



Situation Report on

**The Future of Egyptian Civil Society
Under the New NGO Law**

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Updated on May 29th, 2017 upon President Elsisí's
approval on the law)

Introduction:

The long aspired new “Nongovernment Organizations Law” (NGO Law) was finally voted on and passed by the Egyptian Parliament on November 2016, and President Al Sisi reviewed and approved it on May 29th, 2017, according to the Constitution. Since its release, the new NGO Law received much criticism, out of legitimate concerns by local civil society and international community of abusing the provisions of the law to crackdown on civil society organizations, especially those working in the field of political and civil rights.

The Liberal Democracy Institute of Egypt (LDI) produced this situation report with the purpose to assess the future of the Egyptian civil society under the new NGO Law and investigate into the promises and restrictions loaded on its provisions. On this mission, LDI researchers and fellow legal experts conducted a thorough analysis on the new NGO Law, in comparison to the current NGO Law no. 84/2002, ran interviews with stakeholders at respective government bureaus and civil society leaders, and studied the conformity of the new NGO Law with the principles of the Egyptian Constitution and international treaties related to freedom of association.

This situation report is structured around twelve main questions that highlight the concerns of civil society regarding the new NGO Law and responds to each with a detailed analysis and documentation.

(1) What is the current situation of the Egyptian civil society?

The concept of civil society first appeared in Egypt around the 1920s, when Jewish, Christian, and Muslim religious leaders, foreign communities living in Egypt, and the wealthy got together to build charity organizations to serve the poor. The main focus of those charities was social and economic rights.

By 1980s, the Egyptian society started to enjoy some stability, after more than 40 years of ongoing military wars. There appeared the urge to establish civil society organizations dedicated to promoting and advocating civil and political rights. That is in particular because Egypt has been a member of most of the United Nations committees responsible for producing

international treaties and documents related to human rights, including the United Nations Declaration on Human Rights (UNDHR).

Since then, the Egyptian civil society has grown to be the most vibrant in the Arab World. According to the latest statistics by the Ministry of Social Solidarity, Egypt has forty eight thousand (48000) local NGOs working as charities or human rights organizations, in addition to eighty (80) registered foreign NGOs and ninety one (91) foreign organizations established through bilateral agreements.

(2) Is there a struggle between the Egyptian regime and civil society?

President Abdel Fattah Elsisi has repeatedly emphasized his appreciation and support to the work of NGOs. In his most recent meeting with NGO leaders, in January 2017, President Elsisi stated that the work of NGOs is complimentary to the work of the government.

Over the past three years, since President Elsisi came in power, the Egyptian government has intensively cooperated with local NGOs. The fruit of this cooperation is represented in the renewal of random housing areas, building charity hospitals providing free health care to the poor, and supporting the rights of vulnerable groups; e.g. women, religious minorities, and people with disability.

Furthermore, there are regular and unprecedented interactions between parliamentarians and high profile policymakers, including the President himself, and civil society organizations working on human rights and democratization. LDI, as one example of many, has been regularly providing the Presidential Bureau, Members of Parliament, and state officials with policy papers and analysis reports on the progress of liberal democratization. Most of the time, our recommendations were taken in consideration while stating state policies.

(3) Does the political leadership respect and support human rights and civil freedoms?

Advancing human rights and protecting civil freedoms were the main motives behind the initiation of a revolution that led to the fall of Mubarak's autocratic regime in 2011. President Elsisi, then, was a Board Member of the Supreme Council of Armed Forces, which supported the young revolutionaries in their quest to democracy. When the theocratic regime

of the Muslim Brotherhood, installed one year after the revolution, tried to take away those basic rights under the name of Islamic Shari'a Law, the people rebelled once again. At that time, President Elsis was the Minister of Defense who gave orders to the military to side with the people and support them against the regime, for the second time.

By closely witnessing the struggle of the Egyptian people to protect their basic human rights and earn more civil and political rights, President Elsis and his team in the political leadership carefully understands that guaranteeing human rights and civil freedoms is a priority not a luxury. In more than one occasion, President Elsis emphasized his regime's absolute support to civil and political rights, human rights, religious freedom, and women's rights.

