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# *Freedom of Association and Human Rights Organisations in Egypt*

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# **HUMAN RIGHTS ORGANISATIONS AND FREEDOM OF ASSOCIATION IN EGYPT**

## **Introduction**

On May 26, 1999, President Mubarak ratified a new Law on Civil Associations and Institutions (Law 153 of 1999). The law that severely restricts freedom of association was adopted the same day by the People's Assembly meanwhile Egypt was concluding an Association Agreement with the EU within the framework of the Barcelona process. On June 21, 1999, the EU Council welcomed the successful conclusion of the negotiations between the EU and Egypt.

Article 2 of the Agreement states that all of its provisions shall be based on respect for democratic principles and fundamental human rights as set out in the Universal Declaration on Human Rights, which guides the Parties' internal and international policy and constitutes an essential element of the Agreement.

With the signing of the Agreement, Egypt formally strengthens her commitment to uphold universal human rights, as it had done previously when it ratified the International Covenant on Civil and Political Rights, which includes guarantees of free association enshrined in Article 22.

However in practice, by adopting the new law Egypt breached her international commitments.

The Euro-Mediterranean Human Rights Network (EMHRN) and the International Federation of Human Rights (FIDH) have over the past year closely followed the process that led to the adoption of Law 153 of 1999. In December 1998 they commissioned a mission to Cairo to investigate into the arrest of Hafez Abu Saeda, Secretary General of the Egyptian Organisation for Human Rights (EOHR). In February 1999, they sent a second mission to Cairo to make enquiries into the preparatory work on the Draft Law on Private Association and Institutions as well as the pending case against Hafez Abu Saeda and the EOHR's case for obtaining legal recognition.

In May 1999, when the report from the February mission was about to be released they were informed that a Bill on Civil Associations and Institutions was about to be swiftly passed by the People's Assembly, and it was decided to send an urgent third mission to Cairo.

This report summarises the main results of the two latest missions undertaken by the EMHRN and the FIDH. It is divided into two parts, the first of which reports from the May mission and mainly deals with the Law on Private Associations and Institutions. The second part reports from the mission of February 1999 and deals with EOHR's case to obtain legal recognition and the pending

case against Hafez Abu Saeda. Finally, it describes the process of drafting of the new law on Private Associations and Institutions.<sup>1</sup>

## **Conclusions and recommendations**

The conclusions of the May mission are that

- Law 153 unnecessarily restricts the right of freedom to association as guaranteed under the International Covenant on Civil and Political Rights (ICCPR) which has been ratified by Egypt.
- it represents a step back for the promotion and protection of human rights within the framework of the Barcelona process and the Association Agreement between Egypt and the EU.
- there are strong reasons to believe that the law will severely hamper the work of human rights organisations in Egypt.

The February mission

- deplored the unnecessarily long period it has taken for the EOHR to obtain legal status.
- deplored the arrest, and the humiliating conditions during the detention of Mr Hafez Abu Saada. It considered his arrest as an act of intimidation aimed at preventing the release of human rights reports on police brutality and asked that the pending case of Hafez Abou Hafez be brought to a prompt closure.
- asked that the People's Assembly adopt a new law on associations which allows for real freedom for the human rights organisations and for organisations in general.

The main recommendations to the Egyptian government are:

1. to ensure that Law 153 is reconsidered as soon as possible in a transparent process of consultation with the Egyptian NGO community.
2. to take the necessary steps to close the pending case against Mr. Hafez Abu Saeda

The main recommendations to the EU are:

1. EU officials should communicate concern about the pattern of restrictions on freedom to association in Egypt in bilateral and multilateral meetings with Egyptian government officials.

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<sup>1</sup>Although some of the elements of the February report could have been reconsidered in the light of the latest events in Egypt, we have chosen to publish it as it is because we feel it contains valuable background material to the recent development concerning freedom of association in Egypt

2. EU officials should urge that Law on Private Associations and Institutions be repealed and replaced with legislation in conformity with the free association standards of Article 22 of the International Covenant on Civil and Political Rights.

3. In particular, the EU Parliament and member states should demand that the law be repealed before ratifying the Association Agreement between the EU and Egypt.

4. Until the law is repealed, EU officials should closely monitor developments in Egypt that unnecessarily restrict freedom of association. They should communicate concerns directly to Egyptian government official and make such demarches public.

5. Funding agencies should continue to support non-governmental organizations regardless of the adoption of Law 153 of 1999.

## **PART 1: LAW 153 OF 1999 ON PRIVATE ASSOCIATIONS AND INSTITUTIONS IN EGYPT**

### **Report from a human rights mission to Cairo, May 26-30, 1999 by Marc Schade-Poulsen**

The EMHRN and the FIDH were about to release their report on human rights and freedom of association in Egypt when they were informed that a Bill on Civil Associations and Institutions was about to be swiftly passed by the People's Assembly on May 25-26, 1999. Marc Schade-Poulsen, Executive Director of the EMHRN, was therefore urgently appointed to a mission to Cairo with the mandate to:

\* enquire into the events leading to the adoption of the law.

\* evaluate whether the law conforms to Egypt's international human rights obligations including its commitment to the Barcelona process.<sup>2</sup>

### **The adoption of Law 153 of 1999: a sequence of events**

Law 153 of 1999 is to replace the existing Law 32 of 1964 regulating NGOs in Egypt. The latter has frequently been used to deny legal status to NGOs and to dissolve existing organisations. As a consequence human rights organisations in Egypt are today registered as civil companies under the Civil Code or as lawyers firms, except for the Egyptian Organisation for Human Rights (EOHR) whose case for legal recognition has been pending since 1987 (see part two of this report).

More than six versions of the law have been drafted since autumn 1997 several of which maintain severe restrictions on freedom to association.<sup>3</sup>

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<sup>2</sup>During the visit to Cairo, May 26-30, 1999, Marc Schade-Poulsen was able to meet with Dr. Fathi Naguib, Advisor to the Ministry of Justice, in charge of the Drafting Committee on the Association Law; Dr. Fathi Serour, Speaker of the People's Assembly; Ms. Naila Gabr, Director of the Human Rights Department of the Ministry of Foreign Affairs; Dr. Ayman Nour, member of the People's Assembly (Wafd Party); Dr. Abdel Aziz Shaaban, member of the People's Assembly (Tagammu Party); Bahey El Din Hassan, Director of the Cairo Institute for Human Rights Studies; Negad El Borai, Director, Group for Democratic Development; Gasser Abdel Razak, Director, Centre for Human Rights and Legal Aid; Hafez Abu Saeda, Secretary General, Egyptian Organisation for Human Rights; and Amir Salem, Director, Legal Research and Resource Centre for Human Rights, member of the Drafting Committee on the Association Law. The EMHRN also asked for a meeting with ambassador Ahmed Abul Kheir, External Relations Advisor, who, however, declined the request explaining that he had not been able to follow up on the developments related to the Draft Law during a two month absence.

<sup>3</sup> In preparing this report the author had access to Law 32 of 1964; a Draft Law of April 28, 1998; a Draft Law of January 17, 1999; the Bill proposed to the People's Assembly on May 13, 1999; and the final

Human rights NGOs have campaigned against these versions for more than one and a half year. Several workshops were organised by the Egyptian Organisation for Human Rights, The Cairo Institute for Human Rights Studies and the Group for Democratic Development which led to the drafting of an alternative law in February 1998 that subsequently was presented to the People's Assembly by four parliamentarians on February 28, 1998. The Bill was however not considered by the Parliament.

In May 1998 the Ministry of Social Affairs submitted a new draft law to the Cabinet for discussion. The draft law (until then unavailable to the public) contained severe restrictions on freedom of association as guaranteed by article 55 of the Constitution.

The presentation of the draft led to a new campaign by human rights NGOs where upon it was withdrawn by the Ministry of Social Affairs. In June and July 1998 the Ministry of Social affairs called for meetings with NGOs in Cairo, Alexandria and Minya upon which a Drafting Committee was established including NGO representatives. The Drafting Committee was boycotted by the majority of human rights NGOs who did not believe that sufficient guarantees were provided to ensure that the work of the Drafting Committee be respected.

