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Repressing Egypt's Civil Society

State Violence, Restriction of the Public Sphere, and Extrajudicial Persecution

Jannis Grimm

Since the military coup of July 2013, one of the characteristics of the Egyptian regime has been the lack of clarity on the boundaries of political activism and on what activities it would, or would not, tolerate. Red lines have been shifting frequently, as a plethora of presidential decrees has restricted the public sphere ever more. Furthermore, state institutions and investigating bodies have increasingly abused their powers against civil society representatives. Torture, arbitrary detention and enforced disappearances have become recurrent phenomena. Embattled by State Security, a politicized judiciary and competing ministries, human rights activists are less and less able to fulfil their role as watchdogs. From being merely the witnesses of assaults and human rights violations by the security forces, they have moved on to being their primary targets. Against this backdrop, Germany and its European partners should pressure the Egyptian authorities for compliance with basic civil rights and the rule of law, while aligning their support more closely with the needs of Egyptian NGOs.

On 4 May 2015, the Cairo Institute for Human Rights Studies (CIHRS) published a joint declaration of the leading non-governmental human rights organizations (HROs) in Egypt. It expressed their massive criticism of the authorities' "increasingly aggressive actions", which the HROs saw as an attempt to "slowly strangle the work" of Egyptian rights groups. At the same time, the signatories reminded the government of its commitment vis-à-vis the UN Human Rights Council: in March 2015, during the periodical review of the condition of human rights in Egypt, the leadership in Cairo had accepted most of the recommendations outlined by the international community to

improve the situation. In a statement, it had pledged to rethink its controversial protest law as well as its legislation on NGOs. In this context, it had also emphasized the role of civil society as an essential partner in strengthening human rights.

However, these declarations were merely lip service: the military and police routinely continue to use arbitrary or indiscriminate violence against members of the opposition. Torture is par for the course, as the statistics of the El Nadeem Center for the Rehabilitation of Victims of Torture prove. In addition, there is an increasing number of reports of the security forces systematically using sexual violence against prisoners and

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demonstrators in general, and homosexuals and transsexuals in particular. Even the state-run National Council for Human Rights (NCHR), which is mostly staffed by those loyal to the regime and therefore tends to be conservative in the number of victims it reports, more and more frequently criticizes serious human rights abuses. These are committed not only against members of the Muslim Brotherhood, which has been banned since autumn 2013. According to NCHR reports, there were also 550 people without any personal ties to the Islamists among the more than 1,900 civilians killed between the summer of 2013 and the end of 2014. The number of unreported cases is presumably even higher.

Restricting the Public Sphere

In the absence of a parliament (dissolved in the summer of 2012), the room for manoeuvre of civil society actors has been systematically restricted through a series of presidential decrees. The work of local and foreign NGOs, but also of parties, trade unions and youth groups, has been made more difficult, particularly through the vaguely worded new law on assembly; the tightened rules on foreign funding; the introduction of an obligation to register; and such groups being placed under the control of the Ministry of Social Solidarity. Ambiguous wording in the legal texts is in no way an expression of legislative incompetence. Given that in other policy realms provisions were formulated with noticeably more precision – for instance, in the new investment law – it stands to reason that the lack of terminological clarity is in fact a tactic for unsettling potential critics of the regime and giving the relevant authorities a maximum of discretion. In July 2014, in a memorandum addressed to Prime Minister Ibrahim Mahlab, a coalition of the most important national HROs already referred to a “declaration of war” on civil society. In this, the national leadership under Abdel Fattah al-Sisi has been relying above all on the judiciary to act as implementing body.

In contrast to the Mubarak regime, which sought to stem dissent using mostly illegal intimidation tactics, the al-Sisi administration is pursuing a strategy of legalizing repression. The over 175 presidential decrees issued since July 2013 mark out a restrictive framework that makes authoritarian rule possible without the need to impose emergency rule.

The Egyptian authorities have gradually limited civil society’s freedom of action and extended their repressive measures to include different segments of society. Following the military coup in July 2013, a first phase saw the persecution primarily of the supporters of the deposed President Mohamed Morsi. When the Muslim Brotherhood was designated a terrorist organization in late 2013, this explicitly placed it within the jurisdiction of State Security, allowing its agents to raid and seize Islamist charities and civic associations under the pretext that they maintained ties to the group or its members.

