



Commentary: Egypt and Tunisia's NGO Laws

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1. Introduction

Tunisia and Egypt both experienced revolutions in 2011 which led to major constitutional and legal changes, particularly in terms of rights and freedoms. In a bid to put an end to the legislative frameworks upheld by their respective former regimes, new constitutions were introduced in both countries. In addition, both countries saw significant changes to legislation governing NGOs, or civil associations, and their activities. A new Tunisian law on NGOs was issued directly after the revolution in 2011, while an Egyptian equivalent, which had been part of public discussion from early on in the wake of the revolution, came into effect in 2017.

The two laws employ different methodologies and have produced different results, as will be demonstrated in this comparative analysis. It will address the right to form civil associations as laid out in the constitutions of the two countries, and will investigate the contexts in which the two laws were prepared and issued. It will also look at the process of establishing civil associations, the basic conditions required to do so, and the extent to which they are able to easily mobilize financial resources. Finally, the legal process for the suspension and dissolution of civil associations in the two countries will be reviewed.

2. The Constitutional Right of Association

The 2014 Egyptian constitution restricts the right to establish civil associations to “citizens” only.¹ This contrasts with Egypt’s commitments to international treaties and conventions² that stipulate that

every individual should have the right to create an association³ and which guarantee this right to all individuals present in its territory, without discrimination against, or exclusion of, non-citizens.⁴

The Egyptian constitution moreover stipulates that civil associations should be established on a democratic basis, adopting a system whereby founders are required to notify the authorities in order for their associations to be established and granted legal status, effective as soon as the notification is sent. The constitution guarantees associations’ freedom to exercise their activities and prohibits administrative authorities from interfering in their affairs, revoking their legal status, or dissolving the associations, their boards of directors or their boards of trustees, except through a court order. It also prohibits the founding or continued operation of civil associations whose activities are held in secret, or which have a military or quasi-military nature.

The Tunisian constitution also outlines the right to freedom of association. It stipulates that associations’ statutes and activities must comply with the provisions of the constitution and the law, while guaranteeing financial transparency and non-violence.⁵ However, like the Egyptian constitution, the Tunisian charter contradicts its international commitments,⁶ since it also limits the state’s assurance of rights and freedoms, including citizens’ individual and public rights.⁷

1 See article 75.

2 Egypt signed the International Covenant on Civil and Political Rights on August 4, 1967. It was approved by the United Nations General Assembly on December 16, 1966 and by the Egyptian president through decree 536 of 1981 on October 1, 1981. It was published in the official state gazette on April 15, 1982, and implemented as of April 14, 1982.

3 See article 21 of the International Covenant on Civil and Political Rights.

4 See article 2 of the International Covenant on Civil and Political Rights.

5 See article 35 of the Tunisian constitution.

6 Tunisia ratified the International Covenant on Civil and Political Rights on March 18, 1969.

7 See article 21 of the Tunisian constitution.

3. Drafting the New Laws

A total of 202 members of Egypt's parliament (the House of Representatives) formally submitted a draft bill regulating civil associations on August 30, 2016. The parliament's Social Solidarity Committee began discussing it on October 30 (Abdel-Galeel, 2016) and completed discussions on November 9 (Ali & Abdel-Azim, 2016). The draft was then referred to plenary sessions of parliament for discussion and final approval, in preparation for its issuance. The parliament began discussing it on November 14 (MENA, 2016) and voted to approve it on November 29 (Fakhry, 2016). The law was officially promulgated—as is customary—six months after the parliament approved it.⁸

While the Egyptian parliament was discussing this draft law, the government was formulating objections that it had not been informed about it, and stating that it had almost completed the draft of another NGO bill which was to have been presented to the parliament.⁹ The parliament, however, continued to push ahead with its own bill (Hussein, 2016) rather than delay the law to wait for the government's draft, in a bid to purportedly “protect national security” from foreign funding aimed at creating “chaos.”¹⁰

The parliamentary law was harshly criticized by international human rights organizations such as Amnesty International, which said that it “threatens to annihilate human rights groups” (Amnesty International,

2017). Human Rights Watch similarly described it as ending the work of civil society organizations and the activities of independent NGOs (Human Rights Watch, 2017). Governmental organizations such as the National Council for Human Rights also criticized it, declaring that it violated the constitution and international standards (Ali, 2017). Moreover, it was rejected by various local human rights organizations (Cairo Institute for Human Rights Studies, 2016), which demanded that it be amended (Tarek, 2017). It should be noted that the government has completed the preparation of a new law on civil associations in preparation for the current law's cancellation.

