

# GLOBAL TRENDS IN NGO LAW

A quarterly review of NGO legal trends around the world

## ARAB SPRING: AN OPPORTUNITY FOR GREATER FREEDOM OF ASSOCIATION AND ASSEMBLY IN TUNISIA AND EGYPT?

*"[We] shouldn't ignore this unmistakable new energy, the revelation of the crumbling foundations of Arab authoritarian regimes, or the continuing surprises which should keep all analysts humble about what might follow."<sup>1</sup>*

### **Introduction**

On December 17, 2010, Tunisians launched anti-government protests ultimately joined by tens of thousands of people. The protesters demonstrated against poor living conditions and restrictions on their fundamental rights, and demanded that President Zine el-Abidine Ben Ali step down. The protests continued until Ben Ali left office and fled Tunisia on January 14, 2011.

In Egypt, demonstrators inspired by the Tunisian Revolution began protests on January 25, 2011 demanding the resignation of President Hosni Mubarak. Cairo's Tahrir Square became the protests' epicenter, but millions of Egyptians across the country joined the demonstrations. On February 11, 2011, Mubarak stepped down, and the Supreme Council of the Armed Forces assumed control of the government.

In both Tunisia and Egypt, the interim governments have pledged to pursue a transition to democratic rule. In Egypt, the Supreme Council of the Armed Forces declared its intention "to guarantee the peaceful transfer of power within the framework of a free democratic system that allows an elected civilian power to rule the country, in order to build a free democratic state."<sup>2</sup> In March 2011, interim Tunisian President Fouad Mebazaa announced elections for a Constituent Assembly would be held on July 24, 2011.<sup>3</sup> During his address on state television, President Mebazaa said, "[w]e declare today the

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<sup>1</sup> Marc Lynch, *Will the Arab Revolutions Spread?*, Foreign Policy, Jan. 26, 2011, available at: <http://mideast.foreignpolicy.com/blog/2202>.

<sup>2</sup> Kareem Fahim, *Military Offers Assurances to Egypt and Neighbors*, New York Times, February 12, 2011, available at: <http://www.nytimes.com/2011/02/13/world/middleeast/13egypt.html>.

<sup>3</sup> On June 8, 2011, the interim Tunisian government postponed the elections for a constituent assembly until October 23, 2011, citing technical problems. According to an independent electoral commission, it was impossible to adequately register voters and organize polls in time for July 24. See David D. Kirkpatrick, *Tunisia Postpones Elections for 3 Months*, NYTimes.com, June 8, 2011, available at: [http://www.nytimes.com/2011/06/09/world/africa/09tunis.html?\\_r=2&ref=world](http://www.nytimes.com/2011/06/09/world/africa/09tunis.html?_r=2&ref=world).

start of a new era...in the framework of a new political system that breaks definitely from the deposed regime."<sup>4</sup>

The revolutions in Tunisia and Egypt may open important opportunities to revisit existing laws and current policies affecting NGOs and other civil society organizations. Egypt and Tunisia are both signatories to international agreements guaranteeing the freedoms of association and assembly, including the *International Covenant on Civil and Political Rights* (ICCPR). In practice, the previous regimes used the law to interfere with the rights of NGOs to organize and meet freely. Such laws include the Constitutions, laws governing freedom of association and assembly, and emergency laws that give the state broad powers to restrict demonstrations, marches, and other public gatherings. Moreover, existing laws and extra-legal government actions have severely limited the registration, funding, and operation of many associations and foundations, restraining the civil society sector.

This issue of *Global Trends* takes an in-depth look at the laws affecting the rights to association and assembly, and particularly the ability of NGOs to form and operate, in Tunisia and Egypt. It focuses on those provisions of the existing laws that present obstacles to the free exercise of the rights to association and assembly. In both countries, new NGOs are forming, and foreign NGOs and donors are providing assistance, to meet the many needs that have arisen in the wake of the revolution. The pre-revolutionary laws governing association and assembly are still in place, however, and those seeking to carry out NGO activities will need to be aware of their provisions. Moreover, the laws highlighted below are among those that should be reconsidered if civil society is to reach its full potential in supporting the democratic transition.

