

Law No. 153: Its Impact on Egyptian Non-Governmental Organizations

by Barbara Cochrane Alexander*

On May 26, 1999, the Egyptian Parliament unanimously passed Law No. 153 of 1999 (Law No. 153), titled the Law on Civil Associations and Institutions, which governs private organizations. This new law, issued after a two-year study on how to improve civil society in Egypt, replaced Law No. 32 of 1964 (Law No. 32). Egyptian human rights activists struggled for the previous ten years to repeal Law No. 32, which severely restricted the ability of non-governmental organizations (NGOs) to register for legal status and to operate without repressive government interference. Despite the involvement of representatives from Egyptian human rights organizations in the aforementioned two-year study, critics of Law No. 153 believe that the drafters of the law did not take into full account NGOs' suggestions, causing the law to be more repressive than its predecessor. They argue that the law severely limits the right to freedom of association of Egyptian NGOs and impedes the development of Egypt's civil society.

Supporters of Law No. 153 maintain, however, that the law balances the national duties and rights of the state with the right to freedom of association, which is the most effective way to ensure a civil society. Although the Egyptian government legally may regulate the formation and activities of NGOs, the regulations should not infringe unnecessarily upon the right to freedom of association. Freedom of association protects the ability of NGOs to gather and distribute information, assemble alliances around causes, ideas, and issues, build shared values, and create awareness of issues in a society. These activities are necessary to facilitate the democratic rule of law in a civil society. Without a vibrant civil society to monitor governments, human rights may become extinct.

The Road to Law 153

Between September 30, 1997, and Law 153's passage on May 26, 1999, six versions of Law No. 153 were promulgated. In each of the versions, the Egyptian Parliament retained strong control over the formation and operation requirements of Egyptian NGOs. These controls involved repressive bureaucratic and administrative regulations mandating how NGOs can organize and operate, and restrictions on the rights of NGOs to freely associate with one another. Representatives from 13 NGOs participated on the Drafting Committees for Law No. 153. Many of the representatives, however, complained that their recommendations for reform were ignored. Furthermore, on May 24, 1999, three days before the Egyptian Parliament passed Law No. 153, the NGO representatives issued a statement declaring that the draft law presented to the parliament was changed subsequent to their agreement to it—emptying it of its best provisions. By passing Law No. 153 before adequately addressing these NGO concerns, the Egyptian Parliament undermined efforts to promote a relationship of mutual trust between NGOs and the government.

According to Mirvat al-Tilawi, Egyptian Minister of Insurance and Social Affairs, Law No. 153 abolished 22 clauses of Law No. 32, through which the Egyptian government had unnecessary, restrictive authority over NGOs. Three examples of areas in which Law No. 153 eliminates governmental control are as follows. First, Law No. 153 abolished the requirement that NGOs solicit prior governmental permission to own real estate and to perform outside their local, geographical areas. Second, Law No. 153 also eliminated the government's regulatory power to decline registration to an NGO for reasons of redundancy, security, or a lack of proper premises for headquarters. Finally, Law No. 153 eliminated the power of the government to appoint boards and board members, to convene board meetings, and to declare NGOs defunct or prevent their establishment.

Despite the elimination of 22 clauses that had given the Egyptian Government broad power over NGOs, certain significant restrictions still remain in Law No. 153. For example, the govern-

ment has the power to "object to whatever it deems as contradictory to [Egyptian] law in the statute of the association" (Part I, Chapter I, Article 8). In addition, Law No. 153 bans NGO participation in political or trade union activities or any activities that "[t]hreaten national unity, violate public order or morality" (Part I, Chapter II, Article 11). It also grants the government the power to determine which non-Egyptian organizations an association may join (Part I, Chapter II, Article 16). Finally, Law No. 153 prohibits organizations from accepting foreign funding (Part I, Chapter II, Article 17). Violations of any of these articles enable the government to dissolve the association after a court hearing (Part I, Chapter IV, Article 42).