Conversely, the Tunisian NGO law was drafted by an independent body that was formed after the revolution, the Higher Authority for Realization of the Objectives of the Revolution, Political Reform and Democratic Transition. It included representatives of NGOs, associations and civil society.¹¹ The authority's contributions to the draft law were focused on the importance of controlling and organizing the relationship between civil associations and the other parties concerned with their activities, especially political parties, the bureaucracy, the government and the judiciary. The authority's members also discussed the question of funding from commercial companies, namely whether to limit it or entirely prohibit it. They also addressed foreign or external funding and the importance of finding an appropriate legal formulation to regulate it. The members stressed the necessity of ensuring that the state cannot obstruct the activities of civil associations and highlighted the right of associations to access information, ensuring that this was clearly stipulated in the resulting decree.¹²

The Tunisian draft law was also discussed publicly at conferences and workshops. These were attended by representatives of local civil associations and international experts in NGO law who gave their

8 It was published in the official state gazette on May 24, 2017.

9 “We have no problem with passing the parliament's draft law, but give us an opportunity to make observations and to review the best practices, because Dr. Ghada Wali, the Minister of Social Solidarity, contacted me and said she doesn't know anything about the draft submitted by the MPs. As such, we would like to have a chance to study it,” (see report on El Watan news site: Yousef, 2016).

10 According to an MP responding to comments by the Minister of Legal and Parliamentary Affairs (see Yousef, 2016).

11 Decree 6 of 2011, issued on February 18, 2011.

12 The Higher Authority for Realization of the Objectives of the Revolution, Proceedings of the Authority, Part II, from June to October 2011, printed on January 2012, p. 625, as pointed out by Snoussi (2013, p. 4).

feedback on the bill. This helped achieve a final version¹³ through consensus. The law was passed on September 24, 2011,¹⁴ and the United Nations' Special Rapporteur on the rights to freedom of peaceful assembly and of association described it as conforming to international standards on freedom of association (Office of the United Nations High Commissioner for Human Rights, 2018).

4. Establishing and Legalizing NGOs

Allowing civil associations to be founded via a process of notification is the mechanism considered most in line with international human rights law, in contrast with systems that require approval from authorities prior to establishment. Under the first system, the legal status of the civil association is automatically created as soon as the founders of the association notify the competent authorities.

The authorities are notified by a written statement that includes the information required by the law. It is not considered a prior authorization for the existence of an association; it is simply a statement that allows the administration to register the association (United Nations General Assembly, 2012, p. 19, para. 58).

The Egyptian law promulgated in 2017 employs the notification system; civil association founders must inform the authorities of their association,¹⁵ and the founder is given a notice attesting to this notification.¹⁶ If the founder wishes to obtain legal status for the association through notification, he or she must provide the information and documents required by law. The authorities are granted by law the right to decline the notification documents if they are in-

complete.¹⁷ Furthermore, the law does not give the association the right to open a bank account in its name after obtaining legal status; to do so, it must obtain a letter from the administrative authorities.¹⁸

The Egyptian law can be criticized for allowing room for a degree of arbitrariness in the execution or definition of these conditions. The law should have instead bound the authorities to accept the notification documents, and should not have allowed it to compromise a new civil association's legal status by giving it the power to prevent the body from opening a bank account.