## **Tunisia**

In Tunisia, the rights to association and assembly are protected by the Constitution. The exercise of these rights is affected by a host of other laws, including the *Penal Code*, the *Law on Associations*, and the *Law on Public Meetings, Processions, Marches, Demonstrations and Gatherings*. The implementation and enforcement of these laws by the former regime created an environment in which few independent civil society organizations were able to register. According to the EuroMed Human Rights Network,

Government repression has targeted student unions, workers, opposition parties, journalists and the few independent associations that exist in Tunisia. Over the past three years, the authorities have maintained a persistent pattern of rejecting new rights groups, while security agents have physically attacked independent activists and damaged their property and offices. Associations have faced restrictions to their work such as email and phone tapping, and the blocking of public and even private meetings.<sup>5</sup>

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<sup>4</sup> *Tunisia Constituent Assembly Polls Scheduled For July 24*, RTT News, March 3, 2011, available at: <http://www.rttnews.com/Content/PoliticalNews.aspx?Node=B1&Id=1568031>.

<sup>5</sup> EuroMed Human Rights Network (EMHRN), *The Euro-Mediterranean Human Rights Network 2010 Annual Review on Freedom of Association*, p. 70 (2010).

Major provisions of key laws are summarized below.

### Constitution

The Tunisian Constitution provides, “Freedom of assembly and association are guaranteed and exercised according to the terms defined by law.”<sup>6</sup> Article 7 of the Constitution states, “[t]he exercise of these rights can be limited only by laws enacted to protect the rights of others, the respect of public order, national defense, the development of economy and social progress.”<sup>7</sup>

### State of Emergency

Tunisia did not have a standing emergency law until recently. Tunisia’s government declared a state of emergency in January 2011 in response to large protests and demonstrations that forced President Ben Ali to step down from office. The state of emergency allowed the government to prohibit gatherings of more than three people, impose a curfew, and allow security forces to use force to restrain suspects.<sup>8</sup> Following the revolution, the interim government promised to lift the state of emergency. However, only the curfew has been eliminated, and interim government officials have extended the ban on gatherings indefinitely. The Interior Minister justified the extension as “part of vigilance against anything that could threaten the security of the state and citizens or undermine public order.”<sup>9</sup>

### Establishing NGOs

Tunisia’s *Law on Associations* (Law 154 of 1959 as amended) allows two or more persons to found an association to carry out activities on a permanent basis, as long as its purposes are not commercial and do not include the generation of profit.<sup>10</sup> Only associations fitting into certain categories are permitted: women’s groups; sports groups; scientific groups; cultural and arts groups; charity, emergency, and social groups; development groups; amicable groups; and associations of public interest.<sup>11</sup> Human rights and democracy groups are not a permissible category, which has allowed the state to often deny registration of these organizations.

In order to form an association, founders must submit documents including Articles of Association to the Ministry of Interior. Upon proper filing of the documents, the law requires the Ministry to provide a receipt.<sup>12</sup> The law does not impose a time limit in which a receipt must be issued. Tunisian NGOs have reported that in practice, the government routinely withheld the required receipts, in effect preventing the registration of many independent NGOs. Without the required receipt, NGOs lack evidence that

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<sup>6</sup> Constitution of the Republic of Tunisia, Article 8 (1957).

<sup>7</sup> Id. at Article 7.

<sup>8</sup> Haaretz.com, *Tunisia Declares State of Emergency amid Riots*, January 14, 2011, available at: <http://www.haaretz.com/news/international/tunisia-declares-state-of-emergency-amid-riots-1.337059>.

<sup>9</sup> VOA News, *Tunisia Lifts Curfew, Extends State of Emergency*, February 15, 2011, available at: <http://www.voanews.com/english/news/middle-east/Tunisia-Lifts-Curfew-Extends-State-of-Emergency-116245454.html>.

<sup>10</sup> Republic of Tunisia, *Law on Associations* (Law 154 of 1959 as amended), Articles 1 and 2.

<sup>11</sup> Id. at Article 1.

<sup>12</sup> Id. at Article 3.

they submitted their required paperwork, and are unable to appeal the de facto denial of their application to register.

An association acquires legal status three months after the filing of its documents and a notice of the association's establishment has been published in the *Official Gazette*. During this three month period, the association may not carry out any activities, and the Ministry may disapprove the formation of the association.<sup>13</sup> The *Law on Associations* permits the Minister of the Interior to issue a decree disapproving the formation of an association if:

- Its goals are contrary to laws and morals or lead to disruption of public order, or undermine Tunisia's territorial integrity or Republican form of government; or
- the founders or directors have been convicted of a felony impugning their good morals.