According to human rights NGOs no news about the progress in the Drafting Committee were made known from September 1998 until February 1999, when the mission of the EMHRN and the FIDH in February 1999 received a yet unpublished draft by a representative of the Drafting Committee (see part 2 of the report).<sup>4</sup>

On May 12, to the surprise of the NGOs as well as Parliamentarians, the Cabinet presented a new and late version of the draft law to the Committee for Social and Religious Affairs of the People's Assembly for subsequent adoption by the People's Assembly.

News that the Bill was about to pass led a large number of NGOs including the human rights community to launch a major campaign against the law, and mobilised an important part of the political opposition, the press, NGOs and leading intellectuals and artists.

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version of the law. The author has also studied a summary of a September draft as presented in Dr. Amani Kandil's study "The Laws of Non-Governmental Organizations: A Comparative, International Context", Cairo, Spring 1999. Finally, the author has studied several comments written by Egyptian human rights NGOs and international NGOs.

<sup>4</sup> According to the February mission of the EMHRN and some NGO representatives, the January draft was submitted to the State Council (Maglis el Dawla) responsible for evaluating the conformity of the law with the Constitution, but Parliamentarians and the Speaker of the Parliament were not able to confirm this information to Marc Schade-Poulsen.



From May 22 to May 27, 1999, four leading women activists carried out a hunger strike in protest against the restrictive measures in the law.<sup>5</sup>

On May 25 the NGO Forum for the Promotion of the Non-Governmental Sector in Egypt, comprised of 105 NGOs from twelve governorates, protested against the way in which the new law had been issued, ignoring the dialogue which took place during the past year between the government and the NGO sector. Furthermore, it expressed disappointment at the new law for including all the negative aspects previously criticised by the Forum.

On May 19, leading human rights NGOs declared that the Drafting Committee had been formed to persuade international and local public opinion that the draft law had the support of NGOs and human rights organisations, and they deplored that the efforts exerted by human rights organisations for one and a half years had been in vain.

On May 24, 1999, four representatives of the NGOs in the Drafting Committee issued a statement in which they declared that the draft submitted to the People's Assembly was not the one they had agreed to. The statement also mentioned that extensive dialogue had taken place with representatives of the Ministry of Social Affairs and that a minimum agreement had been reached. However, to their surprise, the draft submitted by the Ministerial Cabinet to the People's Assembly, had been subjected to omissions, additions and amendments of the draft agreed to, and the group declared that they were not responsible for the changes of the law which emptied it of its best contents.

On May 13, the Bill was submitted to the People's Assembly's Committee for Religious and Social Affairs which endorsed the 75 articles in one and a half hour.

On May 25-26, the Bill was debated by the People's Assembly while NGOs demonstrated peacefully in front of the Parliament building. During the general debate the Bill faced severe criticism from independent and opposition deputies who argued that its provision were at the expense of civil rights and political freedoms. Members of the ruling National Democratic Party and government officials launched a counter-attack, emphasising that NGOs opposing the nation's interest should be banned altogether.

Minister of Social Affairs, Merwat Tellawi insisted, however, that the Bill was not aimed at settling accounts with anyone. She explained that it was the fruit of a long series of meetings and conferences with NGO representatives over one and a half years. She added though that "It is the right, however, of the State Council and Cabinet to introduce certain modifications, but this does not mean that this is not the text that was agreed upon with NGOs"(see Al Ahram Weekly, May 27 to June 2).

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<sup>5</sup> Notably Dr. Aida Seif al-Dawla and Dr. Suzanne Fayad, both of the El-Nadim Centre for the Rehabilitation of Victims of Violence, Ms Rahma Refaat of the Centre for Trade Unions and Workers and Ms Farida El-Naqash of the NGO Forum for Women s Development.

On Thursday, May 26, after midnight the law was adopted by the People's Assembly in four sessions and the same evening it was ratified by President Mubarak. It was published in the Official Gazette the following morning as Law number 153 of 1999.

### **Law 153 of 1999: key points of concern**

Below follows a presentation of the main points of concern as regards the final version of the law.

\* Article 3 states that each society that performs an activity related to private associations even though legally constituted in a form other than an NGO, shall amend its statutes, and shall apply for registration under the new law.

This means that human rights organisations have to abandon their actual status under the Civil Code and register under the new law. Otherwise, penalties for a period of up to six months imprisonment and a fine up to LE 2.000 can be inflicted. In addition, their offices will be closed and funds transferred to other associations (according to chapter 4).

\* Article 6 gives the administrative body the right to reject a registration application within sixty days for a wide range of infractions, including activities stated in article 11 that "threaten national unity", "violate public or moral codes" or are related to "political or trade-union activity exclusively restricted to political parties and trade unions".

\* Article 7 establishes that within each jurisdiction of each court of first instance, one or more arbitration committees shall be headed by a counsellor of the court of appeal with the following members: a representative of the administrative body nominated by the Minister of Social Affairs; a representative of the Regional Federation nominated by the board of directors of the General Federation; and a representative of the association to the dispute to be nominated by its general assembly or its board of directors.

One third of the board of the General Federation and its Chairperson are nominated by the President (according to article 68) which indicates that government representatives might obtain the majority in the committee. Furthermore, article 7 will prevent NGOs from taking a dispute directly to court.

\* Article 8 states that the administrative body may object to whatever it deems as contradictory to the law in the statute of an association or as regards the founders without specifying the kind of objections it may raise. The administrative body has furthermore the right to request the competent court to impose a temporary suspension of the activity of an association pending settlement of the dispute. This opens wide possibilities for legal harassment of associations by the administration.

\* Article 11 denies legal status to associations which perform activities that threaten national unity or violate public order or morality. These vaguely phrased terms open up for a variety of interpretations which might be used for arbitrary actions by the administrative authorities.

Furthermore, article 11 bans associations which practice any political or trade-union activity exclusively restricted to political parties and trade unions. This unclear phrasing may also be used to deny NGOs legal status for a range of activities such as providing legal aid; working for the reform of the judiciary; election monitoring; monitoring of human rights abuses; the defence of political prisoners, etc.

\* Article 16 gives the administrative body the right to refuse an association to join, participate or belong to a club, association, authority or an organization domiciled outside the Arab Republic of Egypt within sixty days from notification.

The article does not specify the grounds on which such denial can be made and it gives the administrative authorities wide powers to interfere in relevant international work of associations.

\* Article 17 denies the associations the right to obtain money from abroad either from an Egyptian or a foreign person or foreign body or its local representatives unless so authorized by the Minister of Social Affairs. It does not set any time limit for the Ministry of Social Affairs to provide necessary authorization nor does it specify criteria according to which authorisation should be given. Given the lack of funding opportunities in Egypt for a wide range of civil society activities, article 17 opens the door for the administration to block the work of NGOs.

\* Article 23 gives the administrative body the right to ask an association to withdraw a decision if it finds it in conflict with the statutes or the law and article 34 enables it to oppose candidates for the board of an association.

Both articles allow for broad and unnecessary interference in the daily management of associations.

\* Article 42 states that associations may be dissolved for committing a gross violation of the law or the public order or morality, or if it can be proved that its real purposes are to target or practice an activity prohibited under Article 11. This vague language again gives the authorities potentially wide power to harass any NGO with legal action.

\* Article 64 allows associations and NGOS to establish activity specific federations. However, article 65 only allows one regional federation to operate within the same governorate and thus limits the rights of NGOs to organise freely.

\* Article 68 states that a General Federation of Associations and NGOs shall be established and comprise activity-specific and regional federations with a board run by thirty members.

The chairman and ten members are appointed by the President. This bureaucratic structure limits the right of NGOs to freely elect and establish national federations and gives the executive unnecessary power to influence the work of NGOs.

\* Article 75 subjects violators of the law to criminal penalties, including a LE 10.000 fine, and up to one year in prison for offenses that might amount to no more than the peaceful exercise of freedom of association.