The Tunisian law also uses the notification model;¹⁹ civil association founders have the right²⁰ to send a notification to the government's secretary general. The latter subsequently gives them an acknowledgment of receipt, if their notification includes all the documents and data stipulated in the law.²¹ An officer at law²² must check that the notification includes all the data and must write a report that the association's representative²³ will receive. Under the Tunisian law, the association is considered to be founded from the day the notification is sent, but it only gains legal status after the publication of the announcement of its foundation in the official Tunisian state gazette. It also obliges the official printing office to publish the announcement.²⁴

13 Ibid, p. 5.

14 It was published in the official gazette, issue 74 of the year 154, on September 30, 2011.

15 See article 2 of law 70 of 2017.

16 See article 9 of law 70 of 2017.

17 See article 9 of law 70 of 2017.

18 See article 10 of law 70 of 2017.

19 The Tunisian decree uses the word "permit" which is intended as a notice; see clause 1 of article 10 of decree 88 of 2011.

20 See clause 1 of article 10 of decree 88 of 2011.

21 See clause 2 of article 10 of decree 88 of 2011.

22 The officer at law is the equivalent of a public official who contributes to the administration of justice and exercises its functions within the framework of a free profession, in accordance with the provisions of law 9 of 2018, which regulates the profession of officers at law.

23 See clause 3 of article 10 of decree 88 of 2011.

24 See article 11 of decree 88 of 2011.

Further, the Tunisian law does not allow the government's secretary general the right to refuse to acknowledge receipt of the notification (Mansri, 2018, p. 29). It also does not specify the legal status of the association in the interim period between the day the notification is sent, which is legally considered its date of establishment, until the association obtains official legal status, i.e. pending the publication of its announcement in the official gazette (Al-Shafi, n.d.). In particular, the law does not regulate for a situation in which the printing office refuses to publish the announcement (Snoussi, 2013, p. 7). Once again, it would be preferable for the association to gain legal status simply by notifying the authorities, rather than leaving the matter to the authorities' discretion.

5. Creating an NGO

The international rules and standards that organize the right to freedom of association do not allow restrictions on the practice of this freedom, except for those which constitute necessary measures in a democratic country to maintain national security and the general safety of the system, or to protect public health, public morals or the rights and freedoms of others.²⁵

The United Nations' Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that freedom should be regarded as the rule, with the restrictions imposed on it to be exceptions (United Nations General Assembly, 2012, p. 7, para. 16). Further, the term "necessary," which describes the measures taken to place restrictions on exercising this right, does not mean that it is absolutely necessary or essential to do so, but rather means there is an urgent social need for intervention. When such a need arises, the state must ensure that any restrictive measures fall within the limits of what is acceptable in "democratic societies" (United Nations General Assembly, 2012, p. 6, para. 17). If international human rights law grants

every person freedom of association, then legislation that does not place any specific restrictions on individuals, including children and foreigners, is consistent with international standards. The Special Rapporteur also noted that it is best practice that legislation not require more than two people to create an association, in order not to discourage people from participating in associations (United Nations General Assembly, 2012, p. 18, para. 54).

To create an association, the Egyptian law requires that the founders must be Egyptian, natural and/or legal persons, and that the association be formed by no fewer than 10 people.²⁶ They must also pay a fee not exceeding 10,000 Egyptian pounds.²⁷ Conversely, it is permissible for one person to create a civil association, with the stipulation, however, that a sum of at least 50,000 pounds is allocated at the time of establishment to achieve one of the association's goals.²⁸ The law also requires that the founders hold full civic and political rights.²⁹ Foreigners with legal residency permits are allowed to be members of the civil association or to sit on the board of directors, provided that they do not constitute more than 10% of all members.³⁰

The Tunisian law allows any natural person, Tunisian or otherwise, who resides in the country and is aged 16 years or above,³¹ to exercise this right. The minimum number of people required to found an association is two.³²

It is noteworthy that Tunisian law restricts the right of association to natural persons only, and that it grants it to resident foreigners, unlike Egypt, which

26 See clause 2 of article 9 of law 70 of 2017.

27 See clause 'w' of article 8 of law 70 of 2017; it is in return for the registration of the association in the special records of the administrative authority.

