



EU-Egypt Bilateral Relations:

What Scope for Human Rights Advocacy? - JUNE 2016



EuroMed Rights
EuroMed Droits
الأورو-متوسطية للحقوق

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Author: Hélène Michou



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List of Acronyms

| | |
|-----------------|--|
| AA: | Association Agreement |
| AP: | Action Plan |
| AFD: | Agence Française de Développement |
| CAAT: | Campaign Against Arms Trade |
| CEDAW: | Convention on the Elimination of all forms of Discrimination Against Women |
| CFSP: | Common Foreign and Security Policy |
| COHOM: | Human Rights Working Group |
| COREPER: | Permanent Representatives' Committee |
| CSO: | Civil society organisation |
| DEVCO: | Development and Cooperation directorate-general |
| DFID: | Department for International Development (UK) |
| EBRD: | European Bank for Reconstruction and Development |
| EEAS: | European External Action Service |
| EED: | European Endowment for Democracy |
| EIDHR: | European Initiative for Democracy and Human Rights |
| EMP: | Euro-Mediterranean Partnership |
| ENP: | European Neighbourhood Policy |
| ENI: | European Neighbourhood Instrument |
| EP: | European Parliament |

| | |
|-----------------|--|
| EU: | European Union |
| EU MS: | European Union Member States |
| EUSR: | European Union Special Representative |
| FAC: | Foreign Affairs Council |
| FCO: | Foreign and Commonwealth Office |
| GIZ: | Gesellschaft für Internationale Zusammenarbeit (Germany) |
| HR/VP: | High Representative of the Union for Foreign Affairs and Security Policy/ Vice-President of the European Commission |
| HRD: | Human Rights Defender(s) |
| IHL: | International Humanitarian Law |
| MAMA WG: | Maghreb-Mashreq Working Group |
| MEP: | Member of the European Parliament |
| MFA: | Ministry of Foreign Affairs |
| MoD: | Ministry of Defence |
| NGO: | Non-governmental organisation |
| ODA: | Overseas Development Assistance |
| PSC: | Political and Security Committee |
| SSR: | Security Sector Reform |
| UN: | United Nations |
| UNHRC: | United Nations Human Rights Council |

Introduction

This study aims to establish to which extent the EU and key Member States (MS) have been respecting their own commitments and obligations with regard to human rights in Egypt so that Civil Society Organisations (CSOs) are better equipped to pressure the EU and MS to do more.

The report furthermore aims to identify obstacles to raising human rights violations and how EU-Egypt relations could be leveraged to better foster respect of human rights in Egypt.

The study is aimed at civil society and human rights defenders working on EU-Egypt relations. In this regard, it seeks to provide an important advocacy tool for NGOs calling on the EU and its Member States to abide by their policy commitments and legal obligations, urging the Egyptian government to respect its constitution and human rights clauses contained therein.

Information for this report was gathered via primary and secondary research including a period of field research involving interviews with a range of stakeholders in Cairo, Brussels, Berlin, London and Paris. In all cases both civil society organisations and policy makers were engaged.

Executive Summary

Civil society actors working on Egypt and in Egypt are facing multiple challenges. Among European Member States' policy officials, Egypt features relatively low on the policy radar, as opposed to the more commonly heard 'normalisation of relations'.

Following state visits by President Sisi to Paris, Berlin and London, the resumption of arms exports or the signing of new economic deals, little doubt remains as to the priorities of Member States in their bilateral relations with Egypt. Human rights and democratic values are declared policy priorities, with development cooperation programmes designed to support them, but not backed by clear and consistent political messages.

Likewise, at the EU level, the lack of impact in democracy and human rights work is not for lack of programmes, strategy documents, political frameworks or bilateral agreements. The main challenge is how to hold the various EU institutions – some more accountable than others – to their policy pledges. The EU is set to change its way of reporting on the human rights situation in partner countries by replacing Action Plans with Joint Partnership Priorities, and scrapping Progress Reports.

Similarly, the three-year Human Rights and Democracy Country Strategy is due to be replaced by a broader five-year document from 2016 onwards. The drafting of these new priorities and strategies constitutes a key entry point for CSOs willing to engage in consultative processes with the EU, whether in Cairo, Brussels or in the EU capitals.

In Cairo, civil society finds itself operating in an increasingly restricted space. The last two years under Sisi have seen a blanket – yet at the same time arbitrary – crackdown on political and social opposition, widespread abuse committed by security forces operating without an executive mandate, and an overall lack of accountability mechanisms. The period starting in July 2013 has been the single most repressive in modern Egyptian history. Travel bans for academics and human rights defenders (HRDs), trumped-up charges for political opponents, closure orders for NGOs tolerated under Mubarak; these are but a few of the measures that the Egyptian state has used to curtail and silence civil society.

Some organisations and individuals are resisting. Nevertheless, most local stakeholders agree that their ability to impact on the decision making process is extremely limited. Token consultations with civil society organised by ministries, including those of Social Solidarity, Foreign Affairs, and Finance, have not been accompanied by a willingness to take on board grievances, let alone recommendations.

Regarding the case studies for this report, the overall trends at the Member State capital level can be summarised as follows: the UK seeks to disguise its backtracking on human rights issues, France continues its embrace Realpolitik, while Germany plays by the rules of pragmatic engagement. All three European heavyweights share certain unflattering characteristics: a de-prioritisation of human rights in favour of the traditional security and stability-at-all-cost narrative, boosting economic

ties with Egypt despite an unfavourable investment environment, and favouring so-called quiet diplomacy over public naming and shaming. At the EU level, they generally favour a normalisation of relations with Egypt, and are unwilling to take the lead on public démarches, claiming to respect the EU Common Position on arms exports but, at the same time, ink new deals with authoritarian regimes like Egypt's.

Part 01.

EU cooperation instruments

This section will examine the main political, technical and legal frameworks governing EU-Egypt bilateral relations. Rather than providing a comprehensive overview of each, the section sketches relevant aspects for human rights commitments and practices, offering a brief insight into the workings of the different EU institutions and the available mechanisms to hold them to account.

For a more detailed explanation of each institutions and their relevance to Egypt and the broader region, please consult the EuroMed Rights training guide on EU advocacy, an updated version of which will be published shortly.¹

EU-Egypt Association Agreement and Action Plan¹

The EU's relations with Egypt are governed by a series of bilateral and multilateral agreements, as well as a set of policy frameworks, which aim to position relations in a strategic context. At the bilateral level, within the framework of the Euro-Mediterranean Partnership (EMP), the Association Agreement (AA) entered into force in June 2004, forming the legal basis for EU-Egypt relations. It is mainly economic in nature, and is aimed towards "furthering regional integration, with a view to creating an area of shared prosperity, as well as providing a framework for political dialogue and closer economic, social and cultural relations between the two parties."² On paper the AA is based on "respect for democratic principles and fundamental human rights". However, as we shall see in the course of this report, the EU seems equally willing to overlook these normative commitments as its Member States.

The AA is a standard text used for different countries; Egypt's AA was complemented in 2007 by an Action Plan (AP): a non-legally binding document that provides the basis for cooperation in political, social and economic fields. It seeks to "deepen and broaden EU-Egypt relations through closer cooperation in areas of mutual

¹ <http://euromedrights.org/wp-content/uploads/2015/03/Training-Guide-EN.pdf>

² http://eeas.europa.eu/egypt/aa/06_aaa_en.pdf

interest and through frequent political dialogue”.³ The implementation of the AP is regularly assessed during technical sub-committee meetings, including a sub-committee on political affairs and human rights. The committees resumed their functions in November 2015 following their suspension after the uprisings of 2011. This marks an uptick in the EU’s bilateral engagement but also a platform where issues can be raised on a regular basis. As of 2016, Action Plans will be replaced by Joint Partnership Priorities as detailed under the Political Dialogue section.

Cooperation instruments

To assist Egypt in advancing the implementation of the AA and the AP, the EU offers a number of instruments and incentives within the framework of the European Neighbourhood Policy (ENP). These include trade liberalisation, a stake in the internal market and targeted technical and financial assistance. Within the European Commission, cooperation with neighbourhood countries including Egypt is managed by the Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR).

The main financial instrument for the 2014-2020 period is the European Neighbourhood Instrument (ENI), which allows for direct assistance to certain Egyptian governmental bodies and CSOs. Funding and priorities are outlined in the Annual Action Programme (AAP), including support for job creation, social protection, social justice, good governance, access to sanitation and other basic services.⁴ ENI assistance to Egypt is outlined in two Single Support Frameworks (SSF) with a combined maximum allocation of just under €1bn. Bilateral allocations for Egypt for 2014 – 2016 total between €311 and €380 million.⁵ The remainder will be allocated to the second SSF covering the period 2017 – 2020. These figures are indicative: final allocations in theory depend not just on the country’s needs

but also its commitment to reforms, the so-called incentive-based approach or “umbrella funds” under the revised ENP.⁶ Commission officials confirm that whilst Tunisia receives the maximum allocation, Egypt sits at the bottom of the bracket.

