

Background on Case No. 173 - the “foreign funding case” Imminent Risk of Prosecution and Closure

Wednesday 23 March 2016

The independent human rights community in Egypt is at unprecedented risk. The recent imposition of travel bans, asset freezes as well as the interrogation of NGO staff by investigative judges illustrate a clear plan to prosecute the entire independent human rights movement. If the prosecution goes ahead, it will lead to the closure of these NGOs and the sentencing of their workers, including on charges that carry life sentences in prison.

The NGOs facing prosecution are amongst the most credible and independent human rights NGOs in Egypt and the only remaining voices critical of the government’s political, economical, developmental and human rights policies. They are also the ones documenting human rights violations and providing legal aid, and the closure of human rights and women’s rights groups will lead to a rapid spike in human rights abuses.

Egyptian NGOs have been operating in a perilous environment ever since security forces raided NGOs in December 2011 and the subsequent prosecution and sentencing of staff of international NGO workers in 2013 to prison sentences ranging between 1-5 years.

Background paper co-signed by our Egyptian members organizations EIPR and CIHRS, and Nazra for Feminist Studies, Association for Freedom of Thought and Expression, HMLC, and the Arabic Network for Human Rights Information.

Upcoming developments:

On Tuesday March 22: three of the staff of Nazra for feminist studies will appear before the investigative judges after receiving a formal summons in connection with Case No. 173.

On Thursday March 24 the Cairo Criminal Court in Zeinoh is expected to rule on the asset freeze request by the investigative judge in Case 173 after an adjournment in the last session. Neither Hossam nor Gamal had been informed of the charges against them - they only learned of the court session through the media. When they arrived defense lawyers discovered that an earlier session had taken place. The judge allowed defence lawyers to review the case documents but refused to let them photocopy them. The lawyers reviewed the investigative judges’ asset freeze order dated February 2 and learned the following:

- The evidence brought against Hossam and Gamal are incoming transfers of foreign currency on their bank accounts (bank employees were interrogated). In addition to Gamal Eid, his wife and his 11-year old daughter are also on the asset freeze list.

- Both the Egyptian Initiative for Personal Rights and the Arab Network for Human Rights Studies are named as companies owned by the defendants and therefore also subject to an asset freeze order should the judge so decide.

- The investigative judge's asset freeze request lists the charges Hossam and Gamal are facing in Case 173: Penal Code Articles 78 and 98 c& d (receipt of foreign funding for an illegal purpose) as well as Law 84 provisions which they are using to determine the status of the organization.

- The investigative judge also lists the purpose for which foreign funding will be used stating that in Hossam's case the funding of the Egyptian Initiative for Personal Rights had the purpose of "harming national security, spreading instability in Egypt, encouraging a state of chaos and a security breakdown, encouraging rifts within Egyptian society and the failure of the Egyptian regime."

- Timeframe: two weeks ago one of the investigative judges told one of the defendants the Egyptian Democracy Academy that they have finished questioning state witnesses and are therefore moving on to NGO staff and they plan to interrogate directors in April and refer the case to trial by May. In the 2012 trial, interrogation of staff began in earnest in early January 2012 after the raids of their offices and the defendants were formally charged and referred to trial on February 4, 2012.

What is Case No. 173?

Case No 173 is commonly referred to as the "case on foreign funding of civil society." In July 2011, the cabinet ordered the Minister of Justice to set up a fact-finding committee to look into foreign funding received by civil society groups and to determine which of those groups are registered under Law 84. The report was completed in September 2011 and was included as part of the evidence brought by prosecutors against the international NGOs in the 2012-13 prosecution which is why it is now publicly available. The document includes a report from the National Security Agency and another from the Egyptian General Intelligence Agency that lists almost every independent human rights organisation in Egypt as well as the international NGOs who were subsequently prosecuted and sentenced.

In June 2013, a Cairo criminal court sentenced 43 foreign and Egyptian employees of foreign NGOs to sentences ranging between 1-5 years. The directors and senior staff were sentenced to 5 years mostly in absentia, Egyptian staff who remained in-country were given 1-year suspended sentences. The court also ordered the closure of the organisations in question, the International Republican Institute, the National Democratic Institute, Freedom House, the International Center for Journalists and the Konrad Adenauer Foundation.

What charges will defendants face? What sentences do they carry?

The charges listed in the investigative judge's asset freeze order dated February 2 (which were also the charges in the 2012-13 trial) are:

- Article 78 of the Penal Code amended by President Sissi in September 2014, which increased the penalty to life imprisonment for vaguely phrased charges that include receiving money from abroad "with the aim of pursuing acts harmful to national interests or destabilizing general peace or the country's independence and its unity."

- Article 98(c)(1) of Egypt's penal code, which states: "Anyone who creates or establishes or manages an association or organization or institution of any kind of an international character or a branch of an international organization without a license in the Egyptian Republic shall be punished with imprisonment for a period of not more than 6 months or with a fine of 500 EGP. The maximum penalty shall be multiplied if any of the authorisation was based on false information. A punishment of three months or 300LE shall be brought against anyone who joins an organisation or entity of those mentioned, as well as any Egyptian living in Egypt who joins or affiliates himself in any way without authorisation from the government to such entities based abroad."

