



POLICY PAPER

No. 33 (81), December 2013 © PISM

Editors: Marcin Zaborowski (Editor-in-Chief) ● Wojciech Lorenz (Managing Editor)
Jarosław Ćwiek-Karpowicz ● Artur Gradziuk ● Piotr Kościński
Roderick Parkes ● Marcin Terlikowski ● Beata Wojna

Storm over Foreign Funding Continues in Egypt

Kinga Brudzińska

Similar to the situation before the Arab Awakening, state control of civil associations in Egypt remains intact. Correspondingly, foreign funding for NGOs is still a controversial, selective and sensitive topic. Despite the objections of civil society and the international community, a new draft law on NGOs presented in September 2013 will most likely maintain the idea of state oversight of civil society organisations. The European Union, and Poland itself, should constantly monitor the status of the new draft law and actively encourage the authorities to comply with international standards. Despite difficulties with delivering the aid, the EU should stick to its values while supporting Egypt's transition and continue to provide aid to local NGOs.

The systemic transformation in Egypt has produced a range of visible emotions in civil society, from joy to frustration and impatience. The expressions of relief or anger after the ouster of President Mohamed Morsi from power has resulted in extreme political polarisation, deteriorating economic conditions, and restrictions on freedom of association and media, which has resulted in the dominance of the army in the country's political system. The adoption of a restrictive protest law on 24 November, the approval of a new draft constitution by a constitutional committee that grants the armed forces special privileges, and the proposal of a new, restrictive NGO draft law diminish hopes that the new government will fulfil its promise to restart the democratic political process. The difficult living conditions in Egypt are also reflected in the Legatum Prosperity Index, an annual ranking based on various factors such as wealth, economic growth, and quality of life, where Egypt ranks near the bottom (108th out of 142 countries).

The Egyptian transition is also characterised by a disturbing new increase in efforts to tarnish the image of international human rights organisations and local civic associations, especially those working in the field of public freedoms and rights. The state-run newspaper *Al-Ahram* recently published a six-part series vilifying such groups as the National Democratic Institute (NDI) for funding a "fifth column" that endeavours to destabilise Egypt.¹

Even more controversial than the work of civil associations has been their foreign funding. Consecutive governments have accused such organisations, including those that focus on culture, the arts and education but receive foreign funding, of being foreign agents and traitors, even though NGOs cannot find funding in Egypt and are necessarily forced to get it from non-Egyptian sources. This trend was seen during Morsi's

¹ J. Diehl, "Obama's Bad Choices on Egypt," *Washington Post*, 14 October 2013, www.washingtonpost.com/opinions/jackson-diehl-the-white-house-avoids-hard-choices-on-egypt/2013/10/13/4e669986-31c9-11e3-9c68-1cf643210300_story.html.

rule when the political forces accused each other of allowing their NGOs to be financed from abroad, using it as an argument to prove external interference in internal affairs. Last June, an Egyptian court convicted a total of 43 Americans, Europeans, Egyptians and other Arabs for participating in illegal pro-democracy activities, and ordered the closure of the international NGOs involved in the so called NGO case—U.S.-based NDI, the International Republican Institute (IRI), Freedom House and the German political foundation Konrad Adenauer Stiftung. This policy reflects, foremost, the negative perception of international aid from the West, not only by Egyptian authorities but also society, which has been manipulated by state-sponsored media. Even though in comparison with 2012 Egypt has improved its ranking by eight positions in the Reporters Without Borders World Press Freedom Index, in 2013 it still ranks 158th out of the 179 countries measured.² Moreover, in November 2013 Reporters Without Borders sent out an alert that a policy by the new Egyptian authorities to repress media and control information reflects a continuation of practices in effect since 2011.³ According to polls conducted back in 2005, only 6% of Egyptians believed U.S. democratisation policy (69% of respondents thought democracy support is not the real objective of U.S. policy). It is worth mentioning that the negative view towards the United States is not related to a rebuff of American values but rather a rejection of American policies in the Arab world. To Egyptians, like most Arabs, America's democracy promotion efforts are a fig leaf for wars designed to control oil and help Israel. After June 2013, there was also a shift in the perception of Western aid. While in the past the negative perception was directed mainly at U.S. aid, it changed to include aid from the EU, which is now viewed with suspicion by some groups in civil society.