Cooperation priorities under ENI assistance are called ‘bilateral envelopes’ or ‘sectors of intervention’. The current three areas of priority cooperation are defined as:

1. Poverty Alleviation, Local Socio-Economic Development and Social Protection (40%)
2. Governance, Transparency and Business Environment (20%);
3. Quality of Life and Environment (40%).⁷

Given that incumbent SSF envelopes took into account political developments from 2013 such as the Foreign Affairs Council (FAC) conclusions on Egypt and the recommendations of the Court of Auditors,⁸ it is likely that the next set of envelopes with take into account the upcoming FAC conclusions, elements of the revised ENP, and the main challenges faced by post-Roadmap Egypt.

3 http://www.enpi-info.eu/library/sites/default/files/attachments/egypt_enp_ap_final_en.pdf

4 For Egypt’s AAP 2015, see <http://ec.europa.eu/enlargement/neighbourhood/pdf/key-documents/egypt/20150915-aap-2015-egypt-financing-commission-decision-20150722.pdf>

5 The first SSF was originally planned for 2014 – 2015 only. It was extended late last year following a request by Egypt. The extension also saw a modification of financial allocations. For more details see Commission Implementing Decision of 17.12.2015 modifying the Decision C(2014) 7170 adopting a Single Support Framework for European Union support to Egypt for the period 2014-2015, available at <http://ec.europa.eu/enlargement/neighbourhood/pdf/key-documents/egypt/20160304-extended-single-support-framework-egypt-2014-2016.pdf>

6 Under the 2014-2020 multiannual financial framework, SPRING funds were replaced by the so-called Umbrella programme funds. In 2014, Tunisia was the first recipient of Umbrella funds with an amount of €50 million and €71.8 million in 2015.

7 For the complete SSF see “Programming of the European Neighbourhood Instrument (ENI) - 2014-2020: Single Support Framework for EU support to Egypt”, available at http://eeas.europa.eu/enp/pdf/financing-the-enp/egypt_2014-2015_programming_document_en.pdf

8 Both the Auditors Report from June 2013 and the Council conclusions from August 2013 were highly critical of EU engagement with Egypt, the former with regards to budget support and the latter with regards to political support including arms sales. Both issues are discussed later in the report. See also http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/138603.pdf and <http://www.europarl.europa.eu/document/activities/cont/201306/20130624ATT68309/20130624ATT68309EN.pdf>

To assist Egypt in upgrading the public administration capacity in line with EU and international best practice, another Commission-funded instrument called the Support to the Association Agreement & Action Plan (SAAP) covers the period 2010 to 2016⁹ and focuses on four core areas:

1. Legislative and institutional reform is supported by SAAP I (€25 million) and SAAP II (€17 million)
2. Trade and economic liberalisation;
3. Improvement of the legislative and regulatory framework (covered by SAAP III with €20 million)¹⁰
4. Institutional strengthening, private sector reform and public administration reform (covered by SAAP IV with €10 million)¹¹.

The SAAPs talk of achieving “legislation approximation to the EU *acquis*” and developing the institutional capacity of the Egyptian Government, but contain only brief references to human rights, good governance and gender equality under the “cross-cutting issues” section of the Action Fiches. Neither is the issue of “conditionality and sequencing” included other than as a broad pledge: “The Egyptian counterparts commit themselves to apply[ing] the acquired best practices in line with the EU rules, methods and standards.”¹²

In addition, Egypt also benefits from ENI regional and neighbourhood-wide cooperation programmes such as Erasmus+, Cross-Border Cooperation (CBC), Technical Assistance and Information Exchange (TALEX), Twinning, Support for Improvement in Governance and Management (SIGMA), and the Neighbourhood Investment Facility (NIF) which pools grants from Member States and loans from European Financial Institutions to support infrastructure projects.¹³ These instruments ensure a practical means for transferring European know-how to

upgrade a partner country’s institutional capacity. The programmes promote approximation to EU law and policies, enhanced co-operation, economic integration and democratic governance, covering a number of fields including trade, energy, environment, education, health and research.

Apart from the ENI, Egypt and its CSOs are also eligible for funding under several EU thematic programmes and specific instruments including the European Instrument for Democracy and Human Rights (EIDHR), the Instrument contributing to Stability and Peace (IcSP), and the Development Cooperation Instrument (DCI). The latter covers local authorities, human development and migration & asylum. The European Endowment for Democracy (EED) is also touted as part of the EU’s toolkit, but is not an EU financial instrument per se, although its operating costs have been funded under the ENI since its creation.¹⁴ It is a foundation formed under Belgian law which engages in support for democracy building and political activities that EU institutions are unable to fund, including funding for unregistered organisations. EED sub-granting operations are funded mostly by Member State contributions and miscellaneous private funding.

Finally, on 30 October 2015 Egypt became a formal recipient country of the European Bank for Reconstruction and Development (EBRD) following amendments to several articles and extension of the Bank’s operations beyond its original remit in Eastern and Central Europe to countries of North Africa.¹⁵ The London-based development bank, which was set up to help former Soviet economies transform to market economies, began expanding its mandate after the Arab Spring; Egypt had been in the pipeline since Mubarak’s ouster. The EBRD’s political and economic assessment of Egypt was based on two assumptions. Firstly, it takes for granted that rights enshrined in the constitution are progress in itself rather than examining the extent to which these rights are applied in practice. Secondly it cites figures from Egypt’s National Council for Human Rights (NCHR) without mentioning independently sourced and verified information provided by non-governmental bodies.¹⁶

⁹ The SAAPs have been extended to 2017. Cooperation under the SAAPs to date includes aviation oversight, maritime safety, railway safety, judicial reform, scientific research, postal services, water quality, road safety, telecommunications regulation, environment, waste management, statistics, and tourism among others.

¹⁰ http://eeas.europa.eu/delegations/egypt/projects/list_of_projects/20492_en.htm

¹¹ http://eeas.europa.eu/delegations/egypt/projects/list_of_projects/21871_en.htm

¹² For more information and examples of Action Fiches see https://ec.europa.eu/europeaid/sites/devco/files/aap-finance-egypt-commission-decision-at-2010_en.pdf

¹³ For more information on Neighbourhood-wide cooperation instruments, see http://ec.europa.eu/enlargement/neighbourhood/neighbourhood-wide/index_en.htm

¹⁴ For more information see <http://ec.europa.eu/enlargement/neighbourhood/pdf/key-documents/20150630-im-2015-eni-east-south-eed-financing-commission-decision-en.pdf>

¹⁵ <http://www.ebrd.com/news/2015/governors-vote-to-make-egypt-formal-recipient-of-ebrd-finance.html>

¹⁶ For more information, see the EBRD’s Political and Economic Assessment of Egypt, available at <http://www.ebrd.com/documents/comms-and-bis/egypt-political-and-economic-assessment.pdf>

EU-Egypt political dialogue

The European Neighbourhood Policy (ENP) is the main framework through which the EU lays out its political vision for countries in the region, including Egypt. The mass popular uprising of 2011 led the EU to “review” its policy toward its southern partners with a view to ensuring greater participation of civil society in these countries and increasing support to democratic reforms. The core tenets of this new approach were initially laid out in the Commission’s “Communication on a partnership for democracy and shared prosperity with the southern Mediterranean” in March 2011, enshrined two months later in “A new response to a changing Neighbourhood”, and subsequently revisited as part of the recent ENP review process. The new set of strategic priorities resulting from these consultations can be found in the EU’s Joint Communication “Review of the European Neighbourhood Policy” of November 2015¹⁷.

Although the aim was to lay out European support for the aspirations of local populations, these documents have, in a way, ended up mirroring the cycle of events in the region. Just as Egypt’s so-called transition came full circle reverting to authoritarianism, so has the EU’s policy shifted from initial support for “deep democracy”, “people partnerships” and “inclusive growth” back to stability, security and stemming migration flows.¹⁸ The lack of funds, and of political will to implement the quotas across Member States, and the questionable legality of the refugee deal reached with Turkey are all signs of Europe shirking its responsibilities.

A major dose of realism – if not Realpolitik – has been inserted into the new ENP. The EU uses the concept of “differentiation” to engage with partners despite the lack of progress on democracy and human rights. In being less prescriptive and more responsive to what each individual partner country wants, the EU has agreed to scrap progress reports, which until present were written unilaterally by the EU – arguably one of their main redeeming features. Instead, the EU will now agree to “joint partnership priorities” with partner countries¹⁹, which might allow support and funds being allocated to shorter-term stability measures in line with regime concerns. This study will examine potential remaining entry points toward pressuring the EU and its member states to keep human rights actively on the agenda and to not merely support projects that serve the agenda of local elites.