- Article 98(d) "a punishment of not more than 5 years and a fine of not less than 100 and not more than

1000 LE shall be implemented against all those who receive or accept directly or via an intermediary by any means money or benefits of any form a person or entity outside the country or inside it when the purpose is to commit a crime listed in 98(1), 98(1)(bis), 98(b), 98(c), or 174 of this code.

- Under Article 76(2)(a) of the Associations Law 84/2002, failure to register is punishable by imprisonment for up to 6 months.

Who are the organizations at risk of prosecution this time?

There are 37 organisations named in the Fact-finding Committee report who may therefore at risk of prosecution. On October 9, 2015, the Egyptian daily Al-Youm Al-Sabea leaked a scanned copy of a request by the investigation judge in connection with Case No.173 to the tax authorities enquiring about the tax compliance of 25 Egyptian organizations, including those listed above and also the Hisham Mubarak Law Center, the Egyptian Center for Economic and Social Rights, the Arab Organization for Penal Reform, the Land Center for Human Rights, Appropriate Communications Technologies and the Egyptian Association for Community Participation & Enhancement.

In the past six weeks, the following organisations have been targeted:

1. The Arab Network for Human Rights Information (ANHRI): travel ban and asset freeze against director Gamal Eid.
2. Cairo Institute for Human Rights Studies: summons to three of their staff (one in June 2015 and two in March 2016), previous inspection attempt of premises on order of investigative judge.
3. The Egyptian Initiative for Personal Rights (EIPR): travel ban and asset freeze against founder and board member Hossam Bahgat.
4. Nazra for Feminist Studies: official summons to three of their staff (two administrative, one programmatic) to the investigation.
5. The Nadeem Center for Rehabilitation of Victims of Violence: served on 17 February with a closure order by the Ministry of Health for "breach of licence conditions."
6. United Group: director Negad al-Borei was interrogated by prosecutors on March 3, 2016 on charges of " establishing an unlicensed entity named "United Group - Attorneys-at-law, Legal Advisors" for the intent of inciting resistance to the authorities, implementing human rights activities without a license, receiving funds from the National Center for State Courts (NCSC), deliberately spreading false information with the purpose of harming public order or public interest.". United Group's accountant was also summoned on March 15.

What legal measures have been taken in the past weeks against NGOs that indicate prosecution is forthcoming?

Summons by the investigative judge for interrogation: the investigative judge has this week summoned staff from the Cairo Institute for Human Rights Studies, from Nazra for Feminist Studies and from United Group to appear before the investigative judge on March 16th in case number 173 of 2011. The staff members summoned are those responsible for finances within each organisation.

Travel bans: Gamal Eid, founder of ANHRI was informed of his travel ban at the airport on February 4 as he was trying to leave and Hossam Bahgat, founder of EIPR, of his ban on February 23.

Asset freeze: on March 17 Hossam Bahgat and Gamal Eid learnt that the investigative judges had ordered the freezing of their assets and this would be reviewed by the Cairo Criminal Court on March 20.

Closure order: on 17 February 2016, a police delegation sent by local authorities went to the Nadeem Center's offices and handed them an order of administrative closure by the Ministry of Health "for breaching licensing conditions." Four days later Nadeem directors and lawyers met with ministry of health officials who told them that the decision had come from the cabinet.

Recent media reports, including in Egyptian newspapers with long-standing connections to sources in the Interior Ministry/security forces, have linked the timing of this recent escalation to Egyptian NGOs' sending a joint letter to the UNHC ahead of HRC 31 and the European Parliament's highly critical resolution.

What were NGO staff asked during the interrogation?

Only one of the six NGOs workers summoned for interrogation by the investigative judges appeared on March 16. He was asked about their relationship to other human rights groups and to particular directors in at least one other organisation.

Build-up of investigations: NGO inspections and summons

In late 2014, the investigative judge appointed a technical committee from the Ministry of Social Solidarity tasked with determining whether these NGOs are operating as associations without being registered as such under Law 84/2002 and to examine documents related to funding. The committees started with the Egyptian Democratic Academy (EDA) - in January 2015 the judge issued travel bans against members of the organization and summoned them for interrogation in March 2015.

In June 2015, The United Group, a leading human rights organization was referred to interrogation, during which its director was asked about its funding and legal status. In June 2015, CIHRS received a visit from the Committee for the same reasons, including looking into sources of funding. Only one month after that, the Hisham Mubarak Law Center (HMLC) underwent the same investigations. Lawyers at the CIHRS who read the investigators' warrants found that the HMLC and the Egyptian Democratic Academy were also listed as targets. In December 2015, the Arab Network for Human Rights Information (ANHRI) received a phone call from the aforementioned technical committee to inspect their files, but due to the absence of ANHRI's director Gamal Eid, the visit was postponed and eventually did not take place. Additionally, the investigative judge summoned the Egyptian Center for the Right to Education for questioning in December 2015.