Any person responsible for operating an unlicensed association, taking part in an unlicensed association, or participating in the operation of an unlicensed association faces both fines and imprisonment.<sup>14</sup>

Foreign associations operating within Tunisia face additional restrictions. Foreign groups must seek approval not only from the Ministry of Interior, but also from the Minister of Foreign Affairs.<sup>15</sup> The Ministry of Interior may withdraw the operating license of a foreign association at any time without explanation or a process for appeal.<sup>16</sup> Anyone who operates an unlicensed foreign association may be imprisoned for up to five years and fined up to one hundred dinars. Anyone who participates in running a foreign association or its affiliates may face imprisonment of up to three years and a fine of up to fifty dinars.

### **Restraints on Contacts with Foreign Governments and NGOs**

In June 2010, the Tunisian government amended the criminal code to impose criminal penalties on "persons who establish, directly or indirectly, contact with officials of a foreign state, institution or foreign organization with the aim of inciting them to harm Tunisia's vital interests and its economic security."<sup>17</sup> According to Tunisian Justice and Human Rights Minister, Lazhar Bououni, "harming Tunisia's vital interests" included "inciting foreign parties not to grant loans to Tunisia, not to invest in the country, to boycott tourism or to sabotage Tunisia's efforts to obtain advanced partner status with the European Union."<sup>18</sup> Penalties range from five to twelve years imprisonment. Based on this law, routine

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<sup>13</sup> Id. at Article 5.

<sup>14</sup> Id. at Articles 22 and 30. Articles 22 and 30. A penalty of imprisonment up to five years and a fine of between TD 10-100 may be imposed on any individual who works for an unregistered association in Tunisia. If an individual manages an unregistered association he or she may be penalized with imprisonment of five months to three years and a fine of TD 10-50.

<sup>15</sup> Id. at Article 17.

<sup>16</sup> Id. at Article 20.

<sup>17</sup> Republic of Tunisia, Penal Code, Article 61b as amended by Law 2010-35 of June 29, 2010.

<sup>18</sup> Human Rights Watch, *Tunisia: A Move against Human Rights Defenders: Bill Passed that Criminalizes Harming Tunisia's "Interests" as Country Seeks Closer Ties with EU*, June 17, 2010, available at: <http://www.hrw.org/en/news/2010/06/18/tunisia-move-against-human-rights-defenders>, citing Agence Tunis Afrique Presse article of June 15, 2010 and La Presse de Tunisie article of June 16, 2010.

contact with foreign organizations or foreign media outlets could potentially subject Tunisians to imprisonment. For example, a Tunisian civil society representative who criticizes the Tunisian government in a meeting with a potential economic partner, such as the EU, may face a risk of imprisonment.

### Excessive Government Supervision of NGO Operations

The *Law on Associations* contains few direct references to government supervision. But the government has routinely employed extra-legal means to restrict the activities of NGOs and of unregistered groups. According to the EuroMed Human Rights Network, government security forces harassed and intimidated human rights defenders by carrying out physical assaults; home and office break-ins; vandalizing property, and placing key civil society leaders under surveillance.<sup>19</sup> Organizations have reported being observed by government forces and having their email monitored and phones tapped.<sup>20</sup> Some have been repeatedly denied the ability to hold public meetings or obtain foreign funding.<sup>21</sup> In addition, some have been the targets of “smear campaigns” by the government controlled media.<sup>22</sup>

### Restrictions on Funding

First aid and charity organizations may only accept contributions approved by the Minister of Interior, and other associations may only receive subscriptions paid by members or funds extracted from the members.<sup>23</sup> Although the law does not explicitly require prior approval for foreign funding, some groups report that foreign funding has been monitored through the central government bank, and the government has frozen or confiscated NGO funds for no clear reason. As a result, organizations have limited ability to obtain funds with which to sustain themselves.