The most worrying indicator in the Egyptian transition is that due to protracted political turmoil and uncertainty about the future of the systemic transition, people tend to be more willing to accept harsh provisions proposed by policymakers. Recent polls conducted by Baseera, the Egyptian Centre for Public Opinion, show that 57% of Egyptians who had heard of the recently passed, controversial draft protest law, approve of it. Of respondents, 62% also approve of another bill announced by authorities to combat terrorism.⁴ This could suggest that the enactment of the restrictive NGO law could be even more socially acceptable in Egypt.

What is the Problem with Foreign Funding?

While budget support to Egypt differs from civil society funding from abroad, the perceptions of both types of aid seem to influence and stimulate one another. The different sources of external aid that flew into the country after the 2011 revolution (especially from the Arab Gulf countries as well as from the West) make the picture of external funding even more complex and confusing for society.

Between June 2011 and 2013, Qatar was one of the biggest economic supporters of Egypt, having deposited during President Morsi's administration aid worth \$7.5 billion. Today the military-backed government receives government aid from Saudi Arabia, the United Arab Emirates, and Kuwait worth about \$14 billion. To compare, the amount of Western aid provided to Egypt—the U.S. provides on average \$1.6 billion and the EU has allocated broadly \$207 million annually between 2007 and 2013—is a tiny drop in the bucket of

² The index reflects the degree of freedom that journalists, news organisations and others enjoy in each country and the efforts made by the authorities to respect and ensure respect for this freedom. See: "2013 Reporters Without Borders World Press Freedom Index," <http://en.rsf.org/press-freedom-index-2013,1054.html>.

³ Reporters Without Borders is a non-profit organisation that has consultant status at the United Nations and UNESCO. See: "New Wave of Attacks on Freedom of Association," 5 November 2013, <https://en.rsf.org/egypt-new-wave-of-attacks-on-freedom-of-05-11-2013,45420.html>.

⁴ "The Demonstration and Terrorism Laws," Baseera—the Egyptian Centre for Public Opinion, http://baseera.com.eg/baseera/pdf_poll_file_en/Demonstration%20and%20terrorism%20laws%20-%20en.pdf.

total foreign aid.⁵ Still, Western aid specifically for strengthening civil society, which is only a small part of the total of foreign aid, remains undesirable in Egypt. EU assistance to civil society organisations and non-state actors provided under the Neighbourhood Investment Facility (NIF), the European Instrument for Democracy and Human Rights (EIDHR), or thematic programs under the Development and Cooperation Instrument (DCI) amounted to about \$4.3 million annually between 2007 and 2013.⁶ U.S. assistance to civil society groups reached an average of \$13.5 million per year in the same period (with a significant decrease from \$20.4 million in 2010 to \$1.5 million in 2013).⁷

There is a common perception in Egypt that NGOs with foreign funding serve the donors' interests rather than genuine causes on the ground and that they allow foreigners to interfere in Egyptian domestic issues. Robert Becker, an American NGO worker who was convicted in the NGO case and received a two-year jail sentence, said in an interview for the Washington Post in October 2013 that in practice his conviction was related to rhetoric accusing him of being a spy with the intention to divide Egypt. As a result of the case, in which the final order included a mandate to close the offices of five foreign NGOs, there is not a positive environment for re-opening or setting up new international organisations.

According to Minister of Social Solidarity and Justice Ahmad al-Borai, in light of the country's current policy on fighting terrorism, NGO control is inevitable given the critical threats the country is facing. This past October, the Ministry of Solidarity and Justice started discussions with the National Council for Human Rights to draft an anti-terrorism law "specifying terrorism crimes and penalties facing perpetrators." Therefore, in the mindset of the interim authorities, the restrictions on foreign funding and government monitoring of NGOs are supposed to prevent sponsoring "groups of evil" that are a menace to national security.

Civil Society under State Control

Due to the restrictive laws under which civil society operates and the lack of appropriate funds, human resources, and administrative capabilities, the NGO sector in Egypt is weak. But the problem of civil society in Egypt has never been about bureaucracy or a lack of coordination amongst government bodies, rather the issue has always been the absence of enough political will to allow civil society to work freely. Even though the level of oversight of NGO activists did not increase after the 2011 revolution, it did not decrease either. Interventions in daily work without legal support persist, i.e., denial of licenses and approval to receive foreign funds as well as vague grounds given for the denial of an NGO's mandatory registration. There are also sanctions on violations of NGO laws (for example, for conducting "political activities"), which include dissolution, prosecution, and even imprisonment. It has become common knowledge that registration or funding requests are granted only following the acceptance by the various state security entities. There have even been some cases in which the Ministry of Social Solidarity has refused to allow the registration of an NGO on the basis of an unsuccessful security clearance. As Law 84 of 2002 does not say anything about the role of the security apparatus in this process, when such cases are taken to court, the denial of the registration is often overruled. It seems that even the Ministry of Social Solidarity does not even try to cover up the security apparatus' interference in the operation of NGOs.