Aside from the regional ENP, the EU also has worldwide instruments for promoting human rights in third countries, including the Human Rights and Democracy Country Strategy (HRDCS). Signed off by the incumbent EU ambassador in each country, this document is not public and is said to contain, in addition to the general strategy, specific names of individuals and organisations that the EU delegation will support. Changes are underway for 2016 onwards. The HRDCS are set to shift to cycles of five years (rather than three years previously), with an annual implementation report. It is unclear who will be responsible for this report or for benchmarking achievements under the strategy. Drafts are expected from the EU delegations before the summer, which in Egypt’s case would coincide with the departure of the Head of Delegation, James Moran.

The HRDCS are drafted on the basis of a template largely inspired by the EU Guidelines on Human Rights and adapted to specific contexts.²⁰ These guidelines cover the death penalty, torture, human rights dialogue with third countries, children and armed conflict, international humanitarian law, human rights defenders, rights of the child, violence against women, and, since 2014, freedom of expression offline and online.²¹

17 http://eeas.europa.eu/enp/documents/2015/151118_joint-communication_review-of-the-enp_en.pdf See also EuroMed Rights, “White Book in view of 2015 ENP review”, available at <http://euromedrights.org/emhrn-white-book-in-view-of-enp-review/>.

18 The EU and Egypt have been engaged in preliminary talks for starting a dialogue on Migration and Mobility in line with the EU’s Global Approach to Migration & Mobility and the European Agenda on Migration.

19 Indeed, in Egypt this process began late February/early March with meetings in Cairo between EU Delegation staff and EEAS staff.

20 http://www.eeas.europa.eu/human_rights/docs/guidelines_en.pdf

21 https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf

Trade instruments

Trade is predominantly a technical issue, the full extent of which this report cannot delve into. The gist of the majority of trade negotiations among countries today is to open up their respective economies, reducing technical barriers to trade such as differences between regulations or technical standards and conformity assessment procedures. As part of the Association Agreement a Free-Trade Area (FTA) exists between the EU and Egypt, which translates to the elimination of tariffs on industrial products and significant concessions on market access for agricultural products. Negotiations to upgrade this FTA to a 'Deep and Comprehensive' FTA (DCFTA) are on hold following what some European Commission officials have described as a combination of "lack of interest on Egypt's part" and "unfriendly measures" adopted unilaterally and contrary to its obligations under the AA, FTA, and WTO.

A Sustainability Impact Assessment (SIA) must be carried out for a DCFTA to be signed, which includes a Human Rights Impact Assessment (HRIA). These assessments provide the European Commission with an in-depth analysis of the potential economic, social, human rights, and environmental consequences of deepening trade negotiations, and are a prime opportunity for stakeholders in both the EU and the partner countries to share their views with negotiators.

The assessment completed for Egypt in late 2014 raises significant questions, both in terms of process and content.²² For instance, many of the civil and political rights listed as relevant for the AA are missing from those that are relevant for the DCFTA including: right to a fair trial, safeguards against police abuse and violence, torture, impunity and selective or arbitrary justice, the death penalty, prison and detention centre conditions, freedom of expression and a free press.²³ Secondly, in a volatile situation such as Egypt's, the rights most affected by the DCFTA, namely labour rights, as well as the unions or syndicates championing them, will likely be at risk given the lack of strong monitoring and compliance mechanisms.

An Agreement on Conformity Assessment and Acceptance of industrial products (ACAA), aiming to facilitate market access for industrial products, is subject of the parties' current negotiations attempting to upgrade the FTA to DCFTA. More specifically, the products covered by the agreement will be able to enter the EU without further testing or certification and move freely in the 28 Member States and vice versa.²⁴ It is our observation that unfortunately, the pre-conditions for ACAA negotiations did not include any mention of human rights benchmarks.²⁵

European Commission officials and Member State decision makers consulted in the course of our research were adamant that trade is not subject to human rights conditionality, that indeed, "business is business". Which however begs the question to what extent such a maxim applies to the trade of dual-use security items or military equipment. France's widely publicised sale to Egypt of warships, fighter jets and Renault armoured trucks are a case in point. Arms exports are regulated by the 2008 EU Common Position on arms exports, setting out eight criteria against which Member States are to assess export license applications for military equipment²⁶. The following section examines this and other mechanisms or institutions for holding the EU to account.

22 Trade Sustainability Impact Assessment in support of negotiations of a DCFTA between the EU and Egypt, Final report, November 2014, available at http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153139.pdf

23 Idem p. 79

24 For more information, see http://eeas.europa.eu/delegations/egypt/eu_egypt/trade_relation/import_into_egypt/index_en.htm

25 http://www.accredia.it/UploadDocs/4069_Workshop_UE_26_06_2013_4_The_context_of_the_ACAA_Agreement_Evelyn_Hania_EC.pdf

26 COUNCIL COMMON POSITION 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=O-JL-2008:335:0099:0103:EN:PDF>

Useful mechanisms and institutions for holding the EU accountable

The European Parliament (EP) is a key ally of civil society. Apart from political groups and MEPs, the Parliament has 22 Standing Committees (including one dealing with Foreign Affairs known as AFET and its subcommittee on Human Rights known as DROI), as well as 44 delegations that are able to raise issues in Brussels, in national capitals via Member State parliaments, and in third countries during visits.²⁷ Whilst foreign policy matters fall largely under intergovernmental procedures, which give only a limited consultative role to Parliament (compared to ordinary legislative procedure which gives the same weight to the EP as it does to the Council of the EU), development cooperation budget and trade are areas where the EP can play a powerful role.

The EP has been responsible for some of the most critical language on Egypt to date. In this sense it is especially useful in drawing public attention to issues that the European Commission and the External Action Service (EEAS) had rather relegated to a lower tier in their relations with Egypt. It is worth mentioning the latest EP resolution on torture and forced disappearances from March 2016, and the resolution on the situation in Egypt from January 2015, both of which contain detailed references to EU commitments and Egyptian obligations under its own constitution.²⁸ Despite the non-binding nature of EP resolutions, their impact can be seen in the aggressive lobbying tactics employed by Egyptian officials in Brussels to try and prevent them. Officials in Cairo are quick to communicate their displeasure to Member State diplomats of the language contained in the resolutions.²⁹

Individual Members of the European Parliament (MEPs) can raise written and oral questions, which the European Commission and the European External Action Service (EEAS) are obliged to answer. The responses however are often lacking in detail and after significant time delays, as was the case with questions on planned

and on-going arms transfers by Member States to Egypt.³⁰ Often, the more specific the question, the more generic, non-committal the answer, and the longer the delays obtaining them. In this regard, the expertise of NGOs and human rights organisations closely following political developments in Egypt is key.

With regard to translating condemning language into concrete punitive action, the EU can apply sanctions based on article 215 of the Treaty on the Functioning of the European Union (TFEU). The article provides a legal basis for the interruption or reduction of economic and financial relations with one or more third countries, where such restrictive measures are necessary to achieve the objectives of the Common Foreign and Security Policy (CFSP).³¹ Union law Regulations are directly applicable in all EU Member States and take precedence over conflicting measures of a Member State. EU sanctions currently in force in Egypt include those imposed in 2011 directed against certain persons and entities identified as responsible for the misappropriation of Egyptian state funds. In March 2016, the EU Council extended its restrictive measures in view of the situation in Egypt until 22 March 2017.³² Under the measures, listed individuals and entities are subject to an EU-wide asset freeze. However, sanctions as a tool for incentivizing political reform have been shown as less than waterproof, and lacking impact, especially in authoritarian states where unaccountable political elites are able to protect their interests regardless.³³

Other instruments providing judicial oversight of European institutions include the Luxembourg-based European Court of Justice (ECJ) and the European Court of Human Rights (ECHR). The ECJ ensures compliance with EU law and rules on the interpretation and application of the treaties establishing the European Union — for example, the 2007 Lisbon Treaty, which in effect serves as an EU constitution. The court's main function is to interpret EU law to make sure it is applied in the same way in all EU countries. The court's rulings are not only legally binding but have precedence over national laws whenever the two are in conflict. It also settles

27 For a detailed breakdown of the Parliament and other EU institutions, see the user-friendly EuroMed Rights "EU Training Guide" which helps cut through the jargon. Available at <http://euromedrights.org/wp-content/uploads/2015/03/Training-Guide-EN.pdf>

28 Joint Motion for Resolution: Giulio Regeni, torture and forced disappearances, March 2016, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P8-RC-2016-0338&language=EN> and Resolution on the situation in Egypt, January 2015, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP/TEXT/T+TA+P8-TA-2015-0012+0+DOC+XML+V0/EN&language=EN>

29 Author interviews.

30 See written question from June 2015 <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2015-010476&language=EN> and answer from October 2015: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-010476&language=EN>

31 European Union Restrictive measures (sanctions) in force as of 15 January 2016, available at http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf

32 The extension is brought into force by Council Decision (CFSP) 2016/411 amending Council Decision 2011/172/CFSP. For more see http://european-council.europa.eu/media/documents/press/docs/2016/03/20160310_en12.pdf

33 Richard Youngs, The end of democratic conditionality: good riddance? FRIDE Working Paper, September 2010

legal disputes between Member State governments and EU institutions. Individuals, companies, or organizations can also bring cases before the Court if they feel that their rights have been infringed upon by any EU institution. For such a petition to be examined, a claimant would have to successfully demonstrate that a decision by an EU institution has affected them directly and individually. Cases brought by individuals often garner media attention on account of the David-versus-Goliath imagery.