Nevertheless, the Egyptian Constitution issued in 2014, carries unprecedented principles that guarantee human rights, women rights, and civil and political liberties. For instance, the Constitution stipulates unconditional equality between men and women, for the first time in our history. The Constitution has also provided women with unprecedented quotas in Parliament, Municipal Councils, and Judicial positions. That is in addition to several principles that support religious freedom and equal citizenship rights.

(4) Why Egypt needs a law to regulate civil society work, if it is voluntary?

Egypt is not the only country in the world that seeks to regulate the work of civil society under the rule of law. Well-established democracies, such as the United States and the majority of European countries, have laws that govern civil society and allow the state to monitor and supervise NGO work.

Despite the fact that civil society work is non-profitable and voluntary, it has been abused in more than one instance by illegal groups. One apparent example is the intrusion of the terrorist organization of Hamas, and its parent organization the Muslim Brotherhood, into the American society, while masked as civil society organizations, to recruit jihadists and destroy the legacy of America's open democracy. There are several documents released by Federal Bureau of Investigations (FBI) and several court cases, in the past few years, which prove the abuse of civil society status by Muslim Brotherhood and Hamas.

Likewise, Egypt had its taste of violent extremism practiced by the Muslim Brotherhood and other jihadist groups, in the past three years. Most of Muslim Brotherhood violent affiliates were recruited and trained as militias through so-called charity organizations owned and operated by the Muslim Brotherhood since early 2000s.

Therefore, the Egyptian state needed to regulate the work of civil society under the rule of law in a way that allows the state to monitor and supervise the work of civil society, while providing NGOs with the space of freedom they need to operate. The old NGO Law had too many flaws that both restricted the work of quality NGOs, while allowed the abuse of civil society status by illegal groups to receive funds and execute destruction. There comes the need for the state to issue a new NGO Law that fixes those flaws, and thus guarantees healthy evolution of the Egyptian civil society, in the post-Arab-Spring era.

(5) Has the Parliament taken enough time to draft and pass the new NGO Law?

The Egyptian civil society has been calling for amending or altering NGO Law no. 84/2002, since long before the 2011 revolution. In 2012, after the initiation of the Foreign Funding case against 70 illegal organizations that received foreign funding outside the rule of law, the call for instating a new NGO law went higher.

Consequently, several independent committees were organized by civil society organizations, in addition to a governmental committee that included the elite of the civil society leaders and supervised by the Minister of Social Solidarity, were convened to draft a new law. For three years after, the draft of the new NGO Law has been roaming Egypt through the General Union of NGOs for review and amendments. Since then, no actual procedure was taken to transform the draft into a law, mainly because the Parliament was not convened during those years.

Furthermore, In Egypt's latest Universal Periodic Review at the United Nations Human Rights Council, in November 2014, a high number of recommendations given to Egypt was about issuing a new NGO Law. Under such domestic and international pressures, issuing the new NGO Law was on the top of the priorities of Parliament, when it first convened in 2015.

For eighteen months, respective committees of human rights, social solidarity, and legislation in the Egyptian parliament worked together on drafting the new law based on the original draft released by the Ministry of Social Solidarity in 2012. During this period, the team of parliamentarians responsible for issuing the new NGO Law studied the related articles of the Constitutions and international treaties on which Egypt is a signatory. Then, they held hearing sessions for concerned civil society leaders, and all of their recommendations were taken into consideration while drafting the law. In parallel, the leading parliamentarians provided the public opinion with information on the draft and process of issuing the new NGO Law, through traditional and social media. Then, the parliament sent the final draft to the Ministry of Social Solidarity to review.

Eventually, in November 2016, the parliament passed the new NGO Law upon majority voting of Members of Parliament. The new NGO Law was, then, reviewed and approved by the State Council, and has been finally revised and approved by the President of the State on May 29th, 2017.

(6) Does the new NGO Law conform to freedom of association rights guaranteed by the Egyptian Constitution and international treaties, on which Egypt is a signatory?

In its Preamble, the new NGO Law emphasizes the conformity of its provisions with Article 75 of the Egyptian Constitution and Article 22 of the International Covenant on Civil and Political Rights, on which Egypt is a signatory.

Article 75 of the Egyptian Constitution provides that:

“Citizens have the right to form non-governmental organizations and institutions on a democratic basis, 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 or 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.”