Even though charity organisations (numbering around 42,000, of which 20% are large organisations) seem to be a more popular form of organisation and dominate the non-profit sector in Egypt, the estimated

⁵ "The EU-Egypt Relations," the European Commission MEMO/13/751, 21 August 2013, http://europa.eu/rapid/press-release_MEMO-13-751_en.htm; The U.S. Foreign Assistance to Egypt, www.foreignassistance.gov/web/OU.aspx?OUID=165&FY=2013&AgencyID=0&budTab=tab_Bud_Planned&tabID=tab_sct_Peace_Planned.

⁶ In total, the EU aims at delivering \$31.1 million between 2007 and 2013, "The EU-Egypt Relations," *op. cit.*

⁷ In 2011 and 2013, aid to civil society was, respectively, \$6.1 million and \$6.2 million. See: "Democracy, Human Rights, and Governance Category by Fiscal Year, Egypt, 2010-2013," U.S. government, www.foreignassistance.gov/web/OU.aspx?OUID=165&FY=2012&AgencyID=0&budTab=tab_Bud_Planned&tabID=tab_sct_Democracy_Planned.

number of associations, foundations, non-profit companies, and unions has slightly grown in the last five years, from 24,500 in 2007 to 30,000 in 2013 (this number is small if we compare it, for instance, with Poland, which has half the population but some 80,400 active NGOs).⁸ The existence of different legal statuses in Egypt for NGOs has to do with the level of government interference in their activities. Due to the fact that the Ministry of Social Solidarity and Justice, which is responsible for the registration and oversight of associations and foundations (informally, the process is controlled by the security agencies), most of the organisations that operate in such areas as human rights, free media, and civic education, register as not-for-profit companies (civic companies or law firms). Therefore, they are subordinated to the Ministry of Industry and Trade, which does not monitor their activities. Under the law, NGO engagement in “political activities,” which translates into NGO advocacy and watchdog activities, is forbidden.

A Change without Change

Since 2002 when Law 84 was enacted, there have been several theoretical attempts to lift its restrictive provisions. In practice until now, every proposed draft law equally limited freedom of association. For example, the draft law from May 2013 included a provision to create a Coordination Committee that would consist of four representatives from both the ministries and “concerned entities”—which was a clear reference to security and intelligence agencies. The claim that the coordinating committee would be created to facilitate interactions between government bodies bore no proof. The bill also viewed foreign funding and domestic fundraising through donations (Art. 14) as a crime warranting a fine of \$1,400–14,000, and even the dissolution of the NGO. The ouster of President Morsi meant the draft law did not enter into force.

In July 2013, the military-backed government called again for changes in Law 84, and formed a High Committee to draft the NGO law committee, and by September had already concluded its work on the bill. Although Minister of Social Solidarity Ahmed al-Borai made sure the committee included 18 representatives from civil society (i.e., lawyers, political activists, and representatives of labour unions, women’s organisations and young people) and that the draft law passed through several community dialogue sessions, many civil society representatives at the local and international levels believe that the new law will keep maintaining state control of the NGO sector, as there is little political will for constructive changes. There are four main areas of concern about the new draft NGO law: 1) foreign funding, 2) international organisations, 3) the status of not-for-profit companies, and 4) penalties for violations.

As for funding, the draft law does not allow NGOs to receive funding from abroad without prior approval from the Ministry of Social Affairs (the novelty is that if the ministry does not object within 30 days, the NGO may, however, use the funds). The draft law does not set up clear grounds on which the ministry may object or specify what an NGO should do with the funds if the court rules them to be impermissible. As for international organisations, the draft bill neither specifies the kind of documents they should present in order to be registered with the Ministry of Foreign Affairs nor the period for registration, which may prolong the process indefinitely. The negative impact of the draft bill on non-for-profit companies seems to centre on the prohibition of entities that perform work similar to an NGO, and includes a fine of about \$290 for each case of a lack of compliance. Finally, the law allows the ministry to file a request to dissolve an organisation based on rather broad grounds, such as an NGO’s “failure to achieve its objectives.”

