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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT OPINION

**ON THE DRAFT LAW ON CIVIC WORK ORGANISATIONS
OF EGYPT**

On the basis of comments by

Mr Jan HELGESEN (Member, Norway)
Mr Peter PACZOLAY (Member, Hungary)

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I. Introduction

1. On 11-12 March 2013, Mr Peter Paczolay (member, Hungary) and Ms Simona Granata-Menghini, Deputy Secretary of the Venice Commission, travelled to Cairo upon the invitation of the then Minister of Justice Mr Ahmed Mekki and following contacts with Mr Stavros Lambrinidis, EU Special Representative on Human Rights, in order to hold exchanges of views with the Minister and the working group within his Ministry on the international standards on freedom of association in the context of the preparation of a new law on NGOs.
2. On 28 March 2013, the report on “Standards and legislation relating to Freedom of Association and Non-Governmental Organisations” (CDL(2013)017) drawn up by Mr Paczolay following this visit and a Selection of legislative provisions on freedom of association (CDL(2013)018) were transmitted to the Minister of Justice of Egypt.
3. On 8 May 2013, Mr Stavros Lambrinidis informed the Venice Commission that the Presidency of Egypt would welcome the Commission’s comments on the draft law on Civic Work Entities, which was being prepared by the Presidency (herein after “the Draft Law”).
4. Preliminary comments, prepared by Mr Peter Paczolay and Mr Jan Helgesen (member, Norway), were sent to the Presidency on 23 May 2013. On 29 May, a representative of the Presidency informed the Commission that these preliminary comments had been examined and further amendments had been made to the draft law; she provided certain explanations and arguments, and she requested the Commission’s opinion on the draft law as finalised on 28 May 2013 and as submitted to the Egyptian Shura Council. The text of the draft law was received in Arabic on 1 June 2013 and was promptly translated into English (CDL-REF(2013)030).
5. This opinion examines the Draft Law against the background of the international standards and national legislation related to freedom of association and NGOs, summed up in document CDL (2013)017. However, due to the limited time available and the limited knowledge of the Egyptian legal system and practice, it does not purport to be exhaustive. It was adopted by the Venice Commission at its ... Plenary Session (Venice, ...).

II. Analysis

A. Approach

6. When regulating the legal status of associations/NGOs, two options are – seen from a normative, theoretical perspective – technically possible. The legislation could either describe the rights and duties of such entities, or it could describe the competences of public authorities, administrative and judicial, controlling the associations/NGOs. The first approach might best ensure that the international human rights norms are effectively protected and implemented. The Draft Law has, basically, chosen the latter. It is essential that the Draft Law should not give wide discretionary power to the administrative and judicial authorities to curb or prevent the activities carried out by the associations/NGOs.

B. Definitions

7. A wide range of associations and organisations pertain to the so-called “non-governmental organisations”. The Draft Law aims at regulating basically all kinds of activities by civil society, except commercial activities. While there do exist certain basic features which may apply to most, if not all, civic work entities, it should be stressed that this approach is not the only one possible.

8. The Draft Law in its General Provisions (Article 1) differentiates among eight different types of NGOs, and defines the basic forms of federations and associations.

9. The different types of NGOs in the Draft are the following:

- Civic work is all non-profit work that is carried out by a civic work organisation.
- Civic work organisation is any non-governmental entity established on a voluntary basis by a group of natural or legal persons, or both together, having legal personality, undertaking civic work with the purpose of achieving humanitarian and developmental goals in the context of the values and standards of respect, mutual consent, and tolerance of diversity and difference.
- Association is any group comprising natural or legal persons, or both together, who shall be no fewer than ten in number, for a purpose that does not involve making a financial profit for its members.
- Public benefit association: any association that seeks to achieve a public benefit, whose activity is aimed at serving the community.
- Civic Foundation: a legal entity established by allocating funds of no less than fifty thousand Egyptian pounds upon establishment for the achievement of a non-profit purpose.
- Central association: any association working in various civic work fields and activities, such as a community body, and whose number of founders upon registration is no fewer than one hundred.
- An aid agency is a body consisting of natural or legal persons, or both together, working primarily on humanitarian aid work in times of disasters, wars, and armed conflicts, both domestic and foreign, and on programmes and projects subject to this law.
- Foreign non-governmental organisation: a foreign non-profit legal entity whose main administrative office is located in the Arab Republic of Egypt or abroad, licensed to engage in one or more activities of organisations subject to the provisions of the Draft Law
- Initiative or Campaign is a voluntary affiliation of a group of natural or legal persons or entities subject to this law with the purpose of promoting, encouraging, assisting and advancing the performance of a project through which the capabilities and potential of the entities carrying it out are turned to account.