Article 22 of the International Covenant on Civil and Political Rights provides that:

- “1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.”

(7) Does requesting NGOs to fill in governmental documents upon establishment contradict the constitutional right to acquire legal personality upon notification?

Most of criticism to the new NGO Law revolved around this particular point. Under the old NGO Law no. 84/2002, Egyptian NGOs had an ill experience with filling an infinite number of governmental documents to acquire legal registration. In some cases, the government bureaus took long months, if not years, to respond to the NGOs regarding the status of their registration. As a result, the provision in the new NGO Law, to provide documents upon establishment to the respective government authority upon establishment raised concerns.

However, the provision in the new NGO Law to submit documents to the government upon establishment, does not contradict with the constitutional right for the association to acquire legal personality upon notification. It is rather a routine procedure that shall follow the acquirement of the legal personality, with the purpose to establish a clear relationship between the government and the new association. In addition, the new NGO Law states that the government authority has to complete the documentation procedure with the new association within a maximum period of sixteen days.

Article 2 of the new NGO Law states that:

“The founding of the association shall be acquired upon notification, submitted to the specialized administrative authority by filling in a form, which shall be supported by the documents set forth in the following articles, and the association shall acquire legal personality upon notification, and each natural or legal person shall have the right to join or withdraw from the association according to the provisions of the law.”

Article 9 of the new NGO Law states that:

“The representative of the association shall be handed a receipt upon submitting the notification indicating the exact date and hour of submission and the identity of the government official who received it. The government official may not refuse to receive the correctly completed notification form and supporting documents.

Should the Administrative Authority, within a period of sixty days from the date of receiving the notification, discovers that one of the purposes of establishing the association is prohibited or penalized in the Criminal Code or any other law, or that the submitted information and documents are not complete or incorrect, the Administrative Authority may withhold the documentation process and notify the representative of the association with its reasoned decision in writing.

In this case, the representative of the association may correct or complete the documents, or challenge the decision before the competent court, within a period of sixteen days of receiving the reasoned decision in writing.”

(8) What are the advantages provided to NGOs in the new NGO Law?

Unlike the old NGO Law no. 84/2002, the new NGO Law provides civil society organizations with unprecedented exceptional advantages, based on the recommendations of civil society leaders who met with parliament during the process of drafting the law. They are mainly highlighted by Article 16, which provides that:

“Without prejudice to other advantages stipulated in any other law, the associations, foundations, and unions established according to this law, shall enjoy the following advantages:

- a) Exemption from paying registration fees of contracts of all kinds, such as property contracts and mortgage, where the association is a party, as well as all pertaining ratification fees.
- b) Exemption from taxes and stamp duties, whether they are currently imposed or shall be imposed in the future, on all kinds of contracts, authorizations, written and printed forms, official records, and other similar documents.
- c) Exemption from all property taxes for all buildings owned by the association, provided that the association uses these buildings for achieving its stated purpose, and the association may not change the nature of the activity without acquiring the approval of the competent minister.
- d) Acquiring a discount of 30% on the fees of transportation for equipments and machines related to association’s activities, on railway.
- e) Considering donations received by the association as a commission of maximum 10% on the donor’s net income.
- f) Exemption from taxes and fees due to custom authorities, imposed on exported equipments, machines, tools, production utilities, and vehicles related to association’s activities, as well as the gifts and aids the association receives from abroad, upon a decree by the competent Prime Minister, based on a recommendation from the competent minister and a review by the Minister of finance, provided that the exported utilities are necessary for the main activity of the association.

The association may not dispose the long-lived utilities, before five years of exporting them, without a prior decree from the competent minister in agreement with the Minister of Finance, unless the association has paid the due custom fees and taxes.

- g) Treating the association as a domestic facility in terms with paying subsidized domestic consumption fees of water, electricity, and natural gas produced by state-owned public companies.”

(9) Does the new NGO Law duplicate the penalty which is already stated in the Criminal Code?

Like any other law, the new NGO Law states a number of penalties on violators. Some critics of the law argue that the new NGO Law should not penalize the same criminal activities stipulated in the Criminal Code, to avoid duplicity. This criticism is apparently stemming from justified concerns of abusing the penalties provided in the new NGO Law to crackdown on civil society professionals, as this had been the case prior to 2011 revolution.