### **Arguments in favour of Law 153 of 1999**

On Saturday May 28, 1999, the author had the opportunity to be briefed about the new law in meetings with representatives of Egyptian official institutions.<sup>6</sup>

In general the author was assured that there was no reason to be upset by the law. It was argued that human rights are protected by the constitution and that it would not be acceptable for the government to pass laws in contradiction with human rights standards. The new law was considered a positive measure since groups, including human rights NGOs, which until now had registered on the same level as business enterprises, namely as private companies under Law 32, now had a law of their own. This law provided them with legal protection in accordance with their *de facto* activities.

In addition, it was stated that the law will enhance the work of NGOs compared to Law 32 since the latter defined what was allowed while the new law only defines what is prevented. Furthermore, disagreements can now be taken to civil courts (whereas under Law 32 they had to be taken to the administrative court). As such, it was argued that the administration would have no control of the work of private associations, only the right to monitor their actions. No authority could remove a board but had to go to the judiciary. Finally, an arbitration committee had been established headed by a councillor of the magistrate with representatives of the concerned organisations as well as the administration which had to respect a time limit of sixty days to settle disputes.

One interlocutor argued that the only substantial change that had been introduced as compared to the Draft Law of January 1999 was article 17 which deals with funding from abroad. The change introduced meant that it is no longer sufficient for associations to notify the administrative quarters but that prior approval should be obtained. The idea behind the new wording is to control terrorist organisations, e.g. groups involved in politics receiving funds

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<sup>6</sup> Although the interpretations presented to Marc Schade-Poulsen were not identical, an overall set of arguments can nevertheless be identified in defence of the law, as well as in defence of the sequence of events leading to its adoption. The interpretations concord with the ones presented to the team of the February mission as can be seen in part 2 of this report.

under cover of Islamic education. It was argued that it was a different matter to receive funds from an organisation like the EMHRN than from fundamentalist groups in Pakistan. It was argued that article 17 was an instrument to control money laundering

Concerning the wording of article 11, it was explained that there was nothing particular in denying the right of associations to run activities related to political parties. The fact that associations should work in the field of social development as defined by the law was considered reasonable. The activities prohibited by article 11 were related to reaching executive power. One interlocutor made reference to the statement of Minister of Social Affairs, Merwat Tallawi, in the People's Assembly that human rights work is permitted. It was stressed that human rights work in no way would be affected by the law, that all work is political by nature and that social development work includes human rights.

Finally, it was argued that difference should be made between freedom to association and the need to register as an association, and that the new law would help educate NGOs in Egypt to work more efficiently. Some of the interlocutors even stressed that the new law was better than Law 32 in every respect. One interlocutor stated that inflicting criminal penalties for offenses (article 75) was not a problem since no one should be above the law and no penalties would be inflicted if people would abide by the law.

Concerning the sequence of events that led to the adoption of the law, it was explained that the law had been adopted after a long democratic process including consultation with NGOs and that only minor changes had been introduced compared to the January draft. Others argued that the difference between the January draft and the one presented to the People's Assembly was the result of changes introduced by the Cabinet and the Committee for Religious and Social Affairs in a perfectly legitimate legislative process.

When asked why Law 153 had been met with such a strong reaction by the opposition and NGOs, it was argued that some NGOs opposed the transparency required by the law since they did not want to publish accounts. Furthermore, it was argued that some NGOs held onto Law 32 merely to have an issue to oppose the government or simply because they did not like the fact that the government has a certain hold over civil society. Finally, it was stated that the law created a row because it had been in progress for a long time and then suddenly appeared in a final form.

### **Arguments against Law 153 of 1999**

Among Parliamentarians the main objection to the law was the vague phrasing of article 11 concerning the issue of running political and syndicate activities. It was argued that all social activities are political and should be encouraged and that the new law explicitly should have mentioned that political party activity was banned rather than using the broader term of political activity.

They saw the law as targeting associations that are beyond the government's control, in particular the most active organisations which are able to influence public opinion. As such, the law indirectly targets human rights organisations as these are among the most active NGOs in Egypt. It was furthermore expected that several human rights NGOs would have to close down.

The parliamentarians felt that the law had been passed very quickly, and although they believed the new law was better than Law 32, it was feared that the executive regulations would ban a number of activities related to current NGO activities.

Human rights NGOs also felt that the law particularly targets human rights organisations in Egypt since they represent some of the few civil society groups which have not yet been brought under government control. They feared that the law would result in the slow death of the majority of the existing human rights NGOs when they had to abandon their status as civil companies and register as associations. The main points of concern to which the NGOs refer are the articles presented above.

### **Evaluation 1: the process of drafting the law**

The EMHRN and the FIDH welcome the liberal interpretation of the law made by representatives of the official institutions, in particular the opinion that the law will not affect human rights work in Egypt in a negative way. It is noted that an official statement of the Ministry of Social Affairs of May 27, 1999, supports the arguments presented above. It is the EMHRN and the FIDH's hope that the executive regulations to be drawn-up by the Ministry of Social Affairs and the implementation of the law will confirm this interpretation.

Nevertheless, the EMHRN and the FIDH find it difficult to maintain that the law was drafted in a transparent way. It has not been possible to identify clear procedures for appointing members of the NGO community to the Drafting Committee. According to State representatives in the Drafting Committee, the members were elected to sit in the Committee. According to NGOs taking part in the Committee meetings, as well as individuals who attended the NGO gatherings convened by the Ministry of Social Affairs, no clear procedures were established for the selection of NGO representatives to the Drafting Committee. Candidates proposed during public meetings subsequently became members of the Committee by approval of an unidentified number of the persons present in the audience.

The statement issued by four NGOs taking part in the work of the Drafting Committee confirms the impression that the dialogue which took place during the past year between the Ministry of Social Affairs and that NGOs was by-passed by the government.

A comparison between the January Draft and Law 153 also makes it difficult to maintain that only minor changes were added from January to May 1999.

\* The January draft does not mention that NGOs, constituted in other legal forms than private associations, shall register under the new law.

\* The January draft does not mention syndicate activities among the prohibited fields of activities.

\* In the January draft, organisations may acquire funds from abroad, or send monies to individuals and organisations located outside the country upon notification by the administrative body. Has thirty days elapsed without notification, the request is considered approved.

In the new law no association is allowed to receive funds from abroad unless authorised by the authorities.

As mentioned in part two of this report, the January Draft allowed for wide governmental interference in the functioning of associations. The author believes that Law 153 broadens its jurisdiction by including organisations that are registered under the Civil Code and that it strengthens the authorities control of associations.<sup>7</sup>

## **Evaluation 2: Law 153 of 1999 compared with Law 32 of 1964**

It is also difficult to maintain that the new law improves Law 32 of 1964 in every respect.

As mentioned in a previous study, Law 32 is an old law. It was written in 1964 and much has changed in Egypt since that time. According to the then-prevailing view, NGOs were primarily seen as implementers of government policies. The regime established by Law 32 thus left little to the discretion of the organisations themselves and created a wide scope for the government to oversee the formation and operations of the NGOs. This attitude can be seen not only in the provisions of the law itself, but also in the implementing regulations, particularly those contained in Presidential Decree No 932 of 1966, which specifies numerous details about how NGOs must operate and aspects of organisational life that are generally left up to organisations themselves to determine. “It is almost as if NGOs were viewed as children of the Ministry of Social Affairs.”<sup>8</sup>

Law 32 of 1964 contained a range of bureaucratic measures containing details on the management of associations and a wide range of articles clearly violates basic rights to freedom to association.

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<sup>7</sup> The new law contains some improvements as compared to the January draft for example by 1) reducing the number of persons required to establish an association from twenty to ten; 2) setting a time limit for the work of the arbitration committees (to sixty days); and 3) increasing the number of board members in the General Federation that will be elected by associations (out of thirty board members, ten will be appointed by the President. In the January draft all board members were to be appointed by presidential decree).