The January 2014 Constitution then contained an article that declared the fight against “all types and manifestations of terrorism” to be a national goal, and endowed the security services with far-reaching powers. Since then, the regime has repeatedly modified its definition of terrorism by decree, expanding it each time to include a new set of criminal offenses. As a result, not only the Muslim Brotherhood but all actors critical of the regime or contradicting its narratives on contentious events in Egypt may now be persecuted by State Security on the pretext that they threaten the public order or national unity, and be prosecuted by special courts for terrorism-related felonies and misdemeanors. The latest legislation from mid-August 2015 expands the list of offenses to be tried as terrorist crimes to include even private expressions of support for groups blacklisted by the judiciary as terrorist entities. Rights groups have slammed the new law as an attempt to establish “thought crime” as a punishable offense and pointed to its “Orwellian” character.

A new protest law had already effectively barred all public shows of solidarity with such groups. Responding to the daily mass protests that had been organized throughout the country by circles sympathetic to the Muslim Brothers under the umbrella of the so-called Anti-Coup Alliance, this piece of legislation from November 2013 limits the right to strike and the freedom of assembly on pain of severe penalties. It subjects all collective action to prior police authorization, specifying that the organizers of any demonstration must present themselves at the responsible police station with their itinerary, the number of participants and the names of those in charge, seven days in advance. Violating this procedure or the vague requirement not to impair the country's "productivity" through protests is prosecuted as a crime.

This protest law has led to a de facto ban on all demonstrations since the authorities issue hardly any authorizations. The law is increasingly being used retroactively as well. It is now the most common pretext for prosecuting Egypt's more than 40,000 political prisoners, including prominent activists of the Tahrir Revolution such as the blogger Ahmed Douma or the human rights lawyer Yara Sallam.

The protest law was complemented by a presidential decree of 27 October 2014 that categorized nearly all public institutions as military installations – with the result that all crimes committed there can be prosecuted before military courts (including retroactively). This includes not only electricity plants, pipelines, railway stations and bridges but also the Egyptian universities that have become the hotbeds of resistance against the autocratic rollback after the severe crackdown on the Anti-Coup street protests.

Restrictions on the Freedom of Assembly

Since late 2014, the security apparatus has also increasingly been targeting non-partisan civil society organizations working for the common good without any explicit

political agenda or formal affiliation with a political camp. This particularly concerns human rights organizations, which, in the absence of independent media or a working separation of institutional powers, have taken on the important function of monitoring the executive. Those witnessing and documenting the repression and human rights violations committed by the security apparatus are now increasingly becoming its victims.

In June 2014, social minister Ghada Waly announced a new draft law to regulate the work of NGOs, which was intended to replace the Mubarak-era association law 84/2002. NGOs were to be prohibited from participating in political activities as well as from carrying out unauthorized field research, data collection, or publishing. A supervisory authority with the power of veto was to control the registration, funding and personnel decisions of NGOs working in Egypt. A particular source of concern was the indication that representatives of State Security and the Ministry of Interior would also be sitting on the committee.

Because of massive public criticism, the law has so far been held back. However, a predecessor law has since been applied more consistently. NGOs had to formally register by 10 November 2014, thereby placing their work content and structure under the auspices of the Ministry of Social Solidarity. At first glance a mere formality, this procedure drastically curtailed the principle of freedom of association guaranteed in the Egyptian constitution – in particular because of the large amount of discretion that the vaguely worded paragraphs of the law afford the authorities. For instance, article 11 states that an association may be refused approval if its activities risk endangering national security or the public order and morals, or if it represents the vested interests of individual parties or trade unions. In addition, article 17 prohibits associations from accepting monies from abroad without the Ministry's express agreement. This provision is made even

stricter by a revision of the criminal law, which was determined in September 2014 by presidential decree. Paragraph 78 now strictly defines as an offence the receiving of money or benefits in kind from abroad, wherever they are used to endanger the public order or national interest. Violations of these provisions – once again deliberately kept vague – are punishable by heavy fines and prison sentences. Government employees even risk the death penalty.

The paragraph is formulated so as to be open to interpretation, which suggests that it might potentially also apply to foreign journalists or employees of international organizations. These include the German political foundations, which have been unable to work as intended ever since the verdict against the Konrad Adenauer Foundation for illegal money transfers and lack of a licence in Egypt. Some international organizations, such as Human Rights Watch or the Carter Foundation, have in the meantime closed their Cairo offices.

