBC News*, June 19, 2015.

37. "Community Evaluation of Egyptian Hospitals" portal run by a private company called Shamseya for Innovative Community Healthcare Solutions.



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