<sup>8</sup> Review of the Legal and Regulatory Environment for NGOs and Other Not-for-Profit Organizations in Egypt. International Center for Not-for-Profit Law, October 1998. Paper prepared for the Egyptian government in relation to the drafting of the new law.

It gave the administrative authorities the right to refuse to register an association if “the environment was not in need of its services or if an other association already work in the same field” (article 12). The administrative authorities could decide to fuse two associations that worked for achieving the same goals (article 29). The administrative authorities could convene a meeting of the general assembly or board of directors if it “deemed it necessary” (article 36 and 53). The Ministry of Social Affairs was entitled to appoint a representative to the board of directors (article 48). It could dissolve an association on the vaguely worded basis that an association was unable to achieve the goals for which it was established (article 57).

Law 32 furthermore restricted the field of action of associations to specified area,<sup>9</sup> and established the General Federation, presided by the Minister of Social Affairs, according to a presidential decree (article 85).

The above mentioned restrictions are not to be found in Law 153 of 1999 which furthermore allows disputes to be taken to civil courts.

However, if Law 32 can be viewed as patronising NGOs to an extreme extent, the new law appears to be built on mistrust about civil society organisations and seems to a large extent to have been drafted in the spirit of the old law:

Law 153 maintains the administrative authorities right to object to the statutes or the founders of the associations; object to decisions taken by an association; dissolve an association for infractions stated in vague terms; request the competent court to temporary suspend the activities of associations; and deny permission to obtain foreign funding or to join international organisations or networks. It adds to Law 32 that funds can not even be obtained from Egyptians living abroad.

Furthermore, it maintains restrictions on organisations to freely form regional and national federations; and it maintains the government’s broad influence on the management of general federations.

Finally, it raises maximum penalties for violations of the law from 6 months imprisonment to one year, and leaves a wide range of issues to be interpreted at the discretion of the executive power. In all, it maintains the possibility for the administrative authorities to legally harass associations by means of time consuming committee and court hearings that might prevent these from carrying out any sound management of their work.

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<sup>9</sup> 1. Childhood and Motherhood; 2 Family Care; 3. Social Assistance; 4. Care for the Aged; 5. Care for special groups and handicapped; 6. Cultural, Scientific and Religious Services; and 7. Developing local communities (Article 1 in Presidential decree no 2340 of 1967).



### **Evaluation 3: the general attitude of the Egyptian authorities towards human rights work**

It is difficult to predict how a law text will be implemented in practice. As regards the implementation of Law 153, an overwhelming responsibility has been conferred to the Ministry of Social Affairs. In this regard the EMHRN and the FIDH is deeply worried by the following observations:

The debate in the People's Assembly, May 25-26, revealed a much less liberal interpretation of the law than the ones presented to the author by the officials he met.

Government representatives approved of the law on the ground of maintaining national security and argued that NGOs opposing the nation's interest should be banned altogether. It was suggested that all associations should cease their work until they conform with the law since some organisations had managed to by-pass the existing law by registering themselves with the Public Notary. Members of the majority overtly attacked human rights NGOs for exploiting foreign funding to their own benefit at the expense of community services. Prime Minister Kamal Al Ganzouri stated that organisations arguing that women do not have equal rights have no place in Egypt, a clear reference to the human rights groups. The general secretary of the Assembly's Committee for Religious and Social Affairs described NGO reports as illegal publications that carry the fingerprints of suspected bodies working in the dark.

Campaigns in the government controlled press have regularly been launched against human rights NGOs in Egypt on similar charges since 1995. As documented in part two of this report the latest campaign in Autumn 1999 led to the arrest of EOHR General Secretary Hafez Abu Saeda on charges that echoes article 11 and 17 of the new law, i.e. of disseminating false information abroad that would harm Egypt's interests; accepting funds from a foreign country with the aim of fulfilling acts that would harm Egypt; and receiving funds from abroad without authorization by the competent authorities.

Egypt was the head of 26 countries who presented an interpretation of the Human Rights Defenders Declaration at the fifty-third session of the UN General Assembly.<sup>10</sup> This interpretation sets domestic legislation above international standards:

Article 3 of the Declaration mentions that domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms, is the judicial framework within which human rights and fundamental freedoms should be implemented and enjoyed.

In Egypt's interpretation, the rights and obligations stipulated in the Declaration should be exercised in full conformity with domestic law as the juridical framework within which human

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<sup>10</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" of December 9, 1998

rights and fundamental freedoms should be implemented. The interpretation furthermore states that the advocacy of new human rights ideas and principles should be applied in conformity with domestic law and that the right to solicit, receive and utilise resources by individuals and groups to promote and protect human rights can be exercised only in conformity with the domestic law of the state concerned.

This interpretation devoid the Human Rights Declaration of any meaning as regards the protection of human rights activists work. It also foreshadows the adoption of Law 153.

The author was informed of a number cases where the authorities have prevented human rights organisations from arranging seminars and courses on human rights issues.<sup>11</sup> Lately, the government refused to authorise the holding of two international conferences on human rights in the Arab world in Cairo, respectively “The First International Conference of the Arab Human Rights Movement”, and the conference on “The Judiciary in the Arab Region and the Challenges of the 21<sup>st</sup> Century”.

The EMHRN and the FIDH understand that the reason for not authorising the first mentioned event was that the conference would deal with issues considered sensitive (such as “the protection of human rights defenders” and “the human rights situation in the Arab countries”) due to the location of the Arab League in Cairo.

In general, the EMHRN and the FIDH find it regrettable that Egypt, having the reputation of being a leading country of the Arab world, in the above mentioned cases has chosen to follow the lowest common denominator in the field of human rights instead of taking a progressive lead.

## **Conclusion**

The EMHRN and FIDH believe that states are entitled to control the lawfulness of association’s formation and activities and that protective purposes justify a notification and licensing system. As such, states may also make the registration dependent on the submission of the association’s articles which states the association s purpose, principal place of business, organs and financing.

However, freedom of association implies protection against arbitrary interference by the state or private parties when, for whatever reason and for whatever purpose, an individual wishes to associate with others or has already done so.

The EMHRN and the FIDH do not believe that Law 153 of 1999 grants associations such protection. The law contains broad and vague language that can be used to deny legal status to

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<sup>11</sup>On a number of occasions they have found that conference hotels could not host planned human rights events due to work of repairs.

any of the Egypt's NGOs. The law gives wide discretion to authorities to harass any NGO with legal action, and it gives the state unnecessary power to interfere with the management of independent NGOs.

Finally, the EMHRN and the FIDH note that the law follows a series of restrictive measures carried out in Egypt in relation to political parties (Law 40/ 1977), professional syndicates (Law 100/ 1993), as well as the press and NGOs (Law 3/ 1998).

Human rights organisations have warmly welcomed the commitment of Egypt to the Barcelona Declaration of November 1995 which states that the partners will guarantee the effective legitimate exercise of fundamental human rights and freedoms, including freedom of association for peaceful purposes. In Barcelona Egypt also committed herself to encourage actions of support for democratic institutions and for the strengthening of the rule of law and civil society; and it recognised the essential contribution civil society can make in the process of development of the Euro-Mediterranean partnership.

Human rights organisations also welcomed the formal statement from the Stuttgart summit of the Euro-Mediterranean Partnership, April 1999, in which it is recommended that regional and local authorities should be more closely associated with the non-governmental organisations.

Law 153 of 1999 unnecessarily restricts the right to freedom of association as guaranteed under the International Covenant on Civil and Political Rights (ICCPR) ratified by Egypt, and it is against the spirit of the Barcelona Declaration and the article 2 of the Association Agreement between Egypt and the EU.

The EMHRN and the FIDH believe that promoting the work of democratic forces within civil society is the best way to combat intolerance and to promote the rule of law and economic, social and cultural development.

It is difficult to imagine how terrorism and money laundering can be efficiently combatted by means of administrative surveillance by the Ministry of Social Affairs. Rather, there are strong indications that the law is meant to block the work of human rights organisations in Egypt.