### Suspensions and Dissolution

The Minister of Interior “may issue an order suspending all activities of an association in case of extreme urgency, or may ask the relevant court to order the dissolution of an association if its goals or activities undermine public order, or public morals or whose purpose is political.”<sup>24</sup> The Minister may exercise this power upon determination that suspension would avoid “jeopardizing the public order.”<sup>25</sup> Suspensions are limited to fifteen days, but apply to all of an organization’s activities or meetings, so any planned activity within the suspension period would also be suspended.<sup>26</sup> This provision has allowed the government to prevent planned demonstrations, public gatherings, or other activities seen as opposing the state’s agenda.

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<sup>19</sup> EuroMed Human Rights Network, p. 71.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Law 154 of 1959 as amended, Article 8.

<sup>24</sup> EuroMed Human Rights Network, p. 72, *citing* Law No. 154 of 1959 as Amended in 1988 and 1992, Article 23.

<sup>25</sup> *Id.* at Article 23.

<sup>26</sup> *Id.* A court may extend the suspension for another fifteen days.

The Minister of Interior also has the authority to request a court to dissolve an association if it has “seriously breached” the provisions of Law 154 of 1959, or it “turned out to have objectives, activities or conduct that is contradictory to the general order and morals” or engaged in activities of a political nature.<sup>27</sup> These grounds are broad and without further definition, and provide the government with wide latitude to close associations. During dissolution proceedings, the Minister may ask the court for an emergency order closing the association’s offices and suspending its activities.<sup>28</sup> Upon dissolution, the association’s remaining assets are either transferred in the manner described in its Articles of Association, or to State run “emergency or precautionary” projects.<sup>29</sup> Donors or their successors may reclaim any remaining portion of their grants not dedicated to an activity or assistance.

### Restrictions on Freedom of Assembly

The *Law on Associations* and the *Law on Public Meetings, Processions, Marches, Demonstrations and Gatherings* provide the Minister of Interior tremendous power to regulate the operations of NGOs and impede the right to freedom of assembly.<sup>30</sup> These laws provide the Minister of Interior the power to oversee meetings, processions, marches, demonstrations and gatherings.<sup>31</sup> A member of the security services is assigned to attend any approved public meeting, rally, or march and has the authority to shut down the event. Furthermore, an organization intending to hold such an event must obtain a permit from the Ministry of Interior at least three days prior to the meeting and submit a list of participants.<sup>32</sup>

### Egypt

Egypt’s Constitution protects the right of citizens to form associations and to peacefully assemble. As in Tunisia, the exercise of these rights is affected by other laws, including the *Decree on the State of Emergency* (Law 162 of 1958), the *Law on Associations and Foundations* (Law 84 of 2002), and the Criminal Code. These laws provide the government with wide discretion to decide which associations may form and to intervene in the activities of NGOs, and to restrict public gatherings.

### Constitution

The Constitution provides that “[c]itizens shall have the right to form associations as defined by the law.”<sup>33</sup> It prohibits associations with activities “detrimental to society” or of “clandestine or military character,”<sup>34</sup> opening the door to potential abuse by government officials. The Constitution protects the

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<sup>27</sup> Id. at Article 24.

<sup>28</sup> Id. at Article 25.

<sup>29</sup> Id.

<sup>30</sup> Law 154 of 1959 as amended, Article 23; Republic of Tunisia, Law 96-4 of 1969 on *Public Meetings, Processions, Marches, Demonstrations and Gatherings*, Articles 2, 6, 7.

<sup>31</sup> Law 154 of 1959 as amended, Article 23; Law 96-4 of 1969 on *Public Meetings, Processions, Marches, Demonstrations and Gatherings*, Articles 2, 6, 7.

<sup>32</sup> Law 96-4 of 1969 on *Public Meetings, Processions, Marches, Demonstrations and Gatherings*, Articles 2, 6, 7.

<sup>33</sup> Constitution of the Arab Republic of Egypt, Article 55.

<sup>34</sup> Id. at Articles 54-55

right of citizens to “peaceable and unarmed private assembly, without the need for prior notice.”<sup>35</sup> Security personnel are constitutionally prohibited from attending such private meetings.<sup>36</sup> With respect to public gatherings, the Constitution provides that “[p]ublic meetings, processions and assemblies are allowed within the limits of the law.”<sup>37</sup>

Egypt’s constitution explicitly protects only the rights of “citizens.” The *International Covenant on Civil and Political Rights* (ICCPR) and other international treaties to which Egypt is a party make clear that “everyone shall have the right to freedom of association with others,” not just citizens and residents. Article 2 of the ICCPR explicitly states that the provisions of the treaty apply to “all individuals within [the] territory [or] subject to [the] jurisdiction” of ratifying parties “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status” (emphasis added).