10. The Draft Law recognises different forms of federations as the regional federation, the specialised federation, and the general federation of civic work entities. Furthermore, it makes possible the voluntary affiliation of different entities (non-governmental - governmental - private - foreign organisations - donors) with the purpose of planning for joint co-operation under the names of network, alliance or coalition.

11. The variety of the different forms of associations is a natural and wide-spread phenomenon, and in this respect the regulation is in conformity with the international standards.

C. Relations with international law

12. The Draft Law is unclear as to the relationship with international law. It is repeatedly stated that the activities conducted by the civic work entities must be carried out according to “*the Constitution* [freedom of assembly is guaranteed in Article 50 of the Constitution, freedom of assembly in Article 51 of the Constitution and Freedom to form trade unions in Article 52 of the Constitution] *and the law*”. In this context it should be recalled that the Egyptian state is bound by its international commitments. Different international conventions ratified by Egypt establish rights for individuals and groups to carry out human rights activities and are part of Egyptian law (Article 145 of the Constitution).

13. In the UN Declaration on Human Rights Defenders of 1998 this relationship is formulated in article 3 as follows: *“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 juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.”*

14. Consequently, the Draft Law on Civic Work Entities itself, as well as the whole domestic legal regime – at the constitutional as well as at the statutory level - regulating such activities, must be in conformity with international commitments.

15. Article 2 of the Draft Law provides that Civic Work entities “shall be bound in their statutes by the constitution, the law, rules on transparency *and human rights* (emphasis added)”. Articles 55 and 56 also refer to international treaties. However, these provisions seem to aim more at restricting the activities of NGOs than at providing them with the necessary guarantees that their fundamental rights will be protected in accordance with domestic and international human rights norms.

D. Legal personality

16. The regulation gives enough freedom to choose the form of the entity. But it provides that all non-governmental organisations can only be established as entities with legal personality – this derives from para 1 of Article 1 stating that civic work organisations have legal personality.

17. In accordance with Paragraph 3 of the Council of Europe’s Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe, acquisition of legal personality is required in order to enjoy particular benefits.

18. The Draft Law is still silent about possible forms of association with no legal personality. In their response to the rapporteurs’ preliminary comments, the Egyptian authorities stressed that there are no consequences for carrying out activities in community without legal personality, but in that case it is not possible to benefit from the advantages the law offers to registered associations.

19. The Venice Commission welcomes this clarification; in order to avoid any misunderstanding, however, it considers that the possibility to establish associations without legal personality should be mentioned expressly in the Draft Law.

E. Registration

20. All forms of NGOs regulated in the Draft Law are subject to a registration process, which derives from the fact that they gain legal personality through it. The most general requirement for all kinds of NGOs is the adoption of a written statute. The content of the statute is defined by the law with detailed content. These provisions follow those in Recommendation CM/Rec (2007)14, art.18-20.

21. The statute of the association is recorded in the Register of Associations kept by the administrative authority that is the Ministry of Insurance and Social Affairs. The procedure appears reasonable both in terms of timing and in substance.

22. The legal personality of the association during the process of establishment is acquired simply by notification accompanied by the necessary documents (Article 6 of the Draft Law). The administrative authority gives the association a certificate with its registration number.

23. Registration of the association may not be refused in any regard, except in a few cases that are determined by the Law. It is a guarantee to avoid a lengthy registration procedure that where there is no objection from the administrative authority, the association is considered automatically registered thirty days after the submission of the notification. This is a very positive provision which deserves to be commended.