Whereas the ECJ rules on EU law apply to Member States, the Strasbourg-based ECHR based rules on the European Convention on Human Rights, which covers the 47 member states of the Council of Europe. To the confusion of many outside observers, the European Union itself is not a member of the Council of Europe and, accordingly, is not bound by the rulings of the ECHR. While cases cannot be brought against the EU, the Court has ruled that states cannot escape their human rights obligations by saying that they were implementing EU law.

As the EU's independent external auditor, the European Court of Auditors (ECA) looks after the interests of EU taxpayers. It does not have legal powers, but works to improve the European Commission's management of the EU budget and reports on EU finances. It reports on suspected fraud, corruption or other illegal activity to the European Anti-Fraud Office (OLAF). It produces an annual report for the European Parliament and Council of the EU, which the Parliament examines before deciding whether to approve the Commission's handling of the EU budget. It also chooses which additional issues to audit via ad hoc reports, such as the June 2013 assessment of EU budget assistance to Egypt.³⁴ In a highly critical evaluation of public finance management, support for human rights and democracy, and funds channelled to CSOs, the ECA slammed the "softly softly" approach of the European Commission and the EEAS to reform in Egypt.

Finally, in terms of holding the EU and its Member States to account regarding their arms exports, the EU Common Position of 8 December 2008 serves as a departure point.³⁵ This legally binding instrument replaces and builds on a previous political agreement, the EU Code of Conduct on Arms Exports from 1998. It requires Member States to

abide by eight common criteria when assessing export licence applications for items on the EU Common Military List (EU ML), adopted in 2000 and regularly updated, and the Dual-Use list.³⁶ EU exports of dual-use goods and technology (i.e. items that can be used for both civilian and military purposes) are governed by a 2009 Council Regulation.³⁷

The eight criteria laid down by the Common Position for the export of conventional arms that EU Member States apply to their licensing decisions are as follows:

1. respect for Member States' international obligations and commitments, in particular the sanctions adopted by the UN Security Council or the European Union, and agreements on non-proliferation and other subjects;
2. respect for human rights in the country of final destination as well as respect by that country of international humanitarian law;
3. the internal situation in the country of final destination – Member States will not allow exports that would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination;
4. preservation of regional peace, security and stability;
5. security of Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries;
6. behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law;
7. existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions;
8. compatibility of the exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with minimal diversion of human and economic resources for armaments.

34 "EU Cooperation with Egypt in the Field of Governance", Special Report No 4 (SR 4/2013), European Court of Auditors, June 2013, available at <http://www.europarl.europa.eu/document/activities/cont/201306/20130624ATT68309/20130624ATT68309EN.pdf>

35 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>

36 The EU ML lists 22 categories of arms, munitions, military equipment and technologies. The latest version was adopted by the Council on 14 March 2016 and is available at <http://eur-lex.europa.eu/legal-content/EN/TEXT/?qid=1460122662554&uri=CELEX:52016XG0406%2801%29>

37 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:134:0001:0269:en:PDF>

The User Guide, drawn up and regularly updated by the Council's Working Party on Conventional Arms Exports (COARM), serves as guidance to assist Member States in implementing the Common Position.³⁸ It also aims to improve the sharing of information between Member States, to increase mutual understanding of their export control policies, and to outline requirements for the submission of information to the EU's Annual Report. Although the Common Position is a legally binding instrument, it is not legally enforceable and does not have a direct legal effect.³⁹ It is up to Member States to legislate as to which cases require an export licenses. As an instrument of CFSP it leaves ample room for interpretation of the criteria, making it practically impossible to demand compliance via the European Court of Justice or the European Court of Human Rights.

38 User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, COARM 172, July 20 2015, available at <http://data.consilium.europa.eu/doc/document/ST-10858-2015-INIT/en/pdf>

39 For a user-friendly overview, see http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130454/LDM_BRI%282013%29130454_REV1_EN.pdf

Part 02. Member state case studies

This section will offer some more detailed insights into key member states' bilateral relations with Egypt. It will outline the normative human rights commitments contained in political agreements and cooperation programmes, while analysing the extent to which they are respected and implemented in practice. For each Member State the report also looks briefly at the issue of security cooperation or arms trade, before turning to the mechanisms available to civil society actors to hold their governments to account, including Parliamentary oversight.

UK: BARELY DISGUISED BACKTRACKING

1. Political relations

The British government, like its French and German counterparts, exhibits a deep lack of political will to prioritise human rights. It does however engage in more face-saving measures to obfuscate the apparent disinterest. Secondly, and of greater interest for the purposes of this report, the UK offers more potential advocacy entry points for CSOs working to hold the government to account than other European capitals where civil society is not such an integral part of the political culture.

The UK's skin-deep commitment to normative values was made apparent in a recent Parliamentary Foreign Affairs Select Committee report on the Foreign and Commonwealth Office (FCO)'s administration and funding of its human rights work overseas.⁴⁰ The FCO's Permanent Under-Secretary went on record stating that "human rights is not one of our top priorities [...] right now the prosperity agenda is further up the list".⁴¹ Under the current Conservative government, plans to scrap the Human Rights Act, approval of invasive surveillance laws, and the UK's absence from refugee resettlement deals, all point to a trend of scaling back human rights commitments.⁴² Analysts claim that this is a recent shift under Foreign Secretary Philip Hammond who has dismantled the very specific human rights objectives – including freedom of expression, torture prevention, abolition of the death penalty, and women's rights – that he inherited from his predecessor William Hague. Instead, the FCO focuses more broadly, or one might argue, vaguely, on "democratic values and the rule of law, strengthening the rules-based international order, and human rights for a stable world."

⁴⁰ For full report see <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmfafr/860/86002.htm>

⁴¹ See Foreign Affairs Committee, FCO budget and capacity inquiry, Oral evidence, HC 467 15/09/2015, available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/fco-budget-and-capacity/oral/21587.html>

⁴² London-based NGOs cite the Conservative government under Cameron as the main factor for civil society's limited influence on British policy making. Not only is the tendency for top-down policy making more prevalent, but bills have been passed to restrict civil society campaigning, targeting mainly charities and NGOs. For more on this issue see Owen Jones, "The Establishment: And how they get away with it", Penguin Random House, 2014.



The normalisation of relations with post-Morsi Egypt was made apparent in the red carpet treatment offered during President Sisi's recent London visit, multiple British business delegations to Egypt, and the uptick in arms sales over the past two years. The UK's desire to please the Sisi regime goes further: following Egypt's declaring the Muslim Brotherhood (MB) a terrorist organisation in early 2014, and accusations that the movement was responsible for the February 2014 attacks on a tourist bus in Sinai, the UK bowed to Egyptian pressure, agreeing to initiate an investigation into the activities of the MB in the UK. The choice of the then-serving British ambassador to Saudi Arabia, Sir John Jenkins, to head the enquiry raised questions about the role of Saudi Arabia in influencing Cameron's calculations, not to

mention issues of impartiality.⁴³ The government twice postponed publication of the results, and to-date has refused to release the full findings of this report. The brief summary published in December 2015 concludes that “membership of, association with, or influence by the Muslim Brotherhood should be considered as a possible indicator of extremism” but stopped short of banning the movement in the UK.⁴⁴

Officials in Cairo and London tout “quiet diplomacy” as a means to raising issues as opposed to “megaphone diplomacy”. However, the results of this approach can be called modest at best. When large business delegations accompany Ministers on overseas visits, human rights concerns do not get the same emphasis as economic and security ties. While the UK’s ambassador in Cairo is certainly modernising diplomacy⁴⁵, the message from London is clear: “Egypt is a vital partner in a troubled region” (or, to paraphrase, “we need Sisi”).⁴⁶ FCO Ministers have repeatedly talked-up progress and reform in Egypt and played down the scale and gravity of the country’s human rights crisis, including during President Sisi’s visit when the British government barely made any comments on the human rights situation in Egypt despite sustained calls by prominent NGOs for them to do so.

The UK publishes an Annual Human Rights and Democracy Report that sets out the action taken by the FCO on these issues with third countries. This year “Countries of Concern” have been replaced by “Human Rights Priority Countries”, a move criticised by human rights NGOs. Egypt was not among the countries of concern in the 2015 report but has made it onto the 2016 list: “The UK will support Egyptian government and civil society initiatives to improve the human rights situation, by continuing to raise concerns both in public and private, and through project funding. Our focus will be on detention of political activists, police abuse, and restrictions on civil society.”⁴⁷ It remains to be seen what this means in terms of specific resource allocation, breadth of mandate, and potential measures envisaged in the event of further Egyptian backtracking on human rights.