The EMHRN and the FIDH recommend the Egyptian government to ensure that the controversial articles (see page 8-10) in the law are reconsidered as soon as possible in a transparent process of consultation with the concerned Egyptian NGOs.

The EU and its member states should take the following measures:

1. EU officials should communicate concern about the pattern of restrictions on freedom to association in Egypt in bilateral and multilateral meetings with Egyptian government officials.

2. EU officials should urge that the Law on Private Associations and Institutions be repealed and replaced with legislation in conformity with the free association standards of Article 22 of the International Covenant on Civil and Political Rights.
3. In particular, the EU Parliament and member states should demand that the law be repealed before ratifying the Association agreement between the EU and Egypt.
4. Until the law is repealed, EU officials should closely monitor developments in Egypt that unnecessarily restrict freedom of association. They should communicate concerns directly to Egyptian government officials and make such demarches public.
5. Funding agencies should continue to support non-governmental organizations regardless of the adoption of law 153 of 1999.

## **PART 2: THE EGYPTIAN ORGANISATION FOR HUMAN RIGHTS AND FREEDOM OF ASSOCIATION**

### **Report from a human rights mission to Egypt, February 6-10, 1999 by Tomas Rothpfeffer and Gilles Manceron**

Following recent events in Egypt pertaining to issues of human rights, the Euro-Mediterranean Human Rights Network (EMHRN) and the International Federation of Human Rights (FIDH) decided to undertake a mission to Cairo.

The mission was conducted by Mr Gilles Manceron, France, and Mr Tomas Rothpfeffer, Sweden, during February 6-10, 1999.

Mr Manceron is a member of the Executive Committee of the League of Human Rights in France and editor-in-chief of the French periodical *Hommes et Libertés*. Mr Rothpfeffer is a member of the Swedish Bar Association and a trial lawyer.

The mission had the following mandate:

\* To attend a hearing before the Higher Administrative Court of Cairo, February 7, 1999, concerning legal recognition of the Egyptian Organisation for Human Rights (EOHR),

\* To gather information related to the investigation by the General Prosecutor of Egypt, concerning Mr Hafez Abou Saada, Secretary General of the EOHR, who was arrested on December 1, 1998 and Mr Mustafa Zeidan, member of the EOHR,

\* To make enquiries concerning the preparatory work of a new Law of Associations and Private Institutions, and

\* To evaluate Egypt's compliance with its human rights commitments, including the Barcelona Declaration, in relation to the issues mentioned above.<sup>12</sup>

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<sup>12</sup>The team of the mission had talks with representatives of various organisations working in the field of human rights in Egypt, among others with Mr Hafez Abou Saada, Secretary General of the EOHR, Mr Mahmoud Kandil, EOHR field work director, Mr Negad El Borai, General Director of the Group for Democratic Development, and Mr Mohamed Selim El Awa of the Board of Trustees of the EOHR, Mr Bahey El Din Hassan, Director of the Cairo Institute for Human Right Studies, Mr Gasser Abdel Razak, Director of the Centre for Human Rights Legal Aid, Mr Mohamed Mandour, coordinator of the Arab Working Group for Human Rights, and Mr Nasser Amin, General Director of the Arab Center for the Independence of the Judiciary and Legal Profession. The team of the mission was also able to meet with Dr. Fathi Serour, Speaker of the People's Assembly of Egypt, Ms Naila Gabr, Director of the Human Rights Department of the Ministry of Foreign Affairs, Dr. Fathi Naguib, advisor to the Minister of Justice and member of the Drafting Committee of the Law of Associations and Private Institutions, and Ambassador Ahmed Abulkheir, advisor to the Minister of Social Affairs. The team also received information from Mr Adel Fahmy, assistant to the

## **Legal recognition of the EOHR: a slow process**

### *Refusing to register the EOHR on false pretences*

The EOHR was founded in 1985. Under the present law, the Association Law No. 32 of 1964, all civil organisations have to apply for registration to be legally recognized.

The EOHR applied for registration in Giza in 1987. The application was rejected on the grounds that one human rights organisation, the Egyptian Association for Human Rights, already existed in the governorate of Giza. According to the authorities only one organisation established for a certain purpose could be registered in a district. This interpretation of the law is disputed. The claim by the EOHR that the other organisation had in fact ceased to be active several years earlier was disregarded.

The EOHR appealed the decision in 1989. In 1991 the Council of State upheld the decision to reject the application of the EOHR.

The EOHR again appealed the decision to the Higher Administrative Court. The EOHR challenged the 1991 decision on the grounds that it relied on incorrect information as to the existence of another human rights organisation. The appeal was examined by an Appeals Examinations Committee.

Since 1991 a number of petitions and written statements have been filed by the EOHR which have been answered by the Ministry of Social Affairs.

On December 21, 1998, the Higher Administrative Court decided to hear the case of the EOHR. The court decided that the hearing should take place on February 7, 1999.

Representatives of human rights groups emphatically rejected the interpretation that only one organisation established for a certain purpose should be allowed in each district. Real freedom of association does not place any restrictions on the number of organisations that may be formed. The very fact that the authorities made reference to an organisation, which had ceased to be active some ten years before the EOHR was founded, indicated that the interpretation of the authorities was nothing but a pretext for preventing the EOHR from being legally recognized.

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General Prosecutor of Egypt. Finally the team had conversations with Mr Michele Villani and Mrs Andrea Koulaïmah-Cabral at the Delegation of the European Commission in Egypt; Ambassador Erling Harald Nielsen and First Secretary Thomas Moeller at the Embassy of Denmark; Ambassador Aapo Polho at the Embassy of Finland; First Counsellor Patrice Paoli at the Embassy of France; Ambassador Ronald Loudon and Second Secretary Petra Stienen who is responsible for Political Affairs and Human Rights at the Embassy of the Netherlands; and Ambassador Christer Sylvén and the Counsellor Jan Thesleff at the Embassy of Sweden.

*The hearing before the Higher Administrative Court: a positive development that needs to be followed up*

The team attended the hearing before the Higher Administrative Court on February 7, 1999.

At the hearing February 7, 1999, a team of lawyers, including Mr Negad El Borai and Dr. Mohamed Selim El Awa, Dr. Atef El Banna, Dr. Yehia El Gamal and Dr. Nour Farahat, who are all university professors and admitted to practise in the Higher Administrative Court, Mr Abdel Aziz Mohamed, President of the Bar Association in Cairo, and Mr Saad El Gammal, who is a former judge, represented the EOHR as counsels. Pleadings were made on behalf of the EOHR. A counsel for the Ministry of Social Affairs attended the hearing.

The hearing, which lasted for about half an hour, was held in a friendly atmosphere. On the request of the counsels for the EOHR Mr Tomas Rothpfeffer was admitted as an official observer at the hearing.

After the pleadings of the counsels for the EOHR the court ruled that the Ministry of Social Affairs should submit the documents concerning the non-existing or non-active Egyptian Association for Human Rights. The documents were to be submitted by April 4, 1999, but, according to our information, the deadline was not respected.

The counsels for the EOHR were satisfied with the hearing.

If the Higher Administrative Court finds that the decision to reject the application for registration of the EOHR should be incorrect, the case will be referred to the Supreme Constitutional Court.

The team of the mission welcomes the progress in the EOHR's case to obtain legal status, although it deplores the unnecessary long period it has taken to come so far - more than 10 years since the EOHR first applied for registration.

### **Harassment of Egyptian human rights defenders**

*The case of Mr Mustafa Zeidan*

On August 14, 1998, two young men from Al-Kosheh village in the governorate of Suhag were murdered. Al-Kosheh is a village in Upper Egypt. The majority of the population of the village are Copts.

The killings provoked massive police activities to find the perpetrators.

As a result of information indicating wide-scale police brutality, the EOHR sent a fact-finding mission to Al-Kosheh. Mr Mustafa Zeidan, who is a lawyer and an officer of the EOHR, was charged with the task of carrying out the investigations.