24. Registration may only be refused (Articles 6 and 7 of the Draft Law) “if it becomes apparent to the administrative authority within thirty days from the date of notification that one of the purposes of the association is an activity prohibited under Article 10”. Article 10 in turn provides that associations shall be prohibited from having the following aims or engaging in the following activities: 1) the establishment of military formations, units or organisations; 2) seeking to make profit for the members of the association or its board of directors or pursuing an activity for that purpose (...). Pursuant to Article 7, in this case, “the administrative authority must notify the association in writing to remove the conflicting activity within fifteen days. If the association fails to respond, an objection to the establishment of the association shall be brought before the competent court.”

25. On the basis of these provisions, it should be concluded and welcomed that the only possible obstacle to the registration of an association is 1) a statutory conflict with Article 10 of the Law; followed by 2) the refusal of the association to remedy this conflict by amending its statute, followed by 3) a judgment by the competent court. No other hurdle to the operation of an association is therefore established by the Draft Law, notably by its Article 10. This means that the role of the competent administrative authority is limited – and must be seen as limited – to the verification of the formal compliance of the association’s statute and other accompanying documents with Articles 4, 5 and 6 of the Draft Law.

26. It is an important guarantee that if the association fails to respond to the invitation to redress the statutory issue, the case should be brought before the competent court, and the administrative authority cannot refuse the registration on its own. It is, however, of the utmost importance that the courts act in an independent and impartial manner.

27. In general, it is an important guarantee that all decisions of the authorities should provide reasons, and there is the possibility, or even the necessity of judicial review.

28. For the registration a fee should be paid for the Civic Work Entities Support Fund. The amount of this fee should not exceed 200 Egyptian pounds (approximately 20 euros). According to Recommendation CM/Rec (2007)14 “Fees can be charged for an application of legal personality but they should not be set at a level that discourages applications.” (Article 33). This does not seem to be the case.

29. The Civic Work Entities Support Fund according to the Draft Law will function in the framework of the General Civic Work Federation. This is an improvement compared to the present regulation where a similar fund is set up in the Ministry of Social Insurance and Social Affairs. Although the representatives of three relevant ministries are members of the Board of directors of the Fund, it appears to function basically under civil control (Article 65).

30. Special rules apply for certain type of associations. For example, in the case of the public benefit association a further requirement is an application to the competent minister. In the case of the civic foundations the allocation of at least 50000 Egyptian pounds is necessary. The statute may be substituted by an official deed, a notarised bequest or an endowment (a special legal tool in the Egyptian legal system).

F. Financial Supports

31. According to Article 6 of Recommendation CM/Rec (2007)14 “NGOs should not be subject to direction by public authorities”.

32. Article 11 of the Draft Law defines the privileges that NGOs enjoy under this Law by nine specific provisions that include a wide range of exemptions from fees, duties, taxes, customs duties as well as special tariffs and discount on transport costs. This is positive and should be welcomed.

33. There is an unrestricted possibility under Article 13 of the Draft Law of receiving funds and in-kind donations from Egyptian natural and legal persons, residing within Egypt or abroad, from resident foreigners, or foreign non-governmental organisations licensed to work in the Arab Republic of Egypt. This is positive and should be welcomed.

34. However, the Draft Law imposes severe restrictions in respect of funds and in-kind donations from foreign NGOs not licensed to work in Egypt or foreigners not residing in Egypt.

35. Foreign funding of NGOs is at times viewed as problematic by States. The Venice Commission acknowledges that there may be various reasons for a State to restrict foreign funding, including the prevention of money-laundering and terrorist financing. However, these legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights. The prevention of money-laundering or terrorist financing does not require nor justify the prohibition or a system of prior authorisation by the government of foreign funding of NGOs.

36. None of the Member States of the Venice Commission which have been examined has prohibited foreign funding of NGOs.¹

37. The problem to be solved is – and Egypt tries to comply with international requirements in the fight against terrorism – to avoid any possibility of laundering terrorist money in form of foreign funding for NGOs. This is a necessary, reasonable, and acceptable justification for the stricter control of funding from foreign donors. Such control, however, should not be excessive or too burdensome so as to turn into a disproportionate interference to the right to freedom of association guaranteed by the Egyptian Constitution as well as by international standards.