HROs: Unprotected and Powerless

Egyptian human rights organizations have been pursuing very different strategies of adaptation so as to retain their freedom of action within the restrictive legal framework. In the light of the legal grey areas and the certainty that even a potential clarification of their institutional status would not protect individual members from persecution, they did not, in fact, register en masse before the deadline. According to the Ministry, about 45,000 HROs were registered nationwide by the deadline, but among Egypt's large human rights groups so far only the Egyptian Initiative for Personal Rights (EIPR) has done so, in early 2015, avowedly to set a precedent for Egyptian HROs – though it also announced that it intended to continue working towards democratic reform of the law.

By contrast, other groups, such as Al-Mawred al-Thaqafy, discontinued their work just before the deadline expired; yet others, including the CIHRS, moved a part

of their staff abroad. Some groups simply ignored the deadline. The Arabic Network for Human Rights Information (ANHRI), for example, pointed out that the NGO law was undemocratic and that the ANHRI was a law firm. This tactic was adopted by other NGOs as well, which registered as media production companies, limited liability companies or law firms – sectors where regulation is noticeably less restrictive – so as to circumvent the mandatory registration. However, it remains unclear whether this absolves organizations from additionally having to register under the NGO law. Ultimately, this is at the discretion of the Ministry for Social Solidarity. The registration requirement thus gives the Ministry the possibility of leaving civil society groups in the dark regarding their legal status – all the more so, considering that the Ministry's 60-day grace period for deciding on submitted registration requests can be arbitrarily extended for administrative reasons.

Besides, non-registration is becoming an increasingly unattractive option: in June 2015, the Ministry began to make good its threats of legal action against unregistered NGOs. On the other hand, even an unequivocally clarified status does not provide sufficient protection from prosecution. For example, the Egyptian Democratic Academy (EDA), despite having registered on time, was subjected to a criminal investigation into its funding sources – alongside the unregistered human rights organizations CIHRS, the Hisham Mubarak Law Center and the Egyptian Center for Economic and Social Rights.

Extrajudicial Persecution

The limits of the protection afforded by a clarified legal status were made obvious in early June 2015, with the publication of the first substantiated numbers on the relatively new phenomenon of extrajudicial forced disappearances. According to the group Freedom of the Brave, which campaigns for prisoners' rights, over 160 people were kidnapped between early April and early

June. The Egyptian Coordination for Rights and Freedoms (ECRF), a coalition of lawyers that investigate the whereabouts of disappeared Muslim Brothers, identified almost 1,000 people that have gone missing since the start of 2015. What is more, both organizations point to the rapid increase in kidnappings, which are carried out mainly by security forces in plainclothes on the street, but also in private flats or the campuses of state universities. Until recently, the kidnapping of unwelcome citizens – such as the photo journalist Omar Abdel Maqsood, who in autumn 2014 had reported on the abuse of his wife in police custody – remained exceptions that attracted a great deal of attention. This makes the current wave of kidnappings even more alarming – it marks a new dimension in the abuse of state power.

While dozens are still missing, some of those kidnapped have now been released. Others were eventually found in the Egyptian jails of Tora, al-Qanater and al-Aqrab. In several cases, activists whose location had been discovered were brought before a magistrate on a litany of trumped-up charges so as to legitimize their detention retroactively. The charges brought ranged from membership in a banned organization (such as the April 6 Youth Movement) to violating strike bans, to spreading false news and murdering policemen. In other cases, pre-trial detention was renewed without any formal charges by the prosecution.

The Ministry of Interior, which formally administers Egyptian prisons, either does not comment on kidnappings or else denies that they have taken place, making reference to their illegality. However, even individual representatives of the NCHR attribute primary responsibility for the kidnappings to State Security, which is directly assigned to the Ministry of Interior. This interpretation is backed up among other things by the fact that the forced disappearances are not limited to a few districts, which come under the jurisdiction of certain governors or local police stations, but are a nationwide phenomenon.

The location of the kidnappings and witness statements of the way they unfold show that the perpetrators are highly professional and well-informed. In this context, it is surprising, at least at first sight, that the kidnappings are not more targeted. The victims do include some members of the banned April 6 Youth Movement and leaders of the protest coalition Students against the Coup, which is sympathetic to the Muslim Brotherhood. However, other victims cannot be assigned to any banned group, and have in some cases not been politically active for some time. The case of Esraa el-Taweel is emblematic in this regard. An amateur photographer, she retired from activism after receiving a gunshot wound as she photographed the protests on the 2014 anniversary of the January 25th revolution. She disappeared in early June 2015 along with two friends. Only after intensive searches carried out by relatives and a broad solidarity campaign in social media was she identified in al-Qanater women's prison and subsequently brought before a prosecutor. She remains in custody to date with her provisional detention being renewed on a monthly basis pending further investigation into the charges of belonging to a terrorist organisation.