28 See clause 4 of article 1, and article 54, of law 70 of 2017.

29 See article 4 of law 70 of 2017.

30 See article 5 of law 70 of 2017.

31 See article 8 of decree 88 of 2011.

32 See article 2 of decree 88 of 2011.

25 See paragraph 2 of article 22 of the International Covenant on Civil and Political Rights.

guarantees it for legal persons as well, but restricts it for foreigners. Further, another restriction that features in the Egyptian law is the large number of people required to establish an association – at least 10. It also requires them to pay a large sum of money to register the civil association and to allocate significant capital to it, although it is by definition a non-profit organization.

By contrast, the Tunisian law requires only two founders and no registration fees, and also does not require the organization to hold any specific capital. The Tunisian law can also be credited for allowing founders to be aged 16 years old, although a legal person in Tunisia is defined as being 18 years old and above (Mansri, 2018, p. 22). On the other hand, the Egyptian law requires the founders of a civil association to be at least 21 years old.³³

6. Resources and Funding

The rights involved in creating a civil association are not limited to the right to form and join such associations; they also include the acquisition and use of resources³⁴ from local, foreign and international sources (United Nations General Assembly, 2013a, p. 5, para. 8).

The Egyptian law allows civil associations to receive money and raise funds from Egyptian persons, nat-

ural or legal, residing within the country, although it requires the association to notify the administrative authorities of any funds received. Further, it stipulates that the organization obtain prior approval from the authorities 30 working days³⁵ before starting fundraising. It also obliges associations that accept money, grants or donations from natural or legal persons, whether Egyptians or foreigners residing within the country or abroad, to notify the National Agency to Regulate the Work of Foreign NGOs³⁶ within 30 working days of the receipt of the money. The law grants this agency the right to object to the funding within 60 working days from the date of the notification, and obliges the association not to spend the acquired money within this period. If the agency does not respond within this period, this is legally considered an objection.³⁷

The Tunisian legislation has more generic rules around funding. It stipulates that donations, grants, and wills, whether local or foreign,³⁸ are the types of resources available to civil associations. However, it prohibits the associations from receiving support, donations or grants from countries that have no diplomatic relations with Tunisia, or from organizations that defend the interests and policies of these states.³⁹

33 This is the age at which Egyptian citizens hold both their political and civic rights.

34 The word “resources” is a broad term that includes financial transactions (such as donations, grants, contracts, etc.), loan guarantees, and other kinds of financial help, in-kind donations (such as good, services, devices and intellectual property, etc.), material resources (such as office supplies, ICT devices, etc.), and human resources (such as salaried employees or volunteers). It also includes receiving international help and solidarity, and the ability to travel and network without undue interference. In addition, it includes the right to the state’s protection. This is referenced in the United Nations’ Special Rapporteur’s report of April 24, 2013 (United Nations General Assembly, 2013a, p. 6, para. 10).

35 See article 23 of law 70 of 2017.

36 This agency falls under the jurisdiction of the prime minister and is responsible for all matters related to the work of foreign NGOs in Egypt, all forms of cooperation between the state and foreign NGOs, and for foreign funding of NGOs. The board of directors of the agency was formed by a decree from the president. It is headed by a full-time chair with the rank of minister, who holds office for a period of three years, subject to renewal. Representatives from the ministries of foreign affairs, defense, justice, interior, international cooperation, social solidarity (which is the ministry in charge of NGOs and civil society work), as well as representatives of the General Intelligence Apparatus, the Central Bank of Egypt, the Money Laundering Unit and regulatory authorities are involved. It is regulated by articles 70 and 72 of law 70 of 2017.