38. The Venice Commission is of the opinion that it is justified to require the utmost transparency on the issue of foreign funding. It finds that it would be acceptable to entrust an administrative authority, through a system of mere notification - and not prior authorisation -, with the competence to review the legality – and not the expediency – of foreign funding. The procedure should be a clear and not cumbersome procedure, with an implicit approval mechanism. The decision-making power should be given to courts and not to the administrative body.

39. Two different provisions of the Egyptian Draft Law deal with this matter: under Article 13 paragraph 2 of the Draft Law, associations wishing to receive funds from “foreign non-governmental organisations not licensed to work in Egypt or foreigners not resident in Egypt” must notify the Co-ordinating Committee set up under Article 53 (see below) about the identity, nationality and place of residence of the donor. The Coordination Committee may object and ask the association to stop the relevant activity; if the association fails to comply, the Committee may ask the competent court to decide on the matter. Under Article 63 § 1, Egyptian NGOs

¹ see Selection of legislative provisions on freedom of association, CDL(2013)018.

wishing to obtain funds from “a foreign Non-governmental organisations which does not have branches in the Arab Republic of Egypt” must apply to the Coordination Committee for the authorisation to receive such funding, providing information on the programmes, projects and activities scheduled to be carried out with it. The Coordination Committee has to decide within thirty days. Negative decisions may be appealed to the competent court (Article 63 of the Draft Law). The relation between these two provisions is unclear to the Venice Commission; it would seem that a foreign NGO which does not have branches in Egypt is either a foreign NGO set up in accordance with an international treaty or agreement, or a foreign NGO not established under an international treaty of agreement which however in that case could not be “licenced in Egypt” (see Article 57 last paragraph); the difference between the two provisions appears blurred. This might be due to inaccurate translation; further explanations would be necessary to understand these provisions fully.

40. The Egyptian authorities have explained that once NGOs are registered or receive the general approval to receive funding, they operate freely and receive funding provided they notify the Coordination Committee without requiring or waiting for any other approval. The Venice Commission would wish to receive further clarifications, as this does not appear clearly from the Draft Law (at least in the English translation).

41. The Venice Commission notes at this stage that the competences of the Coordination Committee are not sufficiently and clearly defined. Under Article 13 of the Draft Law, the Committee may object to the funding, but the legal basis of the objection is not defined. In the absence of such legal basis, the objection may be based on discretionary and even arbitrary grounds, and there is no guarantee of sufficient protection for the association, as even judicial review would not be effective in these circumstances. **Article 13 of the Draft Law should therefore be amended.**

42. Article 63 provides for a system of prior authorisation of funding and related activities, which as such is not in line with international standards. In addition, it fails to provide a clear legal basis for refusing the authorisation to receive the funding. **This provision should be removed or drastically amended (in co-ordination with Article 13).**

43. According to Article 14 of the Draft Law, for any type of fund-raising (television campaigns, charity benefits and postal correspondence), prior notification to the administrative authority (the Ministry) is required and the authority may object.

44. The Venice Commission wishes to refer in this respect to the “Preliminary reflections on standards and legislation relating to freedom of association and non-governmental organisations (NGOs)” (para 28)² and stress that no prior authorisation should be required for fund-raising activities.

45. The UN Declaration on Human Rights Defenders provides specifically that “everyone has 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 through peaceful means in accordance with Article 3 of the present Declaration”. The right of access to funding is to be exercised within the juridical framework of domestic legislation – **provided that such legislation is consistent with international human rights standards.**

46. Funds raised by the NGO as gifts, donations or voluntary contributions are therefore part of the legitimate resources of the NGO

² CDL(2013)017

47. The Egyptian authorities state that this prior authorisation is an administrative/organisational requirement because the government authority cannot refuse an event according to the law unless it is illegal.