In his report issued September 28, 1998, *Collective punishment in Al-Kosheh village - random arrest, torture and degrading treatment of citizens*, Mr Zeidan gave an account of the police brutality that was triggered by the killings. It was estimated that over 1,200 people had been arrested, many of whom had been brutally tortured or subject to degrading treatment according to testimonies given to the EOHR delegate.

In October 1998, the British newspaper *Sunday Telegraph* published an article with the provocative headline "Egyptian Police Crucify and Rape Christians". No reference was made in the article to the EOHR report and there was no correspondence between the content of the article and that of the report.

On December 6, 1998, the State Security Prosecutor Hisham Saraya announced that an arrest warrant had been issued for the author of the Al-Kosheh report, Mr Mustafa Zeidan. The house of Mr Mustafa Zeidan had been searched already during the night of December 1. Mr Mustafa Zeidan voluntarily appeared before the prosecutor to be interrogated. Mr Zeidan was charged with the offence of disseminating false information that would threaten Egypt's national interests. He was released after the interrogation.

These events occurred while tension was growing between the authorities and the Human Rights organisations as a result of the differences of opinion about the draft Law of Associations and Private Institutions (see below).

#### *The case of Hafez Abu Saada: Background*

On November 23, 1998, the weekly *Al Osboa* published an article aimed at the EOHR. The front page carried a picture of a cheque for \$ 25,703, which was described as "the price of treason", paid by "a hostile country". The article insinuated that the payment was a prize for writing a report harmful to the interests of Egypt. The issue also featured a special supplement titled "Yes to Human Rights, No to Foreign Funding".

The cheque had been received by the EOHR on October 11, 1998, from the British Embassy. According to the EOHR, the cheque was the second payment from the Human Rights Committee of the House of Commons, to finance a project for legal aid to women which had begun in 1996. No money from these contributions had been used for other purposes than the legal aid project.

The article in *Al Osboa* triggered a big campaign against the EOHR and provoked debate within the organisation itself. In this situation, Mr Hafez Abu Saada at a press conference November 30, 1998, announced that the cheque which had been received October 11, 1998, would be returned.

#### *The arrest and detention of Mr Hafez Abu Saada*

As a result of the article in *Al Osboa*, Mr Hafez Abu Saada was summoned by the General Prosecutor to give evidence as a witness on December 1, 1998. According to Egyptian law, a



person who has given evidence as a witness may not be prosecuted for acts he has testified to in his capacity as a witness.

At the prosecutor's office, however, Mr Hafez Abu Saada was not called upon to give evidence as a witness, but was instead charged with three offences:

1. Disseminating false information abroad that would threaten Egypt's national interests (Article 80 D of the Penal Code, which provides for a maximum sentence of 5 years imprisonment).
2. Accepting funds from a foreign country with the aim of fulfilling acts that would harm Egypt (Article 78 of the Penal Code, which provides for a maximum sentence of 15 years imprisonment with hard labour).
3. Receiving funds from abroad without authorization by the competent authorities (Military Law of 1992, which provides for a maximum sentence of 7 years imprisonment).

Mr Hafez Abu Saada denied the charges and instead called upon the prosecutor to open an investigation into the police brutality in Al-Kosheh, which had been described in the report of the EOHR.

After the interrogation, the prosecutor ordered that Mr Hafez Abu Saada be detained for 15 days, pending investigations into the charges against him.

Mr Hafez Abu Saada was transferred to the Tora detention centre in Cairo. His head was shaved, and he was forced to wear prison clothing. Initially he was placed in solitary confinement in the disciplinary section of the detention centre. There were no reasons for placing him in that section. Later, he was transferred to a cell that approximately measured 10 x 3 metres, together with 36 other inmates. The door was closed the whole day. Mr Hafez Abu Saada described the conditions as “appalling and utterly humiliating”. During the whole period of confinement he was denied access to his lawyers. His wife was allowed to see him only after four days. Before being released, Mr Hafez Abu Saada was moved to a cell with two other inmates. He was released on bail late in the evening December 6, 1998.

The day after his release, Mr Hafez Abu Saada flew to Paris to participate in the Human Rights Defenders’ Summit, a conference for human rights activists from all over the world, to commemorate the 50th anniversary of the Universal Declaration of Human Rights. Mr Hafez Abu Saada had been invited by FIDH and several other organisations.

#### *Investigations that have not yet been concluded*

The investigation concerning Mr Hafez Abu Saada has not yet been closed.

Representatives of the EOHR and other human rights groups that we met in Cairo, stressed that it was very important that the investigations concerning Mr Hafez Abu Saada and Mr Mustafa Zeidan were brought to a speedy end. They unanimously demanded that the General Prosecutor should declare that the charges against Mr Hafez Abu Saada and Mr Mustafa Zeidan are unfounded, otherwise, to bring Mr Hafez Abu Saada and Mr Mustafa Zeidan to court to answer to their alleged offences.

Ms Naila Gabr, the official spokesperson on human rights conditions in Egypt, informed the team of the mission that the investigations had not yet been concluded. The office of the General Prosecutor had informed her that the Prosecutor was waiting for final remarks or statements regarding the investigation by the lawyers of Mr Hafez Abu Saada. According to Ms Naila Gabr, the extension of time would benefit Mr Hafez Abu Saada.

Mr Hafez Abu Saada said that this information surprised him. According to the law there was no basis for a delay for this reason. He also told us that he had nothing to add to the investigation.

Mr Adel Fahmy at the office of the General Prosecutor told us that he estimated that a decision, either dropping the charges or to indicting Mr Hafez Abu Saada, would be made in one month. However, by July 1, 1999, no decision had been taken.

We were also told that there was no investigation into the irregularities of the detention of Mr Hafez Abu Saada at the General Prosecutor's Human Rights Department, since he had not filed a formal complaint.

Mr Hafez Abu Saada said that he was unable to understand the position of the General Prosecutor, since he had given the Prosecutor all the relevant information relating to his detention.

We also asked Ms Naila Gabr if any investigation into the events in Al-Kosheh had been carried out.

Ms Naila Gabr told us that there was a pending investigation. According to the General Prosecutor's office, interrogations had resulted in conflicting testimonies and the claims of torture had not been corroborated by medical examination. Four persons had shown signs of injuries, but these injuries were likely to have been self-inflicted, according to the forensic medicine experts. In sum, sufficient evidence had not been found to file charges against any policeman, and no police officer had been formally charged with any offence.

Four police officers who had been transferred pending investigation are now back in their offices and have each been rewarded with LE 1.000.

### *Concluding remarks*

All representatives of the Egyptian authorities that the team of the mission met maintained that all foreign funding of non-governmental organisations in Egypt had to be controlled because of fears that foreign funding otherwise would be used to finance armed Islamist groups such as *Al-Gihad* and *Al-Gama'a al-Islamiya*. On the other hand, they stressed that several non-governmental organisations did in fact receive foreign aid from the Gulf area, Europe and the USA.

A representative from EOHR underlined that, in reality, independent and outspoken non-governmental organisations run the risk of being accused of receiving illicit funds from abroad, whereas organisations that are friendly to the government or controlled by the authorities never faced the same accusations.

According to the President of the People's Assembly, Mr Fathi Serour, a large number of associations receive financing from abroad (he is himself president of an association that receives funding from Qatar), and some of these use foreign consultants (he mentioned the example of an association that runs sanitary programmes to young destitute girls to prevent them from getting head lice etc.). The EMHRN and the FIDH clearly believe that only some associations are criticised for receiving funds from abroad, not because these are the only ones receiving such financing, but as a way (as in the case of the EOHR) of criticising their activities as such.

The representative of the EOHR also stressed that the contributions from the House of Commons' Human Rights Committee to the EOHR were intended for a perfectly legitimate humanitarian cause. Furthermore, the EOHR maintained that all the money spent so far had been used to provide women with legal aid in 208 cases, which could be proved. The whole idea that clandestine violent groups would use regular channels and human rights organisations to transfer money was entirely unreasonable.