Who is behind this prosecution?

Three investigative judges were appointed by the Cairo Court of Appeal based on a request from the Minister of Justice. The investigative panel is composed of judges Hisham Abdelmeguid, Ahmad Abdel Tawab and Khaled el Ghamry. There are a number of technical committees assisting in the investigation, including staff from the Ministry of Social Solidarity, the Egyptian Tax Authority, the Central Bank and the Ministry of Finance.

Former Minister of Justice Ahmed El Zend said in a televised interview on January 28, 2016 that the prosecution in the foreign funding case would soon move ahead. Faiza Abul Naga, who first ordered the investigation, is now National Security Advisor.

How common are travel bans against human rights defenders and women's rights defenders?

To date, at least 10 prominent human rights defenders and women's rights defenders are banned from traveling outside Egypt. Human rights defenders and women's rights defenders only ever find out about travel bans at the airport when attempting to leave and airport officials consistently refuse to inform them of the reason for the ban or even the case number or potential charges they will face.

Those banned from travel include Gamal Eid and Hossam Bahgat (February 2016), Mohamed Lotfy, director of the Egyptian Commission for Rights and Freedoms en route to Germany in June 2015 and Esraa Abdelfattah and three of her colleagues at the Egyptian Democracy Academy in December 2014. The EDA staff appealed their travel bans before an administrative tribunal but in June 2015, the court dismissed the case on procedural grounds.

Are Egyptian rights groups operating illegally or covertly?

No. These groups are all registered as limited liability or not-for-profit companies, law firms or in one case a medical clinic. Labor and tax laws apply to these groups.

Organisations operate transparently with regards to any funding they receive since they are required to submit contracts with their donors to the bank to receive incoming transfers. All transfers to these organizations have been performed through the banking sector under the control of the Central Bank authority. None of these NGOs generate profit since they depend on donations only.

International law is clear that since freedom of association is a right, governments do not have the right to insist on registration under a particular type of legislation. The Special Rapporteur on the right to freedom of peaceful assembly and the right to freedom of association, states clearly that "the right to freedom of association protects unregistered associations on an equal footing."

Would the registration of NGOs under the repressive Associations Law 84 protect against prosecution?

No, The Egyptian Democratic Academy was amongst the first organizations to comply with the ultimatum put forward by the Ministry of Social Solidarity in 2014 - the group applied for registration under Law 84 in October, received initial approval in November to open a bank account and final approval of their registration in January 2015. Yet this has not prevented the investigative judge from summoning EDA staff for interrogation and imposing a travel ban on them.

What is the problem with the Mubarak-era Associations Law 84?

Law 84/2002 as it stands is not consistent with the Egyptian Constitution which allows for associations to be established by notification. The law therefore needs to be amended to comply with the constitutional provision.

Egypt's constitution provides in Article 75 that "citizens have the right to form non-governmental organizations and institutions on a democratic basis, which shall acquire legal personality upon notification."

For decades the independent Egyptian human rights community has fought against Law 84 and called for its reform due to the deeply restrictive and invasive nature of its provisions. For more information please see the [International Centre for Non-Profit Law legal analysis of the law](#).

From 2011 onwards, successive governments have promised to amend Law 84 and have submitted multiple drafts. Human rights groups have at times consult with and at others lobbied parliament and the government on these various drafts. In late 2013 NGOs were part of a government-appointed committee

to consult on the drafting of the Associations Law. Throughout the past two years, rights organizations have invited the Egyptian government to start an open dialogue with the rights movement and cease all forms of harassment of NGOs.

What are the relevant standards under international law to make reference to?

Under the strict standard of Article 22 of the ICCPR, no restriction on the right to freedom of association is permissible unless it is (1) prescribed by law; (2) necessary in a democratic society; and (3) in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. All three tests must be met or the restriction is invalid. This language has long been interpreted to mean that “freedom of association is a right, and not something that must first be granted by the government to citizens.” The UN Human Rights Committee, has found, for example, that Lebanon’s de facto practice of requiring prior licensing before an association could begin operations improperly restricted the right to freedom of association under Article 22. Accordingly, an individual cannot be required to register an organization in order to exercise his or her right to associate. Second, the restriction is not necessary in a democratic society for one of the four justifications articulated in Article 22. A government may not require that a group register as one particular type of legal entity as opposed to another. It is far from apparent why requiring a human rights group to register as an association rather than as civil company is necessary in a democratic society. Nor is it clear how the interests of national security, public order, etc. are served by such a requirement.

The UN Declaration on Human Rights Defenders, which Egypt supported in 1998, says that states should provide the “right, individually and in association with others, to solicit, receive, and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms” (Article 13).

[source of legal analysis: the International Centre for Non-Profit Law]

P.S.

FIDH Egyptian members organizations EIPR and CIHRS and Nazra for Feminist Studies, Association for Freedom of Thought and Expression, HMLC, and the Arabic Network for Human Rights Information.