48. The Venice Commission accepts that for some fund raising activities which involve for example public meetings or television campaigns certain administrative regulations, including prior notification, may be legitimately required under Egyptian Law. However, these requirements are certainly provided in the applicable legislation and are not superseded by this Draft Law. In addition, there exist in any case the financial reporting obligations and the publicity and transparency requirements which are imposed on associations under Articles 17 and 18 of the Draft Law. Sanctions are provided for breaches of the law. This means that the Egyptian authorities have every means to put an end to possibly illegal activities. Article 14 therefore adds an additional administrative burden for the NGOs, which is not justified. In addition and importantly, the legal basis for the objection to the authorisation is not provided in the law. In these conditions, the objection may be based on discretionary and even arbitrary grounds, and even court review would not be effective. This represents a disproportionate interference with the right to freedom of association guaranteed by the Egyptian constitution and by international standards.

49. The Venice Commission therefore recommends to remove the restriction contained in Article 14.

G. Special rules on Foreign NGOs

50. Specific restrictions are established for foreign NGOs and foreigners not resident or licensed in Egypt. For them, a "Co-ordination Committee" is set up by Article 53 that is formed by decision of the Prime Minister. It is composed of four representatives of relevant ministries and authorities chosen by the relevant ministers and of four representatives of civic work entities chosen by the General Civic Work Entities Federation.

51. According to the Egyptian authorities, the aim of the Coordinating Committee is to consolidate all government entities which the international associations deal with into a single one, in order to facilitate all administration and registration matters. They underline that the law does not confer on the Coordinating Committee the power of control over the associations. The Committee is basically responsible for registering NGOs that receive foreign funding. The Draft Law puts a limitation to government authority over the NGOs and removes any intervention power from the government authority. It also creates a clear reference point with regards to denying registration or objecting to activities, i.e. the constitution and legal framework of Egypt. The Coordinating Committee does not have the authority to stop or intervene in illegal activities or funding without a court order. Once NGOs are registered or are given the general approval to receive funds (in case of the local NGOs receiving foreign funding), they operate freely and receive funding provided they notify the coordination committee without requiring or waiting for any other approval.

52. NGOs which are established in accordance with an international agreement or treaty have to apply for a licence. The Coordination Committee controls that their activity does not conflict with the text of the treaty or agreement (Article 56).

53. For foreign NGOs that are not established under international treaties, the regulation is especially severe (Article 57). Any activity of such organisations may be carried out only after obtaining a licence from the Co-ordination Committee or by a court ruling or as a result of the silence of the administration. The exact procedure for the licence by the Committee and for the fees should be specified in the implementing regulations. The licence for the foreign funds is valid for a renewable five years. The main point in the regulation is to exclude any party political activity from the potential funding (Article 59).

54. Foreign NGOs licensed to operate in Egypt are subject to “monitoring” by the Coordination Committee (Article 62). They have to submit bi-annual performance reports, an annual financial accounts report and any information requested by the Committee on the organisation of their activities. The Co-ordination Committee may object to any activity or method of funding and ask the relevant NGO to stop the activity. If the NGO does not comply, a special committee is set up to carry out a financial and administrative inspection on the basis of the objection and of the NGO’s reasons to persist. If the special committee corroborates the objection, the Co-ordination Committee instructs the NGO to “address the reasons for the objection” within fifteen days, failing which the Co-ordination Committee may seek that the court suspend the activity pending its final decision on the objection.

55. The Venice Commission recalls that under international standards, a system of prior authorization of some or all of the activities of an association is incompatible with the freedom of association. In addition, the Commission finds such a system would almost inevitably be impracticable, inefficient and costly, as well as likely to generate a significant number of applications to courts, with a consequent unwarranted transfer of workload (and danger of clogging up) to the judiciary.³

56. The Venice Commission has explained above, in connection with the procedure of prior authorisation of fund-raising activities, that the applicable Egyptian legislation on specific forms of activities (demonstrations, public events, television campaigns and so on), coupled with the financial reporting obligations and the publicity and transparency requirements which are imposed on associations suffice to enable the Egyptian authorities to put an end to illegal activities. Sanctions may be applied. For foreign NGOs, the procedure of licensing provides an additional possibility for the Egyptian authorities to make sure that the legal requirements of Articles 56 and 57 should be met. **The Venice Commission therefore finds that there is no justification for closely monitoring foreign NGOs.**