The representatives of the different embassies of countries within the European Union explained that they finance a number of Egyptian NGOs. Among these are the EOHR and the Organisation for Education and Development of Upper Egypt, (the Netherlands and France). It is within this framework that a project has been initiated to give legal aid to prisoners and another project providing legal aid to deprived women have been financed with British funds. The defamatory campaign mounted by the Egyptian press against EOHR, mainly consisting of the publication of a photocopy of the cheque for EOHR issued by the British Embassy, ignores the fact that a great number of associations receive external funding to finance various programmes.

According to independent observers, Egyptian authorities are particularly sensitive to allegations insinuating that Christians are subjected to harassment or persecution. In the EOHR-report it was contended that the Al-Kosheh police held the premise that the perpetrator must be a Christian in order to avoid conflict between the Muslim and the Christian population,

but nowhere in the report are the activities of the police branded as harassment or persecution for religious reasons.

In her conversation with the team of the mission, Ms Naila Gabr stressed that it was a mandatory obligation of the prosecutor to take action against Mr Hafez Abu Saada in view of the serious accusations made by the editor-in-chief of the *Al Osboa*, Mr Mustafa Bakri.

As was pointed out, however, the role of Mr Mustafa Bakri is obscure. Mr Mustafa Bakri, a former member of the board of the EOHR, has claimed that the cheque from the British Embassy, shown on the first page of *Al Osboa*, had been sent anonymously to the magazine by post. This claim is not particularly convincing. In addition, various sources have indicated that Mr Mustafa Bakri has close links with the authorities, in particular the security forces and, therefore, that the security forces have exerted influence on or have approved his denouncement of the EOHR. In view of the swift and harsh action against Mr Hafez Abu Saada and considering the rather unsubstantiated grounds for the charges against him, it appears that such assumption is likely.

The burden of proof is on the Prosecutor. The disconnected events which led to the arrest of Mr Hafez Abu Saada do not appear to constitute well-founded grounds for the serious charges brought against him. The decision to detain him under humiliating and appalling conditions must be considered particularly unreasonable and unjust.

Whatever the Egyptian authorities may have considered in the matter of Mr Hafez Abu Saada, human rights groups in Egypt and in other countries concerned with his case are likely to view the action taken against him as an act of intimidation aimed at preventing publication of reports on police brutality.

If the Government and Egyptian authorities wish to honour their commitments to the Barcelona Declaration in order to strengthen the rule of law and civil society, all appropriate measures should be taken to bring the case of Mr Hafez Abu Saada to a prompt closure.

By ratifying the International Covenant of Civil and Political Rights and adopting the Barcelona Declaration Egypt has committed itself to guarantee the effective and proper exercise of right to peaceful association. In order to honour these commitments the EOHR's case to obtain legal status should be concluded as soon as possible. Furthermore, measures should be taken to ensure that the Law on Associations is in conformity with Egypt's international human rights obligations.

### **Drafting of a new Law on Association: real progress or attempts of silencing NGOs**

#### *Concerns and demands of human rights organisations*

Since spring 1998 NGOs in Egypt have been under threat of a Draft Law on Associations and Private Institutions replacing the Law of Association, No. 32 of 1964. The Draft Law was prepared by the Ministry of Social Affairs.

The consequence of the new Draft Law is that the Egyptian government is entitled to reject the request of NGOs to acquire funds from abroad (Article 18). In the case of a rejection the dispute will - according to Article 7 - be presented to a committee consisting of four persons, two of whom are nominated by the government. If the matter is still not solved it may be taken to court. According to Egyptian human rights organisations this will mean a slow killing process of NGOs considering the time and money necessary.

All the defenders of human rights whom we met expressed their profound concern as to the Draft Law on Associations fearing that it will not provide for an actual freedom of association. Under these circumstances they prefer maintaining the present law governing associations (the Association Law No. 32 of 1964), rather than supporting the passing of a new law which does not represent an actual progress in comparison with the previous one.

The points that have their special attention and for which no guarantee seems to be given in the draft law, are the following:

- the possibility of organising preparatory meetings prior to the forming of new associations. Such meetings are indispensable and yet they risk being considered as illegal activity and may expose the participants to imprisonment.
- the possibility of freely forming any association on any subject even if similar associations already exist within the region in question. Without this there is no real freedom of association.
- the possibility of a free functioning of any institution elected by the members of the associations.
- the right to freely adhere to international networks of associations (especially for those within the field of human rights) and to have free and absolutely necessary contact with foreign organisations.
- the right of collecting funds within the country as well as sending funds abroad or receiving external funds in order to finance activities (especially those within the field of human rights). They do not reject the idea of a control after funding is received, but are opposed to any obligation to obtaining preliminary authorisation.
- the right to freely form a national federation of non-governmental associations, without the interference of the government. They are concerned about the preparations for a federation of NGOs, in which the members are to be appointed by a decree issued by the President of the Republic, and which is to control the distribution of funds. Such measures would be against Article 56 of the Constitution (guaranteeing the right to create syndicates and unions).

For the above reasons, they support the draft law prepared by the EOHR, the Group for Democratic Development and the Cairo Institute for Human Rights Studies, which was

introduced in the People's Assembly by four deputies of the opposition: Mr Ali Fath El Bab, Labour Party (Islamist), Mr Ayman Nour and Mr Fuad Badrawi, Wafd Party (liberal), and Mr Mohammed Abdel Aziz Shabban, Tagmmu Party (left-wing).

They stress that the contents of the draft law concern not only defenders of human rights in Egypt, but indeed all democrats in the world. In their opinion, especially the threats against real freedom for the Egyptian associations to foster external contacts within the scope of their humanitarian activities do not concur with the present economic opening in Egypt, particularly towards the Mediterranean area.

Their opinion is that the government has no reason for concern as regards legal organisations with the ambition to develop the judicial system and a real human rights culture, to promote education, to encourage Egyptians to participate in the democratic life of their country, etc. The external funds that they may be able to collect, as well as the funds collected within the country, are aimed at financing their activities which are perfectly clear and beneficial for the country.

According to defenders of human rights in Egypt the argument often invoked to restrain their freedom, that of combatting terrorist organisations, is not relevant. In their opinion, the organisations that are clandestine and use secret financing have no need of an actual law governing freedom of association. On the contrary, promoting human rights and thus securing a free development of associations favouring these rights is the best way to eliminate any phenomena that terrorist movements tend to profit on in order to evolve.

#### *The recommendations of the Ministry of Justice and the Ministry of Social Affairs*

Mr Fathi Naguib has been appointed by the Minister of Social Affairs to direct the commission charged with the preparation of the draft law. As a lawyer and in charge of legislative procedures in the Ministry of Justice, he had a long meeting with the team of the mission. It was the first time the delegation received information on a draft law of January 17, 1999. According to Mr Fathi Naguib, it is now time for reforms with regard to civil society after the political and economic liberalisation that took place during the days of President Sadat. This is the reason why, on the initiative of the Ministry of Social Affairs, a committee of 30 persons, including NGO representatives, lawyers and specialists within the field of social affairs, have been charged with the organisation of broad consultations.

According to Mr Fathi Naguib, in pursuance of the draft law of the Ministry of Social Affairs, human rights associations can be recognised. To create a new association there is no need for any prior authorisation, a declaration is sufficient, and, if the Ministry does not appeal within a period of 60 days, the association will be legal with the right to work within its field of activities. No extracts from criminal records of the associations' founders will be claimed; it rests with the administrative authorities to check up on this and to take possible legal action. Immediately after the declaration, the association may begin its activities, organise meetings, pay the rent, etc. Equally, in accordance with the above draft law, associations may send funds abroad or receive external funds, only having to inform the Ministry of Social Affairs, and with

no obligation to obtain prior approval: A notification to the Ministry will be requested and lack of response to this can be considered as an approval hereof. If the Ministry wishes to raise objection, it is to take legal action within a period of 30 days.