So, in fact, if the proposed NGO draft law is similar to the recent protest law and if passed, it will not be fully in line with international standards and with Egypt’s commitments under international human rights laws that Egypt has signed. In particular it would violate Article 22 of the International Covenant on Civil

⁸ “The third sector in Poland (2010),” Central Statistical Office, Warsaw 2013, p. 25, www.stat.gov.pl/cps/rde/xbcr/gus/GS_stow_fund_i_spol_podm_wyz_2010.pdf.

and Political Rights, Article 10 of the African Charter on Human and Peoples' Rights, and Article 20 of the Universal Declaration of Human Rights on the right to freedom of association with others. Even though some restriction on foreign funding is possible, it is acceptable if applicable by law and applied to maintain national security, public systems, public health and morals, or protection of the rights and freedoms of others. Any other restrictions on foreign funding are not compatible with such agreements as the UN Declaration on Human Rights Defenders from 1998, which ensures that each country is responsible for protecting human rights and fundamental freedoms by adopting the necessary steps to provide the proper environment.⁹ One of these steps is to guarantee the right of individuals or groups to search for, receive or utilise resources in order to support and protect human rights and fundamental freedoms. Therefore, it is not allowed (with some exceptions) to put restrictions on the right to freedom of association.

Conclusions and Recommendations for the EU and Poland

Civil society plays an important role in pressuring the transition to democracy. A range of historical examples, such as those in Poland, Indonesia and South Africa, also demonstrate that broad-based and peaceful civil society movements are a crucial factor in helping young democracies consolidate and sustain their activities. One of the most effective steps that civil society organisations can take in the early stages of a transition, however, is to adopt democratic representative politics. Only in this manner will they be able to fulfil functions such as checking and correcting abuse of power, disseminating information and ideas, empowering citizens, and ensuring the effective functioning of democratic institutions by monitoring voting, parliament or the budget. On the other hand, the policymakers' role is to strengthen the rule of law in ways that allow civil society to flourish. Civil society always needs, and deserves, strong laws to underpin its legitimacy. But the laws should obviously help them to participate freely in civic life rather than restrict their activities. Receiving funds is considered a mainstay of civil associations and should not be seen as a crime. Even, for example, the failure to fulfil legal requirements for disclosure of funding sources should not be considered a crime and should not be harshly penalised, but rather face such consequences as the removal of tax exemptions.

The European Union, and Poland itself, should constantly monitor the status of the new draft NGO law and actively encourage the authorities to comply with international standards. The EU already has experience in working with the Egyptian authorities on these issues. Following a meeting with EU Special Representative for Human Rights Stavros Lambrinidis on 11 February 2013, Egypt's former minister of Justice requested the Venice Commission's assistance in the preparation of the law on NGOs. The working meetings were attended by representatives of both sides and took place in Cairo on 11–12 March 2013.¹⁰ EU high-level visits to Egypt followed these efforts. If there would be enough political will on the Egyptian side, bearing in mind the EU's extensive network, its first-hand knowledge about the process of the creation of the previous draft law (i.e. the EU Delegation in Cairo focuses on human rights and democracy),¹¹ and information on international freedom of association standards prepared for Egyptian authorities in March

⁹ The declaration is not, in itself, a legally binding instrument. However, it contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding, such as the International Covenant on Civil and Political Rights (to which Egypt is a part). Moreover, the declaration was adopted by consensus by the General Assembly, and therefore represents a very strong commitment by States to its implementation. See: "Declaration on Human Rights Defenders," www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx.

¹⁰ The meetings were attended by: Peter Paczolay, member of the Venice Commission; Simona Granata-Menghini, Deputy Secretary of the Commission; the Minister of Justice and the Working Group within his Ministry; as well as representatives of the European Union Delegation to Egypt. See: "European Commission for Democracy through Law (Venice Commission)," CDL (2013)017, 28 March 2013, [http://www.venice.coe.int/webforms/documents/?pdf=CDL\(2013\)017-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2013)017-e).

¹¹ The EU's new Strategy and Action Plan for Promoting Human Rights adopted in June 2012, empowered the EU delegations to conduct human rights diplomacy directly with third countries and promote human rights through a broader variety of activities, such as observing trials and protecting human rights defenders. "EU Strategic Framework and Action Plan on Human Rights and Democracy," EU, 25 June 2012, www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf.