The most troubling restrictions that remain in Law No. 153, however, are the punitive measures for NGOs that fail to comply with government requirements. These punishments can be triggered easily given the ambiguities as to what constitutes illegal conduct and therefore can discourage individual participation in and leadership of NGOs. Article 75 establishes a penalty of up to one-year imprisonment and a maximum fine of

10,000 Egyptian Pounds (LE) for anyone who creates a clandestine organization, participates in military, paramilitary, political, or trade union activities, or who threatens national unity and public order. Article 75 also creates a penalty of up to six months imprisonment and a maximum fine of LE 2,000 for anyone who establishes any type of organization that violates Law No. 153. This penalty also applies to anyone who ignores a court ruling

suspending or dissolving an association, receives foreign funds or sends funds outside Egypt, uses organization funds for personal purposes, or disposes of funds of a dissolved association or NGO. Finally, for anyone who initiates NGO activities before the completion of registration, the penalty is up to three months imprisonment and a maximum fine of LE 1,000. This penalty also applies to NGO boards of directors and members who facilitate affiliations with non-Egyptian organizations, who distribute funding to a dissolved association or NGO, or who facilitate a merger of the association without government approval.

Key Points of Concern

On May 14, 1999, four Egyptian human rights organizations—the Cairo Institute for Human Rights Studies (CIHRS), the Center for Human Rights Legal Aid (CHRLA), the Egyptian Organization for Human Rights (EOHR), and the Group for Democratic Development (GDD)—issued a statement that expressed their concern over the Egyptian Cabinet of Ministers' approval of the Bill on Associations and Private Institutions, which ultimately became Law No. 153. In this statement, these NGOs called for Egyptian President Hosni Mubarak to reconsider the bill and take into account repeated NGO criticisms. Specifically, Article 8 of Law No. 153, which gives the government editorial power over an NGO's charter or founders, makes it easy for the government to legally harass NGOs that criticize the Egyptian government's programs and policies. Similarly, the vague wording of Article 11(2) allows the government to deny NGOs legal status based on the Egyptian Ministry of Social Affairs' interpretation of activities that "threaten national unity, violate public order or morality, or advocate discrimination." No criteria is established or guidance provided on what types of activities fall within this article. This ambiguity could impact negatively on an NGO's ability to provide legal aid, work for judicial reform, participate in election monitoring, and report human rights abuses, all of which the government could argue threaten national unity.

Furthermore, Article 16, which regulates the foreign organizations an NGO may align with does not articulate grounds on which the Egyptian government may refuse an NGO the right to join and participate in non-Egyptian organizations. Similarly, Article 17

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fails to specify any criteria under which the right to obtain funding from outside of Egypt is permissible or a time limit within which the Egyptian government must make its decision on whether or not it will authorize foreign funding on a case-by-case basis. Articles 16 and 17, by restricting with whom NGOs can associate and from whom they can receive funding, undermine NGOs' independence and ability to function, particularly because funds available within Egypt are not sufficient to support such work.

Moreover, if an NGO misappropriates its funding, as stipulated in Article 42(1), or obtains funding in violation of Article 16, a competent court can dissolve the NGO. Similarly, under Article 42, a court can dissolve an NGO that allegedly violated a number of the provisions of Law No. 153 discussed above. For example, a court may dissolve an NGO if it commits a "gross violation of law or the public order or morality." It also can dissolve an NGO that fails to hold a general assembly meeting for two consecutive years, joins or affiliates with a foreign organization without the approval of the Egyptian government, or engages in a practice involving a purpose or activity prohibited under Article 11. This power to dissolve NGOs, based on such ambiguous provisions as Article 11, constitutes unnecessary governmental interference and violates freedom of association. Finally, Article 75 imposes criminal penalties for activities that merely constitute a peaceful exercise of freedom of association in a civil society. For example, Article 75 allows the Egyptian government to prosecute members of a human rights organization with less than ten members because it violates Part I, Chapter I, Article 1 of Law No. 153, which states that all associations and NGOs must have at least ten members to legally exist.

NGOs and Civil Society

On December 9, 1998, the UN General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Defenders Declaration). The Defenders Declaration recognizes that governments have a responsibility to allow NGOs to work in an environment free from interference and harassment. NGOs are an important part of the development and success of a civil society in which there is a strong commitment to social good, and freedoms and rights of its members. Governments, as lawmakers, have a large amount of control over the formation and role that NGOs can play in society. Laws that repress or encourage NGOs affect their ability to participate and play an active role in the promotion of a stable and efficient civil society. In adopting the Defenders Declaration, the UN General Assembly acknowledged the important role that NGOs, along with individuals and other organizations, have in eliminating human rights violations. The UN General Assembly also stressed that it is the responsibility of the state to promote and protect human rights, and this includes protecting the right to form, join, and participate in NGOs.