Yet, the new NGO Law has provided clear and detailed provisions on the violations that may lead to penalty and explained how and when the penalty should be applied. In addition, the new NGO Law gave the exclusive right to the independent Judicial Authority to investigate into potentially illegal activities, putting violators on trial, and applying penalty based on the degree and scope of the violation.

Nevertheless, the new NGO Law cannot prevent violations or punish violators by depending, solely, on the stipulations of the Criminal Code. The Criminal Code is a general law that sets general principles in stretching sentences that may be applied on more than one case or situation. However, the new NGO Law states only the penalties related to violating the provisions of the law or abusing the work of NGOs for criminal purposes.

Several other laws in Egypt provide specific penalties on criminal activities related to its capacity, which are already stipulated in the Criminal Code. The Anti-Terrorism Law and Anti-Sexual Harassment Law are two good examples.

(10) Does the new NGO Law thwart foreign NGOs work in Egypt?

The new NGO Law encourages foreign NGOs to work in Egypt. Unlike the old NGO Law no. 84/2002, the new NGO Law has devoted two full sections for explaining the finite details of how a foreign NGO or its representative office may register, operate, and receive funds for its

projects. The new NGO Law, also, allows foreign communities living in Egypt to establish their own bond or association as a foreign NGO, to defend the community's interests and offer non-for-profit services to the members of the community.

Moreover, to avoid the hassle foreign NGOs had to go through on every encounter with the Egyptian government, the new NGO Law provides the establishment of a new governmental bureau with the name "The National Apparatus to Regulate the Work of Foreign Nongovernmental Organizations" (Foreign NGOs Apparatus), which is directly affiliated to and supervised by the Prime Minister.

This new Foreign NGOs Apparatus shall be solely dedicated to facilitate the work of foreign NGOs in terms with its relationship with the different governmental authorities and the legal procedures defining its relationship with local NGOs.

It is noteworthy that there are eighty (80) foreign NGOs currently working in Egypt under the provisions of the old NGO Law and ninety one (91) foreign NGOs working under state bilateral agreements.

(11) Does the new NGO Law prevent local NGOs from receiving funds from local or foreign grantors or donors?

The new NGO Law, in articles 24 to 30, allows local NGOs to receive funds in the form of donations, grants, or specific project funding from any local or foreign grantor or donor, whom the local NGOs chooses to deal with. However, the new NGO Law provides that the local NGO should notify the Administrative Authority with all details pertaining to those funds; i.e. the source of funding and the activities on which this funding is expected to be spent. In addition, the local NGO is required, according to the new NGO Law, to announce its sources of funding, whether local or foreign, to the public opinion through its website and on its official documents kept in their headquarters.

Additionally, the new NGO Law has resolved the problem of approving foreign funds that local NGOs suffered under the old law. In the past, NGOs used to wait for long months or even years to get an approval from the Administrative Authority on the foreign funds it receives. The

too long bureaucratic procedures caused many development projects to be thwarted and eventually canceled by the grantor or donor.

To avoid such complexities, the new NGO Law puts the authority of approving foreign funds given to local NGOs in the hands of the Foreign NGOs Apparatus. Even better, the new NGO Law provides that the Foreign NGOs Apparatus should respond to the local NGO regarding the approval on receiving its foreign funding within a maximum period of thirty days.

The new NGO Law paid a close attention to stipulate the procedures pertaining to receiving foreign funding by local NGOs in a way that does not hinder the work flow of local NGOs, while at the same time allows the state to monitor how the funds are being spent. That is to guarantee the integrity of the local NGO not only before the state, but also before the grantor. The absence of state monitoring of foreign funds spending, in the past, encouraged some corrupt NGO leaders to embezzle and abuse the funds for their own personal benefits.

In 2009, USAID was a victim to such corrupt practices by some local NGOs. The USAID had to file claims before Egyptian courts against some of these corrupt NGOs. One known case was that of the Egyptian Human Development Association, led by Human Rights Lawyer Mohamed Mohie, who received funding from USAID for his NGO to monitor parliamentary elections, and ended up putting the money of the grant in his own personal account and the accounts of his relatives and escaped to some other country.