The fact that prominent human rights activists and journalists have so far been spared kidnappings is not a result of the security apparatus' incompetence. For unlike the ministerial bureaucracies in Cairo, State Security is highly effective. Mubarak's infamous State Security Investigations Service (SSIS, Amn ad-Dawla) may have been formally dissolved in March 2011, but it continues to operate with largely the same personnel under the umbrella of the newly-founded Egyptian Homeland Security (EHS, Al-Amn Al-Watani). The absence of in-depth reforms of the security sector since 2011 has enabled the agency to take up the secret-service structures and informant networks that had grown up over the decades of the Mubarak era. This has been demonstrated not least in the highly efficient campaign of arrests against the Muslim Brotherhood

and its members after the violent dispersal of their protest camps in Rabaa al-Adawiya and Nahda in mid-August 2013, which caused hundreds of deaths. By May 2015, the security forces had managed to arrest thousands of sympathizers and members as well as the most important leaders of the Brotherhood and its allies in the protest coalition against the Sisi regime.

Divides in the Regime Coalition

The selective restraint shown by State Security towards leading representatives of the non-Islamist parts of civil society in fact point to differences within the regime. The country's most influential actor, the army, rarely takes a position and is only indirectly involved in the repression – through the military justice system, to which the public prosecutor's office has transferred over 2,200 civilians in the few months since October 2014. However, beyond the institutional boundaries, at least two camps can be identified in the repressive triad of army, domestic security and judiciary, two camps that pursue divergent strategies on dealing with civil society.

The Ministry for Social Solidarity, Foreign Ministry and Ministry of Finance represent the approach of restricting the opposition under cover of the law. They are thus a counter-weight to those who advocate a policy of intransigent extrajudicial repression. Like the President's office, the ministries insist on maintaining a pluralistic façade, apparently for strategic reasons – and especially with an eye on normalizing diplomatic relations with Egypt's traditional western partners, for which they strive. In addition, they benefit from NGO expertise in fighting corruption within the administrative apparatus and in formulating draft laws, for instance in the adoption of a criminal-law article against sexual harassment. Last but not least, NGO reports on transgressions by the security apparatus are useful tools in potential conflicts with the domestic security services.

These institutions in turn – in particular State Security – can be identified as the driving forces behind the campaign of repression, alongside the judiciary. A range of leaked files and inquiries have illustrated how the internal security agencies very carefully prepared a series of legal actions against NGOs on suspicion of “espionage under the cover of civil society work” and against opposition media for “false reporting” and “deliberate disinformation”. Activists furthermore confirm the existence of blacklists of organizations and individuals who have been identified as potential targets for prosecution and ascribe the fact that these have not yet been processed primarily to circles in the president's office around security advisor Faiza Abu-l-Naga, which fear that the West may impose sanctions.

This might also explain why the kidnapers have so far largely concentrated on the grassroots and middle ranks of civil society organizations. Persecuting these actors attracts noticeably less attention than kidnapping human rights defenders who are part of international networks. This keeps the foreign-policy costs of the kidnappings low. In addition, it is almost impossible to prove state responsibility. The degree of difficulty involved in independently confirming the accusations made by Egyptian HROs is shown among other factors by the fact that the UN Working Group on Enforced or Involuntary Disappearances has been refused entry into Egypt since 2011. At the same time, every kidnapping creates a fait accompli that is hardly revisable, strengthening those responsible inside the regime coalition: When kidnappings become known, the various regime factions present a united front in public and, if necessary, begin retroactive legal proceedings so as to legalize the arrests.

Last but not least, targeted kidnappings have a preventative effect on the opposition in general. The primary addressee of the kidnapping is not necessarily the victim himself or herself. Rather, the abduction of former activists such as el-Taweel sends a

signal that even withdrawing from human rights work does not provide protection from persecution, any more than the legal process does. The deaths of kidnapping victims, for example the activist Sabry al-Ghoul from the Sinai Peninsula or the student Islam Ateeto, are a particularly powerful deterrent.