As NGOs have previously noted with regard to the Annual Human Rights Report, there are very few governments in the world that produce a report of this kind, and the UK deserves due credit for doing so.⁴⁸ It provides an important element of transparency pertaining to the government’s human rights work overseas. It is a useful tool for accountability, allowing parliamentarians, NGOs and the media to hold the FCO to account for its human rights work. Yet despite lofty statements of intent there is a distinct absence of measurable targets for the department’s human rights and democracy work. Amongst other improvements, the Human Rights Report could be made more accessible online, in a timely and comprehensive manner. It could include monthly updates similar to the user-friendly DevTracker website provided by the Department for International Development (DfID).⁴⁹

2. Parliamentary oversight

While FCO scrutiny is being scaled back, Parliamentary scrutiny is increasing. Egypt has been named by the foreign affairs committee (along with Eritrea) as one of two countries in which they will specifically monitor FCO engagement during the rest of the political term. Bodies of scrutiny within Parliament include cross-party select committees, which operate largely through enquiries, and legislative committees which operate mainly through debates. Both the House of Commons and the House of Lords form committees that are made up of 10 to 50 MPs or Lords and that have the ability to launch their own enquiries.⁵⁰ Select Committees such as the Foreign Affairs Committee examines the expenditure, administration, and policy of the FCO and its associated public bodies. The Committee on Arms Export Controls consists of four select committees that coordinate with each other: Business, Innovation and Skills Committee, Defence Committee, Foreign Affairs Committee, International

48 Written evidence from Human Rights Watch (HUM0006), available at <http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Foreign%20Affairs/The%20Foreign%20and%20Commonwealth%20Offices%20administration%20and%20funding%20of%20its%20human%20rights%20work%20overseas/written/28209.html>

49 These and other suggestions are contained in written evidence from Amnesty International UK (HUM0025), available at <http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Foreign%20Affairs/The%20Foreign%20and%20Commonwealth%20Offices%20administration%20and%20funding%20of%20its%20human%20rights%20work%20overseas/written/28751.html>

50 The main difference is that the House of Commons Select Committees are largely concerned with examining the work of government departments whereas Committees in the House of Lords concentrate on five main areas: Europe, science, economics, communications and the UK constitution.

43 <http://www.theguardian.com/world/2014/apr/01/cameron-muslim-brotherhood-orders-inquiry-extremism>

44 Muslim Brotherhood Review: Main Findings, December 17 2015, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486932/Muslim_Brotherhood_Review_Main_Findings.pdf

45 Local embassy staff claim that Ambassador John Casson has his own brand of diplomacy, including making public statements in Arabic, taking selfies of himself sharing local food with ‘shaabi’, which the Egyptian authorities don’t quite know how to deal with.

46 <http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160302/halltext/160302h0002.htm>

47 <https://www.gov.uk/government/publications/egypt-human-rights-priority-country/egypt-human-rights-priority-country>

Development Committee. NGOs can submit written and oral evidence during an enquiry, and are often called as witnesses in Parliament.⁵¹

MPs can apply to the House Speaker for three types of debate: a Westminster Hall debate which has to be attended by a Minister, an emergency debate or an adjournment debate. They can also ask a Ministry to provide information under what is known as the “Privy Council” (for confidential use only). The Privy Council is a formal body of advisers to the Queen comprising senior politicians and former members of either the House of Commons or the House of Lords.

At the local level, individual constituents can approach their local MP who is then duty-bound to raise the issue in parliament. There are different ways that this can be done: a written question is assigned to a specific Ministry and allocated to the relevant Desk Officer with a one-week turnaround; an oral question posed to a Minister has to be tabled three days in advance; urgent questions have a turnaround of hours (but the Speaker will only ‘allow’ them if he/she deems them relevant and “of public importance”). For instance, before Sisi’s London visit in November 2015 questions were not allowed until the third day. With urgent questions the relevant Government Minister has to come to the Chamber to explain what the Government is doing on the issue raised. Finally, The Official Report known as “Hansard” is the edited report of proceedings of both the House of Commons and the House of Lords, available online and highly useful for holding the government to account.

3. UK development cooperation with Egypt

The UK’s flagship Arab Partnership from 2011 – 2015 to support countries in transition across the MENA region was a joint DFID – FCO initiative totalling £110 million over four years which, despite being a useful exercise in cross-governmental development cooperation, has fallen short of shoring up support for CSOs threatened under Egypt’s repressive laws. Instead, British diplomats are all too keen to start talking

about the new Magna Carta fund for Human Rights and Democracy (£10.6 million for the period 2016 – 2017).⁵²

As opposed to other cuts faced by the FCO and DFID over recent years, this Fund is meant to be ring-fenced for a period of four years. The Magna Carta Fund has three priority themes:

- » Democratic values and the rule of law - Uphold universal rights, democracy and the rule of law as key building blocks for more secure and prosperous societies;
- » The rules-based international order - Support for an effective rules-based international order that stands up for universal rights;
- » Human rights for a stable world - Promote a more stable world by upholding universal rights in tackling conflict and extremism.

The main issue for the purposes of this report is that applicants to the Magna Carta Fund for Human Rights and Democracy must have legal status and registration in their home countries, barring non-registered organisations from receiving funds. This in turn means that the British embassy in Egypt will shy away from supporting independent NGOs and CSOs who, for fear of government reprisals, have not registered under the restrictive NGO law. Furthermore, the deployment of resources only in accordance with Magna Carta criteria risks missing graver human rights concerns and urgent needs of Egyptian HRDs in danger. Other development cooperation initiatives include those funded by the British Council, the Westminster Foundation for Democracy, and independent NGOs such as Oxfam, that run technical cooperation programmes in Egypt.

51 See for example the ongoing inquiry into the use of UK-manufactured arms in Yemen (including evidence submissions, witnesses called upon for the recent oral evidence session, and planned meetings): <http://www.parliament.uk/business/committees/committees-a-z/other-committees/committee-on-arms-export-controls/inquiries/parliament-2015/uk-arms-yemen-15-16/>

52 <https://www.gov.uk/government/news/the-magna-carta-fund-for-human-rights-and-democracy>

4. UK arms exports to Egypt

British arms exports total about £8.5 billion a year⁵³, of which export licenses to Egypt are estimated at £143 million (a figure representing only military licenses, not including dual-use items or general security equipment).⁵⁴ In August 2013 the UK temporarily suspended 48 licences to Egypt following the EU FAC conclusions that called for Member States to reassess export licences for military equipment and review their security assistance to Egypt. However, this so-called embargo was not legally binding and was left open to the interpretation of individual countries. There were no time limits placed on the restrictions, nor clear definitions of the terms “suspension” or “equipment, which might be used for internal repression”. Arms sales resumed almost as soon as the issue was out of the media spotlight (a case of what Campaign Against Arms Trade – CAAT – activists call “arms control by embarrassment.”) The majority of British contracts were unfrozen a few months later.⁵⁵ Since then, 2015 has seen a peak in export licenses to Egypt including, among other items, £40 million worth of components for military combat vehicles licensed in March.⁵⁶

CAAT has the most up to date and user-friendly statistics for British and EU arms sales to different countries. At the national level it engages in activities ranging from leafleting workers at arms manufacturing plants to submitting evidence to Parliament. At the European level it is the core member of ENAAT (European Network Against Arms Trade) and works closely with *Stoppt den Waffenhandel* (Germany), *Observatoire des transferts d'armements* (France), *Rete Italiano per il Disarmo and Campagna Banche Armate* (Italy).⁵⁷ Following the momentum built up around British arms sales to Saudi Arabia thanks to ongoing media attention, parliamentary enquiries, and mobilised public opinion, CAAT has launched legal action against the British government. Law firm Leigh Day, representing CAAT, has begun formal legal

action in the High Court to challenge the decision by the Department for Business Innovation and Skills to export arms to Saudi Arabia. This follows increasing evidence that Saudi forces are violating international humanitarian law (IHL) in Yemen. UK arms export licensing criteria say that licences should not be granted if there is a clear risk that equipment might be used in violation of IHL. If permission for the judicial review is granted, then the High Court will be asked to investigate whether the continued arms exports contravene the UK government's commitments under British and European arms export regulations.⁵⁸

London hosts the biennial Defence and Security Equipment International (DSEI) exhibition, more commonly known as the arms fair, where regimes of all shades are invited: Saudi Arabia, Bahrain, Egypt, Algeria, Pakistan, Azerbaijan, etc.⁵⁹ The event is partly organised by the governmental department UK Trade & Investment's Defence & Security Organisation (UKTI DSO) responsible for arms sales. At past London arms fairs, campaigners have discovered illegal torture equipment and cluster-munitions on sale. The UK also hosts the annual “Security and Policing arms fair”, a secretive event that offers a “discreet environment” for 400 companies who supply national and international police forces, prisons, detention centres and the military to hawk their wares to governments engaged in domestic repression, militarised policing, and increasingly strict border controls or surveillance technologies.