(12) Does the new NGO Law require local NGOs to pay taxes to the state on the funds, donations, or grants they receive?

The new NGO Law does not provide a tax on local NGOs in any of its stipulations. On the contrary, the new NGO Law, mainly in Article 16, provides local NGOs with an unprecedented tax exempt status as follows:

“Without prejudice to other advantages stipulated in any other law, the associations, foundations, and unions established according to this law, shall enjoy the following advantages:

- a) Exemption from paying registration fees of contracts of all kinds, such as property contracts and mortgage, where the association is a party, as well as all pertaining ratification fees.
- b) Exemption from taxes and stamp duties, whether they are currently imposed or shall be imposed in the future, on all kinds of contracts, authorizations, written and printed forms, official records, and other similar documents.
- c) Exemption from all property taxes for all buildings owned by the association, provided that the association uses these buildings for achieving its stated purpose, and the association may not change the nature of the activity without acquiring the approval of the competent minister.
- d) Acquiring a discount of 30% on the fees of transportation for equipments and machines related to association's activities, on railway.
- e) Considering donations received by the association as a commission of maximum 10% on the donor's net income.
- f) Exemption from taxes and fees due to custom authorities, imposed on exported equipments, machines, tools, production utilities, and vehicles related to association's activities, as well as the gifts and aids the association receives from abroad, upon a decree by the competent Prime Minister, based on a recommendation from the competent minister and a review by the Minister of finance, provided that the exported utilities are necessary for the main activity of the association.

The association may not dispose the long-lived utilities, before five years of exporting them, without a prior decree from the competent minister in agreement with the Minister of Finance, unless the association has paid the due custom fees and taxes.

- g) Treating the association as a domestic facility in terms with paying subsidized domestic consumption fees of water, electricity, and natural gas produced by state-owned public companies."

However, some of the critics of the new NGO Law misinterpreted Article 80, which provides local NGOs to offer 1% of net total monetary collection licenses in the form of solidarity share, among other nine resources, to “The NGO Support Fund,” which is responsible for supporting and growing the civil society in Egypt.

Article 78 of the new NGO Law describes “The NGO Support Fund” as follows:

“The Administrative Authority shall establish a fund with the name NGO Support Fund, with the purpose to offer financial support to guarantee the continuity of the activities of nongovernmental associations, foundations, and unions working under this law... The NGO Support Fund shall be responsible for offering financial, technical, and administrative support to associations and help improve its work flow. The executive bylaw shall determine other responsibilities of the NGO Support Fund.”

And, in Article 80, the new NGO Law provides 9 resources that The NGO Support Fund can depend on to be able to provide financial and technical support to local NGOs, as follows:

- “a) The finances assigned in the general budget of the state for supporting nongovernment organizations, according to the provisions of this law.
- b) The total of the fees of documentation collected, according to the provisions of this law, and proved in the special records of the Administrative Authority, and the total of fees collected on issuing or renewing the license of foreign nongovernmental organizations.
- c) Grants and donations received by The NGO Support Fund and approved by its board.
- d) The total of the funds transferred to The NGO Support Fund from dissolved associations, foundations and unions.
- e) The total of additional fees collected for the benefit of charity activities.
- f) The total of the values of fines provided according to the provisions of this law.
- g) One per cent (1%) of total licenses given to associations to collect funds and of the value of each approved grant.
- h) Any other resources decided by the board of The NGO Support Fund.
- J) The revenues from investing the funds of the NGO Support Fund.”

Conclusion:

According to this situation assessment, LDI believes that the new NGO Law could be a valid basis for establishing a healthy relationship between the government and civil society. The Egyptian civil society has suffered for so long from the tough regulations of the old NGO Law no. 84/2002, which the new law has resolved in a brilliant way that would allow state to monitor the work flow of NGOs without arbitrary intervention. Civil society leaders, especially those working on civil and political rights, who worked outside the old NGO Law, were an easy prey to the brutal distortion campaign in media, particularly after 2011 revolution. The new NGO Law provides civil society with an opportunity to work under the rule of law without worrying about the risks civil society professionals had to take in the past, and thus reinstate a new relationship with the public that would definitely enhance their work and serve the greater goal of achieving the liberal democratic development Egypt has been seeking for six years.