57. In addition and importantly, the Draft Law fails to provide the legal basis against which such monitoring should be done. The grounds on which the Coordination Committee may object to activities or fund-raising are not specified (respect for the Constitution and the law of Egypt is too broad a yardstick), which results in too broad discretionary powers in the hands of the Co-ordination Committee, hence a lack of protection, including through courts, of foreign NGOs from arbitrary decisions.

58. The Venice Commission therefore recommends amending Article 62 of the Draft Law.

59. Finally, as concerns the composition of the Co-ordination Committee (four representatives of relevant ministries and authorities chosen by the relevant ministers; four representatives of civic work entities chosen by the General Civic Work Entities Federation; the minister as Chair of the committee), the Venice Commission finds that even though it appears to be balanced on paper, in practice it might enable the government, notably through the security services, to exercise a very tight control over civic work entities, which would be unwarranted. A transparent mechanism of appointment of the members of the Co-ordination Committee, including a system of election by the General Civic Work Entities Federation, should be designed and introduced in the law.

H. Financial transparency

60. The Draft Law contains detailed rules for the monitoring of the financial activity of the NGOs. Thus the regulation tries to comply with the requirements of the fight against terrorist

³ CDL (2013)017, para 21.

activities, and especially the cautious control of money transfers. Obviously, the strict regulation and control of all financial manoeuvres puts a burden on the every-day operation of the NGOs but all in all there is a delicate balance between the requirements of financial transparency and the appropriate functioning of the civil associations. This has to be appreciated compared to the previous drafts that wanted to consider the funds of the NGOs as public funds allowing direct state control over the financial activities of these organisations.

I. Transitional provisions

61. The transitional provisions allow one year for the adaptation of the NGOs to the new regulation. This is a reasonable and acceptable time limit. Nevertheless, the immediate entry into force of the new Law (the next day following its adoption) is exaggerated: more time should be allowed in order to get acquainted with the new Law.

III. Conclusions

62. The new Draft Law is definitely an improvement compared to previous draft laws on Civic Work Entities. Most of its regulations follow international standards, although there are some important exceptions.

63. Indeed, the Draft Law contains considerable positive features, such as: registration of NGOs is obtained through simple notification accompanied by the necessary documents, in a procedure which appears reasonable both in terms of timing and in substance; refusal to register appears to be limited to very specific circumstances (article 10 of the Draft Law) and must be decided by a court, the administrative authority not having this power; in general, all decisions of the authorities should provide reasons, and there is the possibility, or even the necessity of judicial review; NGOs are given an extensive list of privileges and enjoy an unrestricted possibility of receiving funds and in-kind donations from Egyptian natural and legal persons, residing within Egypt or abroad, from resident foreigners, or foreign non-governmental organisations licensed to work in the Arab Republic of Egypt; the principle of proportionality is explicitly provided in the application of penalties by courts (article 72).

64. The Draft Law however still contains certain problematic provisions.

65. It takes too severe a standpoint in respect of foreign NGOs, and the operation of the Coordination Committee – although four of its members represent civil organisations – might lead to the control and even direction of the operation of foreign NGOs by public authorities, which would be contrary to international standards.

66. Prior authorisation of the activities of foreign NGOs not established under international treaties and monitoring of licensed foreign NGOs is not in line with international standards. The relevant provisions should be amended.

67. The need for prior authorisation for fund-raising should be removed.

68. The need for prior authorisation for receiving foreign funds should be removed.

69. A transparent mechanism of appointment of the members of the Co-ordination Committee should be designed and introduced in the law.

70. The Draft Law should also make clear that associations are allowed to operate, under certain conditions, without having legal personality.

71. The Venice Commission is ready to provide further assistance to the Presidency of Egypt in order to improve this Draft Law and to bring it fully in line with international standards.