53 See UKTI DSO, UK Defence & Security Export Statistics for 2014, released 14/07/2015, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444359/20150710_-_Defence_and_Security_Export_Statistics_for_2014_-_Core_Slides.pdf

54 For more detailed figures, see https://www.caat.org.uk/resources/export-licences/licence?iso2=EG&date_from=-3&rating=Military

55 See Export Control Organisation, Dept for Business Innovation and Skills, Notice to Exporters 2013/27: Egypt – results of the review of licences, 25/10/2013, available at <http://blogs.bis.gov.uk/exportcontrol/uncategorized/notice-to-exporters-201327-egypt-results-of-the-review-of-licences/>

56 https://www.caat.org.uk/resources/export-licences/licence?iso2=EG&date_from=-3&rating=Military

57 For more information on these organisations and others see <http://www.enaat.org/network/>

58 For the full text of the formal legal challenge to the Department for Business, Innovation and Skills see <https://www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2016-03-09-caat-y-bis-claim.pdf>

59 Amnesty International launched a spoof torture equipment advertising campaign to coincide with the 2015 DSEI: <https://www.youtube.com/watch?v=uhCatmlspr8>

FRANCE: VIVE LA REALPOLITIK!

1. Political relations

France has traditionally espoused a Realpolitik approach to foreign policy, pursuing overwhelmingly interest-based relations with third countries and trumpeting the security discourse at every opportunity. The two terrorist attacks on French soil in 2015 contributed to a public opinion supportive of additional security measures under an unprecedented and prolonged state of emergency, a lack of sustained Parliamentary interest in foreign policy issues, and reduced column inches in mainstream media dedicated to criticising President Hollande's dealings with autocrats. At the foreign policy level with Egypt this has led to embracing a reductionist and simplistic narrative: "we are two countries facing the same problem and [are] both fighting terrorism".

HRW France's former director referred to Hollande's Realpolitik as "diplomacy of variable geometry".⁶⁰ Similar to the UK's embrace of commercial diplomacy, it is this which allows France to award its highest honour to a Saudi prince, dismiss human rights as something to be footnoted "only for good measure"⁶¹ and sign off on huge arms deals with authoritarian regimes engaged in dubious domestic and regional ventures. French officials are quick to cite Egypt as a stabilising factor in the region and a necessary ally for dealing with regional crises such as Libya, Daesh, the Sahel, and migration flows. Bilateral cooperation in terms of intelligence sharing and information exchange has increased. Within Franco-Egyptian cooperation, the Egyptian State Information Service talks of the need for establishing an "inclusive dialogue" in Libya while omitting any reference to such inclusivity for Egypt.⁶²



On the occasion of Sisi's visit to Paris in November 2014, the French media were much more restrained than the British and German press. The open letters that were issued by civil society were not widely picked up by the media. Another domestic factor contributing to France's apparent passivity in the face of human rights violations is the nature of the political opposition: it is not in the DNA of the far-right Front National to call for a more principled engagement with the Sisi regime, nor do the right-wing 'Républicains' party have many incentives for doing so.

During the series of official visits between Egypt and France in 2015,⁶³ French Prime Minister Manuel Valls did not hesitate to declare: "we want to take advantage of this

60 Jean-Marie Fardeau, "François Hollande enterre la diplomatie des droits de l'homme", *Le Monde*, 25/08/2015, available at http://www.lemonde.fr/idees/article/2015/08/25/francois-hollande-enterre-la-diplomatie-des-droits-de-l-homme_4736374_3232.html

61 For the full leaks of the diplomatic e-mails between France's ambassador in Riyadh, the MFA's DG for MENA and Hollande's diplomatic advisor see: <https://www.causette.fr/le-mag/lire-article/article-1442/la-va-ritable-histoire-de-la-la-cion-de-honneur-du-prince-ba-rilier-saoudien.html>

62 State Information Service, Relations égypto françaises, 17/12/2015, available at <http://www.sis.gov.eg/Fr/Templates/Articles/ImpArticles.aspx?CatID=7011#Yw18c0dR7W>

63 Since Sisi's visit to Paris, and following the Egyptian foreign affairs minister's participation in the Charlie Hebdo march in January, 2015 saw an uptick in official visits including: France's Finance Minister attended "Egypt: the Future" conference in March, Egyptian PM was received in Paris in May, French former FM Laurent Fabius included Cairo in his Middle East Peace Process tour in June, Defence Minister Jean-Yves Le Drian visited in July, Hollande was present at the Suez Canal expansion in August, and PM Manuel Valls visited in October. France's ambassador for Human Rights has also visited Egypt.

unique moment in our relations to go even further in our economic partnership.”⁶⁴ When the newly appointed Foreign Minister Jean-Marc Ayrault travelled to Cairo in preparation of the president’s official state visit mid-April 2016, according to officials he raised human rights issues with his Egyptian counterpart including some concrete cases of imprisoned journalists and novelists. Ministry sources state that these names were down to internal MFA decisions and not based on suggestions from NGOs. The foreign minister’s predictable reply was that the cases might be raised but that Egypt was engaged in a war on terror. These visits constitute an entry point for civil society to raise human rights issues with the French government, both prior to departure in the form of offering briefings and upon the delegation’s return by requesting de-briefings.

Paris-based NGOs talk of limited entry points, limited receptiveness, and lack of real dialogue with governmental officials. While most claim to have relatively good access to the Egypt Desk Officer at the MFA or their superiors, the prevailing impression is that civil society is not listened to. Apparently the Ambassador for Human Rights has been pro-active in reaching out to CSOs before her recent trip to Egypt and offering a de-brief upon her return. The same however cannot be said of other officials. The Ministry of Defence is unsurprisingly difficult to penetrate, while the Egyptian embassy operates a closed door policy, and the Agence Française de Développement (AFD) are “more hot air than anything else” according to local stakeholders.

2. Parliamentary oversight

MPs, elected by all French citizens, form the National Assembly, which passes laws, monitors government action and evaluates public policies. It shares legislative power with the Senate, but if the two Chambers of Parliament do not reach an agreement on a particular bill, the National Assembly has the final say. It alone has the power to censure the Government, in other words, to force its resignation. MPs can question ministers, either in writing or orally. The Assembly can create committees of enquiry and committees to collect information.

At the parliamentary level there seems to be a difference in culture as well as the actual mandate compared to the UK and Germany. Government officials claim that “the French Parliament does not take its role to be that of holding the executive to account”. The “Friends of Egypt” groups (one in the Senate and one in the Assemblée Nationale) have on previous occasions been willing to participate in Amnesty-organised letter writing campaigns, whereas currently there is a distinct lack of interest or engagement on their part.

The French Parliament does not have a subcommittee on human rights, instead the issue is dealt with in the MFA by the “NUOI” department that includes the UN, other multilateral organisations, issues such as UPR, etc.. This means that resources and time dedicated to human rights issues are forcibly diluted, like the message itself. Questions at the parliamentary level and Freedom of Information requests can be tabled via a few friendly MPs providing the time, has been conducive to the domestic debate. The difficulty is that Egypt is below the radar both in terms of public opinion and political attention span.

3. French development cooperation with Egypt

Bilateral technical cooperation programmes focus above all on infrastructure, and institutions of public administration, in order to support different branches of the judiciary, anti-corruption efforts, and state reform. Other projects include support for the electricity grid, natural gas plants, the agricultural sector, water and sanitation and SMEs.⁶⁵

French development cooperation’s flagship project is the long-standing Cairo metro expansion with various phases stretching back 30 years in cooperation with the EU and the European Investment Bank (EIB). Since 2012, AFD has co-financed the third phase of construction for Metro Line 3 (provisionally named the “Revolution” line), for an amount of €300 million on top of the €44 million already allocated in 2009.⁶⁶

64 Manuel Valls on bilateral relations: Viewpoint, The Report: Egypt 2016. Oxford Business Group, available at <http://www.oxfordbusinessgroup.com/egypt-2016>

65 For an overview of all projects of the French Development Agency (AFD), see <http://www.ambafrance-eg.org/-Les-principales-activites-de-l-AFD->

66 <http://www.afd.fr/webdav/site/afd/shared/PUBLICATIONS/THEMATIQUES/AFD-egypte-VA.pdf>

France does not benchmark development cooperation funding, nor would it consider freezing development cooperation projects “so as not to harm the general population.” It finances its cooperation through a combination of grants, sovereign and non-sovereign loans. The main financial instruments used are the “Réserve Pays Émergents” (RPE) [Emerging Markets Reserve], FFEM (Fonds français pour l’environnement mondial, French Global environment facility), and the “Fonds d’Études et d’Aide au Secteur Privé” (FASEP) [Private Sector Study and Aid Fund] designed to benefit emerging markets with French industrial know-how. These instruments, implemented by the Treasury Directorate General, are included as part of French overseas development assistance (ODA) commitments. In theory these funds are only disbursed on the basis of a request from the recipient countries and should meet the needs prioritized in their national development strategies.