### State of Emergency

Egypt remains under a state of emergency which limits many fundamental rights including the freedom of peaceful assembly and of association. The powers contained in the *Decree on the State of Emergency* (Law 162 of 1958) were first invoked by President Gamal Abdel Nasser at the start of the 1967 War. Since then, the state of emergency has remained in effect for more than forty years with the exception of a brief period in 1980-81, when President Anwar Sadat lifted the state of emergency for 18 months. However, following President Sadat’s assassination, President Hosni Mubarak reinstated the state of emergency, citing the assassination as justification.

The state of emergency gives the government far-reaching power to arrest anyone who “threatens national security.”<sup>38</sup> The law uses broad language, and the power granted is unchecked by any judicial oversight. For example, the state of emergency allows state authorities to conduct warrantless arrests of anyone suspected of “representing danger to the security and the public order.”<sup>39</sup> Furthermore, the emergency law grants the President authority to monitor and seize all publications, advertisements, announcements, or other means of disseminating information.<sup>40</sup>

In addition to warrantless arrests and confiscation of publications, the President may also seize companies and other institutions, search individuals and areas, and restrict transportation.<sup>41</sup> Anyone detained under the Decree can be held for six months before receiving the opportunity to appeal the detention. Any release within the first six months of detention must first be approved by the President.<sup>42</sup> After six months, detainees may be granted a trial.<sup>43</sup> Detainees can be sentenced to hard

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<sup>35</sup> Id. at Article 54.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Arab Republic of Egypt, *Law Concerning the State of Emergency*, Law 162 of 1958, Article 3(1).

<sup>39</sup> Id. at Article 3(1).

<sup>40</sup> Id. at Article 3(2).

<sup>41</sup> Id. at Article 3(7) and 3(9).

<sup>42</sup> Id. at Article 3 bis 1.

<sup>43</sup> Id. at Article 3 bis 1.

labor and a fine up to 4,000 Egyptian pounds.<sup>44</sup> In 2007, the government detained the novelist and civil society activist Mossad Abu Fagr after he wrote critical opinions of the Egyptian government on his blog. In 2008, the state detained a member of the heterodox Islamic Quranic sect for posting online and held him for approximately 90 days.

In May 2010, the Egyptian Parliament approved a government request to extend the state of emergency for an additional two years. Upon announcing the decision, state officials promised that the additional powers to restrict freedoms would only be used in cases of terrorism and drug trafficking. However, the language of the law does not restrict the government's authority under the state of emergency to these grounds. Human rights groups and civil society organizations criticized the move. Hossam Bahgat, Executive Director of the Egyptian Initiative for Personal Rights, said "[t]he culture of exceptionalism stays, and with it the message that security agencies are still above the law."<sup>45</sup>

International law and agreements to which Egypt is a signatory, guarantee free association and peaceful assembly as fundamental rights. These same instruments require that the imposition of a state of emergency that limits fundamental rights and freedoms must be exceptional and temporary.<sup>46</sup> The ICCPR provides that states may only "take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation."<sup>47</sup> Despite its obligations under such agreements, Egypt's emergency law continues to be in effect.

In March 2011, the Supreme Council of the Armed Forces who took control of the Egyptian government after President Mubarak was forced to step down, promised to end the state of emergency as part of its efforts to "transform Egypt into a democracy, but indicated it needed six months to find a balance between the demands of protesters and the need to fight terrorism and drug trafficking."<sup>48</sup> The Council has pledged to repeal the hated law before parliament elections set for September 2011.

## Forming and Registering NGOs

Egypt's *Law on Associations and Foundations* (Law 84 of 2002) governs the registration of associations in Egypt. Under Law 84 of 2002, registration is mandatory for any group that "carries out any of the activities of associations and foundations, even if it assumes a legal form other than that of associations and foundations."<sup>49</sup> Many civil society organizations seek to avoid the onerous requirements of Law 84 of 2002 by registering as for-profit or not-for-profit companies under the *Law on Corporations*.

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<sup>44</sup> Id. at Article 5.