Eyes Wide Shut on Egypt

Hardliners in Egypt are strengthened among other things by the fact that the step-by-step transition to routine repression has so far had hardly any negative consequences internationally. Quite the contrary: the desire of Western states to normalize relations with the Sisi regime is shown in their politically willed, large investments in Egypt's energy sector, as well as the resumption of military aid and security cooperation. This impression is further strengthened by questionable measures – such as the temporary imprisonment of the Al-Jazeera journalist and critic of the regime, Ahmed Mansour, in Berlin – which suggested close coordination of the German authorities with the Egyptian security apparatus. The official receptions accorded to President al-Sisi in Madrid, Berlin and soon London also rehabilitate the Egyptian dictatorship on the international scene, and send the signal that Europe prioritizes cooperation in security and economic affairs over respect for human rights. During her visit to the economic summit in Sharm-el-Sheikh in March 2015, the EU's High Representative for Foreign Affairs, Federica Mogherini, assured the Egyptian leadership of Europe's continued support, without even addressing the human rights situation. Wherever criticism has been voiced, it has been largely limited to condemning the hundreds of death sentences that have been handed down against opponents of the regime since the summer of 2013 – although even here there has been a process of habituation, so that new verdicts in mass trials no longer cause any diplomatic consequences above the level of verbal notes. Representa-

tives of the Egyptian regime routinely play down any criticism, pointing out that Egypt enjoys a separation of powers – an argument that is frequently and uncritically accepted by international partners despite their knowledge of Egypt's politicized judiciary.

What Role for Germany and the EU?

The repressive approach of the authorities in Cairo works against Germany's and the EU's declared intent of stabilizing the country. Such stabilization is highly unlikely to succeed without a vibrant civil society to represent the interests of all segments of the population and demand good governance. Instead, the severe restriction of the public sphere and the brutal approach of the security apparatus sow the seeds of political violence. Escalation becomes more likely as peaceful expressions of opposition and non-violent mechanisms for conflict resolution are repressed.

Germany and its European partners should therefore not stop at their principled criticism of the death penalty, but should strongly condemn both mock trials and extrajudicial repression as well. Furthermore, they need to judge the leadership in Cairo by how well it respects the 2014 Constitution, which guarantees citizens' freedom of assembly and association (articles 73 and 75) and ties the conduct of the state to international human rights conventions (article 93) that have been ratified by Egypt, such as the International Covenant on Civil and Political Rights.

Germany and its European partners should not cooperate with Egypt's internal security institutions. This specifically includes fighting terror, for as long as Egypt uses vaguely worded criminal law to persecute even peaceful opponents as terrorists. Cooperating with Egyptian State Security and the domestic security services is out of the question while these institutions remain primarily responsible for the grave human rights situation in the country. Any thought of overcoming these repressive ten-

dencies by providing training and equipment, or through workshops, is as absurd as the idea of enshrining accountability mechanisms in such a way.

Instead, NGOs need to be supported in their work wherever they continue to carry out effective monitoring of human rights violations despite the growing personal risk, and thus take on the role of scrutinizing government conduct. Alongside a few independent online editorial teams, such as the journalists' collective Mada Masr, they have become the only reliable source of information on corruption, abuses of state power, and other systematic violations of collective and individual human rights.

A closer alignment of supportive measures with the needs and legal status of local organizations would be crucial, but access to Egyptian HROs has worsened dramatically. On the one hand, they fear being accused of espionage, while on the other they have become suspicious of foreign support because of the West's policy of rapprochement with the Sisi regime. The revision of the criminal law has strongly limited possibilities for directly funding local projects in particular. Indeed, by giving material help and financial contributions, foreign partners risk handing the authorities a legal pretext for prosecuting the beneficiaries. The same is true for indirect help through issuing service contracts.

However, there still are some channels for promoting civil society. It should be explored whether it is possible to provide local venues for civil society exchanges, which have been in short supply since the implementation of the assembly law. Alternatively, such forums could also be offered outside Egypt to promote closer coordination between activists, who have thus far only been loosely cooperating with one another. This could be accompanied by workshops abroad on improving networking, for instance in public relations and legal support, or data encryption and secure forms of communication. A few instances already exist of bilateral cooperation between Egyptian NGOs and partner organi-

zations in the wider Arab world. However, many NGOs would like to have closer exchanges with European groups, among other reasons to prevent a regime-coopted, façade civil society from establishing itself as the West's interlocutor.

Not least, civil society groups point to a huge need for professional care by psychologists and therapists. Almost all NGOs complain of stress and staff shortages because of depression, burnout and traumatization caused by personal or mediated experiences of suffering. For women's activists groups this has an additional gender component, since female activists frequently keep their experiences of violence silent for fear of social stigmatization. Thought needs to be given to how psychological care might be offered. Not only could this tie into the experience of the German Ministry for Economic Cooperation and Development with traumatized civil-war victims, but support from medical and psychological services should also meet with less resistance from the Egyptian authorities because of the technical nature of such help.

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