4. French arms exports to Egypt

The control regime for exports of war materials and assimilated items is based on decisions made by the Prime Minister on the advice of the Inter-Ministerial Commission for Scrutiny of War Material Exports (CIEEMG). The CIEEMG is chaired by the General Secretary for Defence and National Security and is made up of the ministries responsible for Foreign Affairs, Defence and the Economy. Until June 2014, exports of war materials involved two control phases (prior approval and export authorization), which have since been replaced by a single licence issued by the Minister responsible for Customs, following consultation in the framework of the CIEEMG.⁶⁷ As for dual-use items, the licensing authority for exports is the Dual-Use Items Service (SBDU) of the Ministry of the Economy, Industry and the Digital Sector. The most sensitive applications are examined by the Inter-Ministerial Dual-Use Items Commission (CIBDU), which is chaired by the MFA.

The Egyptian-French defence relationship has blossomed since February 2015 when Cairo purchased 24 Rafale fighter jets, a navy frigate and missiles for the hefty sum of €5.2 billion. In October last year, France also sold two Mistral helicopter

carriers to the Egyptian Navy after cancelling an earlier deal with Russia in line with European Union sanctions imposed on Russia to protest its involvement in Ukraine. During the French President’s April 2016 visit, Egypt and France signed a further €2 billion worth of agreements in energy, security equipment and military satellite communications among others.⁶⁸

French officials in Cairo and Paris claim that they respect the EU Foreign Affairs Council (FAC) conclusions preventing arms exports to Egypt with replies such as “warships and planes are not used for torturing your own population.” Indeed, a publicly available list of France’s export restrictions does not include Egypt.⁶⁹ The irony of France’s recently inked headline arms deal is that French banks will provide the bulk of the financing given Egypt’s economic situation. Egypt’s parliament recently authorised loans from France’s Credit Agricole that will provide €3.3 billion for the purchase of fighter aircraft and warships.⁷⁰

A recently published investigation by the Brussels-based Group for Research and Information on Peace and Security (GRIP) suggests that France ought to have stopped its exports to Egypt during 2013 and 2014 following clear indications that French equipment was being used for internal repression, namely Renault-made Sherpa vehicles delivered in January 2013 and deployed in the Rabaa massacre.⁷¹ Secondly, that France should re-evaluate its military cooperation with Egypt given the latter’s ongoing aggressions against civilians in the Sinai, invoking criteria numbers 2 and 3 of the EU Common Position

68 Following four years of negotiations, Airbus and Finmeccanica group member Thales Alenia Space will jointly supply the Egyptian defence force with a military satellite communication system worth €600 million. For other companies involved see <http://www.dw.com/en/france-hollande-inks-billion-euro-deals-with-egypt/a-19192370>

69 Tableau des restrictions commerciales à l’importation et/ou à l’exportation à l’encontre de certains pays, August 31 2015, available at <http://www.douane.gouv.fr/Portals/0/fichiers/professionnel/restrictions/2015-08-31-tableau-des-mesures-restrictives-e2.pdf>

70 See “Egypt’s parliament approves French loans for military hardware buy”, IHS Jane’s Defence Industry, 07/03/2016, available at <http://www.janes.com/article/58632/egypt-s-parliament-approves-french-loans-for-military-hardware-buy> and “Rafale : comment l’Egypte va-t-elle payer?” l’Opinion, 13/02/2015, available at <http://www.lopinion.fr/blog/secret-defense/rafale-comment-l-egypte-va-t-elle-payer-21335>

71 For the full report (in French) see Arthur Guillon, “Ventes d’armes françaises à l’Égypte : les risques d’une coopération opportuniste” 25/02/2016, GRIP, available at http://www.grip.org/sites/grip.org/files/NOTES_ANALYSE/2016/NA_2016-02-25_FR_F-GUILLON.pdf

67 For more information see <http://www.diplomatie.gouv.fr/en/french-foreign-policy/disarmament-and-non-proliferation/france-and-the-control-of-sensitive-exports/article/export-controls-on-war-material>

(respect for human rights in the country of final destination and internal situation in the country of final destination as a result of existing tensions).⁷² Thirdly, that arms sales to Egypt risk aggravating the conflict in Libya given Egypt's support for General Khafatar's Tobrouk-based forces in the form of bombing raids, arms transfers (in contravention of the UN embargo), and accusations of further involvement on the ground.⁷³

Regardless of calls for halting French arms exports, companies continue to report huge profits. MBDA, a European developer and manufacturer of missiles formed in 2001 by a merger of French Aérospatiale-Matra Missiles, Italian Alenia Marconi Systems and British Matra BAe Dynamics (HQ in the UK) recently announced annual results for 2015 on 17 March, revealing €5.2 billion in orders. This record was achieved mainly thanks to the Rafale and FREMM contracts signed by Egypt and Qatar. Another huge arms manufacturer, Thales, also reported record exports in 2015 with orders worth €18.9 billion thanks in part to the Rafale sales.

72 See Official Journal of the European Union, COUNCIL COMMON POSITION 2008/944/CFSP defining common rules governing control of exports of military technology and equipment L 335/99, 13/12/2008, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008E0944&from=EB>

73 Le rapport 2014 du Panel d'experts de l'ONU sur l'embargo d'armes à la Libye publié le 23 février 2015

GERMANY: FORWARD IST BESSER

1. Political relations

The political context in Germany as in any Member State is bound to effect the positioning of an issue on the radar of policy makers, public opinion and media. In Berlin most stakeholders agreed that Egypt is low on the policy radar compared to issues of migration, Syria, Libya etc. It is also a Chancellery-dominated file, which means that whilst the MFA Desk Officer for Egypt is in regular contact with civil society organisations, decisions are taken at a higher level based on strategic interests. The year review of Germany's foreign policy carried out by Foreign Minister Steinmeier has done little to change this balance of power. Officials state that it was more about internal organisation of the administration rather than the foreign policy vision as a whole.

Like fellow heavyweights in the EU, France and the UK, Germany has lost multiple opportunities to exercise conditionality in its bilateral relations with Egypt over the past few years. The German government has forfeited some of its most powerful diplomatic instruments in exchange for lucrative business deals. In December 2014, formal government negotiations between Egypt and Germany resumed for the first time in four years. Declarations made by Chancellor Angela Merkel that Sisi would not be invited to Berlin until the roadmap was complete and Parliamentary elections had taken place were rendered asunder when his visit went ahead in June 2015 despite the fact that no definite date for Parliamentary elections had been set. At the international investors conference "Egypt the Future" held in Sharm el-Sheikh two months earlier, German Vice-Chancellor Sigmar Gabriel issued the invitation following the signing of a memorandum of understanding worth up to €8 billion with blue chip company Siemens.⁷⁴ As a Spiegel editorial put it at the time, "Germany has important leverage it could be using -- for it is Sisi who needs money and recognition from Berlin, not the other way around. Berlin could insist



on deeds rather than words. There is a wide spectrum between boycotting Egypt and a normalization of relations.”⁷⁵

Although civil society pressure in the lead up to the visit did result in human rights violations and other sensitive issues being raised at the highest level,⁷⁶ the overall message was one of support for Sisi. For its part, the Egyptian government responded to the points raised but dismissed most of them and claimed to be in the process of addressing others. Since then, Foreign Minister Steinmeier has visited Cairo in May 2015, followed by Minister for Economic Cooperation and Development Gerd Müller in December 2015. At the start of 2016, Egypt's Foreign Minister

⁷⁴ Officials close to the Chancellery say that the push behind the invitation largely came from Volker Kauder, Chair of the CDU-CSU Parliamentary Group (which accounts for almost half of the seats in the Bundestag) and a staunch Sisi supporter who buys into his narrative of protecting Christians in the Middle East.