For Mr Fathi Naguib, in accordance with the above draft law, the administrative authorities have no right to interfere with the existence of the associations. An association may affiliate freely to any international federation after having notified the Ministry of Social Affairs, provided the Ministry does not object to this within a period of 30 days. The penalty of imprisonment anticipated by the draft law (up to two years) only concerns armed militia or other activities that may be harmful to the security of the country.

This draft law is, according to him, more liberal than the one presented by the four deputies of the opposition together with the EOHR and other associations. At present it is being examined by the Council of State before being submitted to the government, for the adoption in the People's Assembly. Mr Fathi Naguib hopes that it will be adopted during the coming session.

The statements made by Mr Fathi Naguib have been confirmed to the team of the mission, by Mr Ahmad Abul Kheir, adviser to the Minister of Social Affairs. He stressed that the replacement of the Association Law No. 32 of 1964 was initiated by the Ministry of Social Affairs. The government wishes to lighten the task of the associations in general and not solely the one of the human rights associations. He explained that the process of preparation of the Draft Law is exceptional, since it has been marked by several fora in which all human rights associations have participated. If criticism has been expressed (e.g. on penalties of imprisonment), certain points have been subject to consensus.

According to the Draft Law, an association may come into existence from the point of its declaration. In the question of external funding, the principle supported by the Ministry of Social Affairs is that of transparency: Associations are to inform about the sources of their funding and the government has the possibility of opposing this within 30 days, otherwise the funding is deemed to be accepted. Likewise, according to the draft law, associations are to inform the administrative authorities about their affiliation to networks or international federations. The Ministry in question then has the possibility of opposing this within a period of 30 days. The administrative body has the right to dissolve any association, following a court decision, if the association has failed to assemble its board of directors during a period of two years or if it is engaged in criminal activities, such as prostitution. But the Ministry cannot interfere with the existence of the associations: A ministry employee can not head an NGO. As to a national federation of NGOs (issued by a presidential decree) provided for in the Draft Law, it is to be independent and at the same time financed by the Ministry. Its aim is to create a forum for debates, to encourage the general education, and to organise the distribution public funds.

Mr Fathi Serour, Speaker of the People's Assembly, gave no date nor any precise information on the future law. At present, there are no less than four different draft laws. These are to be considered as preparations for a new law. No draft law has yet been submitted to the

Committee of the People's Assembly, and no bill is ready for adoption during its coming session.

According to Mr Fathi Serour, the authorities are concerned that associations may receive funding from abroad, with no government control whatsoever: This could allow for external interference into the internal affairs of the country. To him, this is a threat to the national security.

He wishes to encourage activities within the field of civil society, however, without renouncing the right of the administrative authorities to control the activities of associations. This control is indeed nothing new, since the present law (No. 32 of 1964) requires prior approval of any external funding. According to Mr Fathi Serour, this is not aimed at limiting the activities of certain associations nor at discriminating associations for political or religious reasons. It is vital to national security since recent incidents of terrorism have shown that associations have received external funding in order to finance criminal activities. However, according to him, associations may continue receiving funds from within Egypt as well as external funding, as is the case today.

#### *Concluding remarks*

The EMHRN and the FIDH first noted that the Ministry of Social Affairs has initiated a process of discussion on the law governing associations during which a committee, composed of lawyers, experts from the ministries concerned, and various civil persons, was set up.

However, the outcome of this process, i.e. the January Draft Law does not take the fundamental points of critique expressed by the associations related to the previous draft laws into account.

Finally, the EMHRN and the FIDH question the willingness of the administrative authorities to allow for a real discussion to take place in the People's Assembly, taking the demands of the associations into consideration. The team fears that the most positive elements of the draft law will be questioned during the process of its submission, elaborated by the Ministry of Social Affairs, of January 17, 1999, to the High Council of State, the Council of Ministers and finally to the People's Assembly.

The international opinion will attentively look at the contents of the law to be adopted. It will look at real changes interfering with the freedom of association, or to such phenomena that may appear to be forms of artificial liberalisation and a new model for control on behalf of the administrative authorities without offering any improvement to the Law of Association, No. 32 of 1964. In the eyes of the international opinion, the image of Egypt and its prestige not only in the Arab world but also in the Mediterranean area and in Europe as such, would benefit highly from a step in the direction of liberalisation.



## **Conclusion**

### *The general situation of human rights in Egypt*

In a number of meetings the team of the mission received some general information on the situation of human rights in Egypt.

In Egypt, the legal system functions very badly. The possibilities of lawyers to carry out their profession are impeded since, according to Egyptian law, the detainee may be imprisoned for a period of 45 days before being presented before a court of law. While the detainee is allowed to meet with a lawyer during this time, in reality this right is often denied.

By the end of 1995, the Egyptian Bar Association was closed and since then the working conditions of lawyers and the functioning of the legal system have only deteriorated. More than hundred lawyers have been taken into custody and are waiting in detention to be brought before court; some of these have waited for 8 - 9 years. A lawyer, Mr Madani, died under torture in 1994. A large number of trials, especially the trials of Islamists, are brought before military tribunals and special tribunals. These military and special tribunals make up the largest amount of problems.

According to different sources the independent associations are troubled in particular by two phenomena of Egyptian society: The clandestine and omnipresent role of state security throughout the country and in any administration as well as the absence of a really free and independent national press. For instance, within each Ministry there exists a service pertaining to state security, but if an Egyptian citizen should inquire into the existence of any such service, he will get no answer. As for the press, the most independent editorial offices are those situated in Cairo, taking their license from Cyprus and printing their papers in Cairo. However, they need the approval of the censorship before distribution as if they were imported from abroad and can be called in question at any moment.

### *Human rights organisations in Egypt, international human rights standards and the Barcelona Declaration*

According to the Barcelona Declaration, of November 1995, Egypt has undertaken to act in accordance with the Charter of the United Nations and with the Universal Declaration of Human Rights, adopted by the United Nations on December 10, 1948. The Universal Declaration thus stipulates that no one shall be subjected to arbitrary arrest or detention (Article 9), that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him/her by the constitution or by law (Article 8) and that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal (Article 10). The International Covenant on Civil and Political Rights, in force from March 1976 and ratified by Egypt, stipulates that "any person whose rights or freedoms ... are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity" (Article 2).

The EMHRN and the FIDH request that the Egyptian authorities explain how they intend to bring the matter concerning the arrest and detention of Mr Hafez Abu Saada to an end, in a clear and open manner, in accordance with the above-mentioned texts.

The Universal Declaration stipulate that everyone has the right to freedom of peaceful assembly and association (Article 20). Furthermore, Article 1 of the Declaration on the protection of defenders of human rights recognises the right of everyone, “individually and in association with others, to promote and to strive for the protection of human rights and fundamental freedoms at the national and international levels” the right “a) to meet or assemble peacefully; b) to form, join and participate in non-governmental organisations, associations or groups; c) to communicate with non-governmental or intergovernmental organisations” (Article 5), the right to “obtain, receive and hold information about all human rights” (Article 6), and also the right to “solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means” (Article 13).

Additionally, in signing the Barcelona Declaration, Egypt pledged in particular (pages 2 and 3 of the Declaration) to develop rules of law and the democracy of its political system, to respect human rights and the fundamental freedoms, and to guarantee the effective and proper exercise of such rights and freedoms, including freedom of expression, freedom of peaceful association and freedom of thought, conscience and religion - both individually and together with other members of the same group - without any discrimination on grounds of race, national origin, language, religion or sex. Furthermore, Egypt has pledged to recognise (page 7 of the Declaration) the essential contribution civil society can make in the process of development of the Euro-Mediterranean partnership and to encourage exchange and a decentralised cooperation between the various institutions of the civil society in the countries, which are party to the Declaration.

On the basis of the above principles, the EMHRN and the FIDH ask the Egyptian authorities to explain which measures they intend to undertake in order for the People’s Assembly to adopt a new law on associations which allows for real freedom for the human rights organisations and for organisations in general. Finally the EMHRN and the FIDH ask the Egyptian authorities to take necessary steps to conclude the EOHR’s case to obtain legal status as soon as possible.