37 See article 24 of law 70 of 2017.

38 See clause 3 of article 34 of decree 88 of 2011.

39 See article 35 of decree 88 of 2011.

The Egyptian law falls short of guaranteeing free access to funding, as it subjects civil associations' right to fundraising to prior approval from the state. It also enforces a double standard, whereby the funds received by civil associations from citizens who live in Egypt are only subject to the notification system, while those received from foreigners are subject to prior approval. Furthermore, in addition to obtaining approval from the specialized administrative authorities, civil associations must also obtain approval from another body that includes security, military and intelligence elements. The process of obtaining approval can also take a long time, and the authority's refusal to respond to the notice is considered a refusal.

The Tunisian law, however, can be criticized for preventing civil associations from receiving funds from countries that have no diplomatic relations with Tunisia. In addition, it allows for ambiguity in its prohibition of the receiving of resources from organizations that defend the interests and policies of these countries (Snoussi, 2013, p.8).

7. Suspending and Dissolving NGOs

Suspending or involuntarily dissolving a civil association are considered severe restrictions on freedom of association, and they should therefore only be permitted in the event of a clear and specific danger leading to a serious violation of national law, in compliance with international human rights law. This procedure should be fully compatible with the intended objective and should only be used when more flexible measures are ineffective (United Nations General Assembly, 2012, pp. 24-25).

The Egyptian and Tunisian laws are similar in terms of the dissolution of civil associations, whether by a voluntary decision from its members in accordance with the rules outlined in its statutes, or through a

judicial ruling.⁴⁰ Neither give authorities the right to dissolve civil associations by decree.

However, the Egyptian law grants the authorities the option to dissolve civil associations in the event of a violation of the conditions related to receiving funding from within Egypt or abroad, or a failure to comply with the rules of transparency and disclosure.⁴¹ After sending a warning, the administration has the right to issue a decision to suspend the association from exercising its activities and to request that the relevant court dissolve the association or remove the board of directors or trustees.⁴²

The law also grants the authorities, or anyone entitled to resort to the court, to request the removal of a civil association's board of directors and the appointment of an interim board to call a general assembly to elect a new board of directors, or to request to dissolve the civil association permanently. This has occurred in a number of cases involving violations of different provisions of the law.⁴³ It also stipulates the suspension of the issuing of licenses for any civil association that is subject to a lawsuit seeking to dissolve it or to dismiss its board of directors, thereby prohibiting organizations from collecting donations or receiving foreign funding until the court issues a decision.⁴⁴

By allowing authorities to stop a civil association from exercising its activities while a case is ongoing against it, and by automatically suspending licenses and thus preventing it from raising funds or receiving international funding, the Egyptian law vi-

40 See articles 41 and 43 of law 70 of 2017 and clause 3 of article 45 of decree 88 of 2011.

41 These rules concern the availability of information about NGOs' sources of funding, members' names, annual budgets and activities. NGOs are also required to keep documents, correspondence, records, bank letters and other information in their administrative headquarters. See article 25 of law 70 of 2017.

42 See paragraph 2 of article 26 of law 70 of 2017.

43 See articles 42 and 43 of law 70 of 2017.

44 See paragraph 3 of article 44 of law 70 of 2017.

olates international norms and standards related to freedom of association, which clearly state that the suspension of the work of a civil association should be undertaken only as the result of a court decision (United Nations General Assembly, 2013b, p. 26, para. 55).

The Tunisian law, by contrast, adopts a more flexible and gradual approach in the event that a civil association violates its provisions.⁴⁵ It first requests the government's secretary general send a warning to the association, stating clearly what violation occurred and giving it a 30-day period to rectify it. Should the association fail to address the violation, the law allows the secretary general or any interested party to request a judgment to dissolve it permanently, after a warning and a decision to suspend its activities, and after the exhaustion of the appeals process over the suspension decision.⁴⁶

Significantly, both laws allow the judiciary to dissolve civil associations in the event of violations of the majority of the rules and conditions of the law. This contravenes international standards related to freedom of association, which state that dissolution must be based on a clear and imminent danger, such as an organization using violence to achieve its goals; inciting discrimination, hostility or violence; or undermining the rights and freedoms enshrined in international human rights law.

45 See article 45 of decree 88 of 2011.

46 See article 45 of decree 88 of 2011.

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