⁷⁵ Spiegel online, "Selling Out: Berlin Sends Wrong Message by Welcoming Sisi", June 3 2015, available at <http://www.spiegel.de/international/world/editorial-on-egyptian-president-sisi-and-his-visit-to-germany-a-1036876.html>

⁷⁶ See for instance the joint NGO letter sent to Chancellor Merkel, June 1 2015, available at <https://www.hrw.org/news/2015/06/01/joint-letter-chancellor-angela-merkel-re-president-abdel-fattah-al-sisi-visit>

Shoukry was welcomed in Berlin. Vice-Chancellor Sigmar Gabriel carried out his second economic diplomacy trip to Egypt in April 2016 with a significant business delegation in tow and the signing of six economic agreements. He has also been quoted by the Egyptian press, saying: “We are ready to provide Egypt with arms.”⁷⁷

2. Parliamentary oversight

The German Parliament, the Bundestag, is obliged to scrutinise the government, its budget, and legislation. Instruments for scrutiny include minor and major interpellations, written questions and question times, debates on matters of topical interest, and committees of inquiry.⁷⁸ Sometimes a Parliamentary majority is required (for example for budget approval), sometimes 25% of the members (for example to set up a committee of inquiry), sometimes just 5% of a Parliamentary group (major interpellation) and sometimes individuals can raise questions. The most critical motions and questions on Egypt to date have been tabled by opposition parties Die Linke (The Left) and Bündnis 90/Die Grünen (Alliance ‘90/The Greens).⁷⁹

The main bodies established to scrutinise the work of the government are the permanent committees including the Committee on Foreign Affairs, the Defence Committee, and the Committee on the Affairs of the European Union⁸⁰. These three all have special status, which affords them direct rights of scrutiny and allows them to demand reports on current legislative projects from representatives of the relevant federal ministry and to make recommendations thereafter. Some local stakeholders mentioned that due to the domestic political situation in Germany the Bundestag is currently less engaged on foreign policy issues, and that it actually “had trouble filling the Committee on Foreign Affairs.” Similarly, the German-Egyptian friendship group is said to depend to a large extent on the interests of the chairperson (for instance the current chair Karin Maag is more focused on health and family issues

whereas the previous chair was vocal on issues of foreign policy and human rights). In this regard, some consulted stakeholders said that they were trying to engage with younger MPs, those in their first or second Parliamentary term who might have more interest in foreign policy matters.

3. German development cooperation with Egypt

Germany is the member state whose bilateral cooperation programmes on the ground have been most effected by the Egyptian regime's clampdown on NGOs. Its political foundations (Stiftungs), each associated to a political party and funded in relation to representation in Parliament, have faced raids, closure, legal action and other obstacles to their functioning in Cairo. Those remaining in Egypt have stated that they now operate with great caution, tuning down visible engagement with local human rights organisations and funding only non-sensitive projects. The risk factor of maintaining satellites in Cairo under current conditions means that Stiftungs in Berlin find themselves downplaying levels of criticisms both in their public events and publications.

Germany's bilateral cooperation with Egypt falls under the Transformation Partnership (TP). Similar to the UK's Arab Partnership or the Danish Arab Partnership, this Foreign Ministry funded package aims to “support the setting up of democratic institutions and foster the rule of law and human rights”.⁸¹ A total of around €30 million was allocated to various project executing agencies in 2012 and 2013. The Federal Foreign Office's key cooperation partners were the Gesellschaft für Internationale Zusammenarbeit (GIZ), the Goethe-Institut, the German Academic Exchange Service, the political foundations as well as a number of NGOs. Stakeholders in Berlin claim that the Transformation Partnership (which incidentally diplomats no longer refer to as such) is doing good work at the project level but sending the wrong message at the political level; indeed Egypt uses it as proof of normalisation. The German MFA on the other hand claims it is “a foot in the door in the continued glacial period in Egypt”. There is no conditionality element to the TP; on the contrary, German

⁷⁷ Al Masry Al Youm, 18 April 2016.

⁷⁸ For more information on all of these instruments see https://www.bundestag.de/htdocs_e/bundestag/function/scrutiny

⁷⁹ See for example “Motion: No peace and no stability without human rights and the rule of law – For a far-sighted ENP towards the states of North Africa”, 04.11.2015 and “Kleine Anfrage: Ein- und Ausreisesperren von politischen Aktivisten und Mitarbeitern von Nicht-Regierungsorganisationen in Ägypten”, 09.02.2016 (concerning travel-restrictions for political activists and members on NGOs in Egypt), available at <http://dip21.bundestag.de/dip21/btd/18/075/1807511.pdf>

⁸⁰ For the composition of the Committee on Human Rights and Humanitarian Aid see https://www.bundestag.de/htdocs_e/bundestag/committees/a17/a17_members

⁸¹ For more information see http://www.auswaertiges-amt.de/sid_7302D3B04E0ED1C88B1600F5E83901F3/EN/Aussenpolitik/RegionaleSchwerpunkte/NaherMittlererOsten/Umbrueche_TSP/Transformationspartnerschaft-EGY-node.html

foundations have stopped projects at the behest of the Egyptian regime rather than as a response to violations of human rights.⁸²

As part of the Berlin Declaration issued bilaterally in August 2011, and under the G7 Deauville Partnership, Germany proposed cancelling a large chunk of outstanding loans totalling €240 million and swap them for development purposes (ODA) over a period of four years.⁸³ Implementation of this debt swap however is “currently on ice” according the Ministry website.

Apart from MFA funding, in 2015 the Ministry for Economic Cooperation and Development (BMZ) committed €68 million in development cooperation funding, €50 million of which are loans. Priority areas of cooperation include management of water resources and waste disposal, renewable energy and energy efficiency, and sustainable economic development. The development of civil society, gender equality and sector governance are mentioned as “cross-cutting issues” but no explicit programme or human rights benchmarking exists. In an encouraging initiative, the German embassy in Cairo funds a local lawyer to support trial observation missions by EU Member States. German officials claim they would like to see similar efforts from the EU delegation or other member states, ideally to the extent that funding for local lawyers could be mainstreamed into development cooperation programmes.

4. German arms exports to Egypt

Since the Second World War, Germany has rarely sent soldiers to combat zones. But it is one of the biggest arms exporters after the US, Russia and China, often ranked above France and the UK in terms of volume of trade.⁸⁴ Foreign sales of weaponry bring in almost €1 billion a year. Some German makers of military gear are part of civilian industrial giants, such as Airbus Group (formerly EADS), and ThyssenKrupp, a steelmaker. Other non-industrial companies such as Rheinmetall

and Krauss Maffei Wegmann (KMW) are the makers of Leopard 2 tanks sold to Saudi Arabia. Arms sales to anywhere other than NATO and “NATO-equivalent” countries are in principle forbidden. But the Federal Security Council, headed by Chancellor Angela Merkel, can approve exceptions when foreign policy dictates it, as long as human rights are not harmed.

Whereas both French and British ministers of defence have made trips to Cairo, the apolitical nature of Germany’s Ministry of Defence means that Ursula von der Leyen is not likely to follow her counterparts. Instead, Germany sends its Minister of the Interior. The recent visit to Cairo in April 2016 saw the signing of bilateral security deals known as “Sicherheitsabkommen”. It is telling that MFA officials in Berlin cited the prior agreement of this deal as a condition for the Ministry of Interior trip as opposed to progress in security sector reforms or human rights issues.

2016 is the proposed date for delivery of two U-209 submarines to Egypt following the signing of a billion-euro contract in 2014. This is the second such deal since 2011. The first two submarines from the 2011 contract (worth €920 million) are being constructed in Kiel by HDW, a subsidiary of ThyssenKrupp Marine Systems (TKMS). The 2011 deal angered Egypt’s regional rival Israel, which previously bought nine submarines from TKMS and claims naval dominance in the eastern Mediterranean. Germany has also been criticised for approving a deal to Saudi Arabia for more than 100 patrol boats worth €1.4 billion. Again, policy makers deploy a combination of the following arguments: “boats cannot be used for domestic repression”; “we’re not the only ones who sell weapons”, and “if we didn’t sell them the Russians/Americans/French [delete as appropriate] would do so”.

Annual reports on arms exports are published by the Federal Ministry of Economics and Technology. The report gives details on the category and value of export licences granted and information on licence denials. The report also gives the financial value of exports of ‘weapons of war’ per destination.⁸⁵

82 This was the case with the popular “Tahrir Lounge” housed in the Goethe Institute, which used to be a forum for political debate amongst youth and has since been turned into an arts and crafts space.

83 <http://www.auswaertiges-amt.de/cae/servlet/contentblob/589558/publicationFile/157314/110812-BerlinerErklaerung.pdf> For further reading see “Debt swaps for development: Creative solution or smoke screen?” EUROTAD report, October 2007

84 http://www.eurodad.org/uploaderfiles/whats_new/reports/debt_%20swaps_%20eng%281%29.pdf
85 http://www.sipri.org/googlemaps/2015_of_at_top_20_exp_map.html

85 Report by the Government of the Federal Republic of Germany on Its Policy on Exports of Conventional Military Equipment in 2014 (in German), available at http://www.sipri.org/research/armaments/transfers/transparency/national_reports/germany/germany-2014

Conclusion

Given the bleak domestic context and the limited advocacy opportunities available to CSOs under Sisi's regime, and the lack of political will among EU Member State governments for upholding human rights in their bilateral relations with Egypt, two things are overwhelmingly clear: firstly, if civil society does not seek to hold their governments to account, no one will do it for them. This goes for repressive regimes and democratically elected governments alike; the only difference being that the latter have a series of mechanisms and institutions in place to facilitate citizen oversight. Secondly, the time has come to think outside the box in terms of advocacy strategies for targeting governments, private sector companies, and other less traditional sectors. Whether via alliances with unlikely partners to form civil society platforms for greater impact and reach, or via upping the ante in strategic litigation against Member States engaged in arms exports, the social and political space for manoeuvre must be kept open.