<sup>45</sup> Michael Slackman, *Egyptian Emergency Law is Extended for 2 Years*, New York Times, May 11, 2010, available at: <http://www.nytimes.com/2010/05/12/world/middleeast/12egypt.html>.

<sup>46</sup> International Covenant for Civil and Political Rights (ICCPR), Art. 4; European Convention on Human Rights, Article 15; American Convention of Human Rights, Article 27.

<sup>47</sup> ICCPR, Art. 4.

<sup>48</sup> Chris Stanton, *Emergency law remains, angering Egyptian*, The National, February 25, 2011, available at: <http://www.thenational.ae/featured-content/latest/emergency-law-remains-angering-egyptian>.

<sup>49</sup> Arab Republic of Egypt, Law 84 of 2002, Preamble Article 4.

To register an association, at least ten individuals must file with the Ministry of Social Solidarity Articles of Incorporation and additional documents. After all paperwork has been submitted, the Ministry has up to sixty days to approve or reject the application; if no decision is made within sixty days, the application will be considered automatically approved. Despite the requirements of the law, the Ministry of Social Solidarity has often failed to meet the sixty-day deadline or issue a default registration certificate in the event that the deadline passes.

The Ministry may reject a registration application on broad and vaguely defined grounds, including “threatening national unity, violating public order or morals, or calling for discrimination between citizens because of race, origin, color, language, religion, or creed.” If the Ministry rejects a registration application, the founders can appeal to a competent court within sixty days following notification of the decision.<sup>50</sup>

In 2000, the New Woman Research Center (NWRC) refused to accept the state’s agenda for programming and activities. In response, the government denied the NWRC’s registration on the grounds that the organization posed a security risk. Even following an appeal to the administrative court in which the NWRC won judgment against the Ministry, the state refused to register the organization.<sup>51</sup>

### **Restraints on Contacts with Foreign Governments and NGOs**

The Egyptian government restricts NGOs from affiliating with organizations abroad. Associations may have foreign affiliations, but only if they notify the government and sixty days pass without a written Ministry objection. Law 84 of 2002 does not include criteria for approval or disapproval of a group’s foreign affiliation. Pursuant to this authority, the Ministry banned a celebration of the World Day for Women’s Rights organized by the Egyptian Center for Women’s Rights. Similarly, the celebration of the World Day for Habitats organized by Egyptian Center for Housing Rights was stopped when the State Security ordered the Upper Egypt Association to refuse to host the celebration in 2005.<sup>52</sup>

### **Excessive Government Supervision of NGO Operations**

Egyptian government officials regularly intervene in the normal operations of NGOs. Under Article 26 of Law 84 of 2002, associations are required to inform the Ministry of Social Solidarity and the General Federation of Associations and Foundations of any upcoming general assembly meeting. The notification must include the agenda for the meeting. The General Federation is permitted to send a representative to the meeting, and following the meeting, the minutes must be sent to the Minister of Social Solidarity and the Federation.

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<sup>50</sup> Id. at Article 6.

<sup>51</sup> Freedom House, *Country Report: Egypt*, available at: <http://www.freedomhouse.org/template.cfm?page=172>.

<sup>52</sup> Mohammed Agati, *Undermining Standards of Good Governance: Egypt’s CSO Law and Its Impact on the Transparency and Accountability of CSOs*, *International Journal of Not-for-Profit Law* 9, 2, April 2007, available at [http://www.icnl.org/knowledge/ijnl/vol9iss2/special\\_4.htm](http://www.icnl.org/knowledge/ijnl/vol9iss2/special_4.htm).

Associations must also submit a list of the names of all candidates for positions on their boards of directors to the Ministry of Social Solidarity at least 60 days prior to elections. The Ministry may then request that an individual be removed from the list of nominees for “not fulfilling the nomination requirements” – though such requirements are not specified anywhere in the law itself.<sup>53</sup> If a nominee is not withdrawn after a request has been made, the government may initiate a judicial proceeding to postpone the election until a decision on the legality of the nominee – a process that can take months if not years to complete – is determined by a competent court.<sup>54</sup>

The Minister of Social Solidarity also has the power to appoint acting members to the General Assembly when not enough are present to hold a meeting, as well as to dissolve an association’s board of directors if the board fails to call a meeting of the General Assembly within two years.<sup>55</sup>