According to the World Bank's *Handbook on Good Practices for Laws Relating to NGOs*, governments should support a strong, independent NGO sector, even when the policy of NGOs is to criticize the government and compete with government programs. NGOs provide an important means through which individuals can exercise their rights to freedom of association and freedom of speech to protect their interests. These rights are protected under international law, specifically Article 19 (freedom of speech) and Article 20 (freedom of association) of the Universal Declaration of Human Rights (UDHR) and Article 22 (freedom of association) of the International Covenant on Civil and Political Rights (ICCPR). Domestically, freedom of association is guaranteed by Article 55 of the Egyptian Constitution. NGOs also promote pluralism and tolerance by allowing individuals to pursue their interests and needs. Similarly, NGOs can promote social stability within a pluralistic society by managing diverse interests in such a way that group interests

are transparent and accountable to society and the rule of law. In addition, NGOs can assist governments in providing public goods and services. NGOs operate in close contact with local communities whose members volunteer their time, allowing NGOs to provide goods and services at lower cost and more efficiently. Furthermore, a strong independent NGO sector can address those areas that the public, for-profit sector does not. For all of these reasons, the World Bank advocates that states adopt laws that support a strong and independent NGO sector.

Law No. 153 Violates International Standards

Law No. 153 represents an affront to the spirit in which the UN General Assembly drafted and adopted the Defenders Declaration. This declaration emphasizes the right and responsibility of individuals and groups to protect and promote human rights, both nationally and internationally. Article 2 of the Defenders Declaration asserts a state's responsibility and duty to create laws that guarantee the rights and freedoms of all of its citizens, "individually and in association with others," and to promote and protect human rights. Specifically, the key points of concern with Law No. 153 are

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that it violates a number of the provisions adopted in the Defenders Declaration. First, Article 5 of the Defenders Declaration asserts the right to form, become a member of, and participate in NGOs, and "to communicate with non-governmental or inter-governmental organizations." By restricting the right of NGOs to join with other non-Egyptian organizations (Article 16 of Law No. 153) and dissolving those NGOs that do interact with foreign organizations (Article

42(5) of Law No. 153), Law No. 153 contravenes Article 5 of the Defenders Declaration.

Second, Article 11 of Law No. 153, which bans NGO involvement in political and trade union activities, violates the right of individuals and groups to draw public attention to human rights issues and advocate for these issues through appropriate means (Article 6(c) and Article 7 of the Defenders Declaration). Furthermore, Law No. 153's potential criminal penalties (Article 75 of Law No. 153) against persons who use peaceable means to react to and oppose activities that result in the violation of human rights breaches the state's obligation to protect these persons from retaliation and discrimination (Article 12(2) of the Defenders Declaration). In addition, by restricting NGOs' fundraising capabilities (Article 17), Law No. 153 violates Article 13 of the Defenders Declaration, which asserts the right of NGOs to receive resources through legal means. Moreover, Article 17 of Law No. 153 violates Article 3 of the Defenders Declaration because it is domestic legislation that is inconsistent with Egypt's obligations under international law. These obligations include Article 22 of the International Covenant on Civil and Political Rights (ICCPR), which protects freedom of association. Egypt ratified the ICCPR in 1982 and is legally bound by its provisions.

Conclusion

Proponents of Law No. 153 maintain that the law is not restrictive, arguing instead that NGOs cannot engage in political or union-like activities because such activities are regulated under separate laws. Law No. 153, however, explicitly empowers the Egyptian government to interfere with the formation (Article 8), activities (Article 11), association (Article 16), and funding (Article 17) of NGOs. These restrictions, in conjunction with Article 75's criminal penalties for violating Law No. 153, unnecessarily abridge the right to freedom of association of Egyptian NGOs. Furthermore, these restrictions prevent NGOs from effectively playing their role, recognized in Article 16 of the UN Defenders Declaration, in raising public awareness about human rights. Ultimately, this harms the development of civil society and the protection of human rights in Egypt. ☹

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