2013 by the Venice Commission, the chances for successfully lobbying for a decent NGO law could be higher.¹²

Apart from diplomatic leverage, despite limited EU influence, to affect the legal environment in which civil associations and companies operate, the Union should stick to its values while supporting Egypt's transition and continue to provide aid to local NGOs. Due to the rapidly changing environment, the EU should, however, ensure that its policies reflect the local context (for instance, when it enabled the granting of aid to not-for-profit companies). It should also direct aid not only to the biggest and most established civic associations and companies but also to smaller players, such as those working on media freedom, tolerance, civic education, and women's issues that were established after the 2011 revolution but which had to cease their activities or maintain a low profile after the NGO case.

While the European Endowment for Democracy (EED) has already started to distribute funds, it could also deliver support for non-registered actors or those lacking necessary funds for administrative work. The EED, members of whom have already been to Egypt once to meet with civil society representatives there, should take a cautious approach, build its network capacity while relying on the EU Delegation and EU Member States' diplomatic corps, and try to reach out to a greater variety of human rights and democracy activists and defenders. The EU could also keep creating a platform for dialogue between it and the Egyptian government and opposition. Apart from a high-level visit by EU officials to Egypt, the EU could expand youth-to-youth forums that could gather various actors from different political backgrounds outside Egypt. The EU-Middle East Youth Forum in Brussels, created by the European Parliament, that will take place in December 2013 is a good start.

As there is confirmation by the Higher Elections Commission that 67 local NGOs have been granted the right to observe voting on the referendum on Egypt's amended constitution (probably in January 2014) and forthcoming parliamentary elections (March/April 2014), the EU should encourage capacity-building and knowledge transfers to approved NGOs. The EU Member States could also follow Poland's example in terms of sharing its experience with the Egyptian Higher Elections Commission in which five Egyptian election officials, including Abdel-Moez Ibrahim, the head of the Supreme Elections Committee, accepted a Polish invitation to observe its parliamentary election in October 2012. Gaining first-hand experience in holding free and fair elections could serve officials, and if possible, also Egyptian security forces, media, judges, and NGOs, to develop an efficient way to manage and implement large-scale elections.

Although Egypt was not included as a priority country, unlike Tunisia and Libya, in the Multiannual Development Cooperation Program 2012–2015 or in the "Support for Democracy" programme 2014 (which did include Tunisia) implemented through the Polish democracy support agency Solidarity Fund PL, Poland should consider increasing aid to Egypt in the next budget period. This aid could be delivered through the Solidarity Fund PL or other means, such as a system of small grants distributed by the Polish embassy in Cairo. The additional funds could help with the organisation of seminars in Egypt or workshops in Poland for, for instance, young activists, politicians, and NGO leaders from various political backgrounds on national reconciliation and "Round Table"-type agreements, and help them to build negotiation skills and creative and critical thinking, or with capacity-building. Having experience already in working with Tunisia, Polish NGOs could start working with Egyptian NGOs once the political situation stabilises. Poland, as a country with broad experience in democratic transformation, could also share with Egypt practical knowledge in creating laws, such as those for NGOs, and actively support the activities of the EU in its commitment to working closely with all stakeholders to ensure that new laws are fully in line with international standards. A jointly signed letter offering experience and best practices on the regulation of the work of NGOs, which was shared in a meeting with Egypt's Shura Council, and co-signed by the Polish

¹² "European Commission for Democracy through Law," *op. cit.*

Ambassador, is a good example of giving moral support to the democratic transformation as well as technical knowledge to Egyptian policymakers.¹³

There is no doubt that enabling a fruitful transition and promoting democracy in Egypt is an extremely difficult and frustrating task for outsiders, but the alternative—a failing Egypt left on its own—is worse for European interests. Increased Polish engagement with such an important country in the region would certainly strengthen Poland’s position as a visible, credible and responsible participant in global processes and international cooperation. On the other hand, it would help create suitable conditions for the development of civil society in Egypt.

The Policy Paper is a result of cooperation between the Polish Institute of International Affairs and the Al-Ahram Centre for Political and Strategic Studies in Cairo facilitated by the Anna Lindh Foundation’s “DAWRAK–Citizens for Dialogue” twinning programme.



¹³ The letter was signed by the ambassadors for the Netherlands, Germany, Canada, Poland, Sweden, and Switzerland, and the Deputy Chief of Mission of the European Delegation on 25 March 2013. See the letter at www.swedenabroad.com/en-GB/Embassies/Cairo/Current-affairs/News/Ambassador-Steeghs-letter-to-the-Shura-Council-sys.