### **Restrictions on Funding**

Associations may receive donations from domestic sources. Associations may not receive funds from a foreign source or send funds abroad without prior authorization from the Ministry of Social Solidarity.<sup>56</sup> In 2007, the government ordered the dissolution of the Association for Human Rights Legal Aid (AHRLA) for accepting money from foreign donors without state approval. The group had previously exposed evidence of torture by state security officials, and the closure was widely regarded as the state abusing its powers under Law 84 of 2002 to restrict organizations that acted against the state. AHRLA won its appeal, and was eventually allowed to re-register in October 2008, in part because of tremendous pressure from international and national stakeholders.<sup>57</sup>

### **Suspensions and Dissolution**

The law grants wide discretion to the Minister of Social Solidarity to dissolve an association. Grounds for dissolution include disposing of or appropriating property or money for any reason other than the group’s registered purpose, acquiring funds from or sending funds to a foreign or domestic entity without approval, affiliating with a foreign organization, or any other violation of the law, or “public order or morals.”<sup>58</sup> In 2007, Law 84 of 2002 was amended, and a provision that suspended dissolution if the dissolution was challenged in court. The amended law now permits the Ministry of Social Solidarity to expedite the dissolution of an association without limitation.

## **CONCLUSION**

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<sup>53</sup> Id. at Articles 30, 34,40.

<sup>54</sup> Id. at Article 34.

<sup>55</sup> Id. at Articles 40 and 42.

<sup>56</sup> Id. at Article 17.

<sup>57</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labor *2008 Human Rights Report: Egypt*, February 25, 2009, available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119114.htm>.

<sup>58</sup> Law 84 of 2002, Article 42.

The interim governments of both Tunisia and Egypt have undertaken constitutional reforms. Tunisia will hold an election for a Constituent Assembly, currently scheduled for October 23, 2011. According to interim President Mebazaa, the vote would be for the "formation of a national Constituent Assembly that will develop a new Constitution." He has noted that Tunisia's existing Constitution "does not meet the aspirations of the people after the revolution," and has been "an obstacle to transparent elections."

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Tunisian NGOs are calling for a new NGO framework law. The Higher Political Reform Commission (HPRC) has been tasked with drafting new legislation, or proposing amendments to existing legislation during the interim period. The interim President has the authority to issue a decree before the election in July, replacing old laws with any new laws prepared by the HPRC. Once the new Parliament is in place, it will then have a chance to approve any new law(s) issued by the interim-president. It is anticipated that the HPRC will consider amendments to the *Law on Associations*. The HPRC may also consider drafting a new law, but delay the presentation of the draft until after the July 24 elections. Whether the issue is taken up before or after the July elections, the opportunity to improve the *Law on Associations* should not be overlooked.

In Egypt, amendments to certain articles of the Constitution, most pertaining to elections, were put before voters in a referendum on March 19, 2011, and were approved by a wide margin. No changes were proposed to Articles 54 and 55, the provisions dealing with the rights of association and assembly. However, Article 189 was amended to allow the next elected government to convene a constituent assembly and draft an entirely new constitution.<sup>60</sup>

The Supreme Council of the Armed Forces has made several announcements suggesting September parliamentary election, though no specific date has been set. The Supreme Council has also promised to lift the state of emergency prior to the election, and to allow international and domestic NGOs to monitor the elections. Presidential elections are expected to be held after the parliamentary election—perhaps as soon as December 2011. However, a number of prominent civil society and political actors have lobbied to reverse the order of elections, so that the presidential election precedes the parliamentary election. In either case, observers of Egyptian politics expect a new government to be formed by the end of this year. The next government of Egypt is in turn expected to use Article 189 of the Constitution to convene a constituent assembly and draft a new Constitution. Review of existing Egyptian laws, including the *Law on Associations and Foundations*, will not likely begin until mid-2012, after a new Constitution has been drafted and approved via a referendum.

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<sup>59</sup> "Tunisia Constituent Assembly Polls Scheduled for July 24" RTT News, March 3, 2011, available at <http://www.rttnews.com/Content/PoliticalNews.aspx?Node=B1&Id=1568031>.

<sup>60</sup> Carnegie Endowment for International Peace, *Overview of Egypt's Constitutional Referendum*, March 19, 2011, available at: <http://egyptelections.carnegieendowment.org/2011/03/16/overview-of-egypt%E2%80%99s-constitutional-referendum>.