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Statement of attorney at law Negad El Borai

**Debate convened by the permanent mission of Egypt to
the UN**

In attendance

**Minister of social solidarity, and Minister of International
Cooperation.**

Regarding,

The new civil society law and it's executive regulations



Your excellences,

As a human rights defender, and a lawyer operating engaged in the civil work in Egypt, for more than thirty years, I can say that, in my opinion, the law no.149 of the year 2019, can be considered as a small victory, yet a very important one, given the battle that has been ongoing on since 1964 for civil societies to be able to work in the field of development as an " equal partner" to the government.

This law is with no doubt better than the previous law no.70 of the year 2017, which can be described as disastrous in all aspects. It is also relatively better than the law no.84 of the year 2002. As the current law reflects the power balance between societal and political actors at the time of its formulation. However, as a human product, the law cannot be free from flaws, and can be always subject to criticism, but this should not prevent us from admitting that it has responded to certain vital demands of civil societies.

- All associations are registered upon notification.
- Private individuals and corporations are allowed to undertake initiatives and/or campaigns to implement activities of civil nature, for a renewable period of one year.
- Should the administrative relevant entity failed to respond to the request of foreign funding either with approval or rejection, within 60 working days (as stipulated in the law), the application is considered approved.
- Allowed Civil society through a notification sent to The Ministry of Social Solidarity, to obtain funding from any Egyptian or foreign non-governmental association authorized to operate inside Egypt.
- The relevant administrative body does not have the right to dissolve a civil association on its own discretion, it must resort to court.
- In case the relevant administrative body decides to suspend the activities of a civil society, it has to present this decision before court within 3 days from taking this decision, or it shall be considered void.
- The imprisonment penalty was canceled for violating the provisions of the law



Although it is an exaggeration to say that this law has mitigated all challenges faced by NGOs in Egypt since 2011, yet on the other hand it is unfair to deny the progress achieved by this law, and claim that it placed more severe and harsh restrictions on them.

In my opinion, this law is an extremely promising start, yet this is conditional on how it shall be implemented. Will it be implemented in the spirit of the law and in support of the idea of the independence and freedom of civil society? Or will it take a different turn where control replaces co-operation.

The answer to these question will need some time to answer, as there is a need to determine how the government intends to implement the law. However, some articles of the executive regulations, that were published this year, may cause some practical issues during implemented, in addition to articles that contain clear violations of the law.¹

¹ For guidance below, a non-exhaustive list of examples of flaws in the executive regulations;

- Until a license is obtained, the law prohibits any civil association from implementing any activity stated in its by-laws, if this activity requires a license from another entity i.e obtaining legal assistance and/or conducting a survey. The executive regulations expanded on this restriction by prohibiting the civil association from announcing the implementation of any activity before obtaining a license; this is an undue restriction that was not stated in the law. Article (29) states: " Until a license is obtained, civil associations are prohibited from announcing and/or practicing any activity listed in its by-laws if this activity requires licensing from any authority."
- The law requires from any civil association to obtain a license before entering any partnership with other foreign associations to implement civil activities., whereas article 32 of the executive regulations required that in order to obtain a license from the Ministry of Social Solidarity; there must be " positive tangible return " from this affiliation. How can this return be measured? and who shall measure it? Does the relevant government body envision that a civil association shall resort to court to prove that its partnership with a foreign association had a positive return? knowing that the process may take years? .
- The executive regulations have violated the law when they assigned an **unknown authority** to be responsible for giving approvals on foreign funding. Article 43 states " for the unit- **and after consulting with relevant authorities**- the right to approve or reject the foreign funding application within 60 working days. Starting the count from the day of notification. If the relevant administrative body did not respond to the request within the time frame, then the fund is approved by law. " What is the unknown unit? on what basis are requests approved or rejected? does the civil association have the right to contact and discuss the decision with this unit? The Executive Order has turned the administration into a mere intermediary between the civil community and unknown authorities that has no legal role in this. Which makes all the facilitations referred to in the law rather questionable.
- Despite the fact that the law clearly established how the Association could be dissolved or suspended, the dissolution of the Association is effective based on the Administrative Court of Justice judgment, following the request of the administration. The administrative authority is required to submit the order to the Administrative Court of Justice within seven days from the date of its issuance, otherwise it would be considered null. These decisions do not prevent the association Board Directors from carrying out its functions until the final Court ruling is issued. However, article 74 of the implementing regulations provides for new procedures that are not stipulated



Such as it prohibited associations from receiving donations from Egyptians who reside outside Egypt, unless they get approval from the Ministry of social Solidarity. This undermined the position of local NGOs compared to foreign and international NGOs registered in Egypt, as they are allowed to receive funds from abroad just by sending notifications.

If the government considers that it is impractical to amend the executive regulations before testing it on the ground, then the government should adopt an alternative path through allowing civil society to be a partner in monitoring implementation and developing solutions that might arise. The government also should be transparent by announcing clear and specific steps on the engagement of civil society in the monitoring processes, and how it will be executed.

- The First Step in my opinion is; declaring the permanent suspension of investigations related to case no.173 of the year 2011. This case, started in March 2011, and still going on till now. It does not bear any legal justification or reasoning for its existence. As it bans hundreds of civil society activists from traveling, froze their assets, and forcibly closed offices of a number of important human rights institutions. As a result of these investigations and the procedures taken against civil society, many human rights activists and associations chose to relocate and work from abroad since 2013. This case has put a heavy strain on the relationship between non-governmental and government organizations. Charges against defendants should

under the law. The executive list allows government administration to control the work of the association while it is still looked in the court. The article states: "The competent unit or sub-unit may request the Department of Public Prosecutions to issue a decision to restrict the association Board of Directors from any activities until a court judgment is issued either by dissolution of the association or isolating the board of directors. In case public prosecution decides to suspend the operations of the Board of directors, the unit or sub unit may place a request at the ministry of social solidarity asking to appoint a committee of at least 3 expert matter member and maximum 7 members, to be responsible for the civil association until a decision is taken by court. This competent unit must obtain the signature and approval of the chairman of the newly assigned committee in order to access and deal with the civil association's bank account. All actions are illegal and expands the administration's control over the association.



be dropped, the right to travel and return back home must be guaranteed for all those accused in this case. In addition to drop any court rulings that may prevent human rights activists abroad from returning to their homeland.

- The second step is to immediately approve all registration applications submitted by well-known and credible human rights organizations, such as the Egyptian Initiative for Personal Rights, Nazra Foundation for Feminist Studies, and others. As well as release all detained human rights activist, in order to enhance the climate of trust and encourage human rights organizations to apply to work under the umbrella of the new current law and resume their struggle for the freedom of civil society from within Egypt.
- The third step, is to create a constructive relationship between government and nongovernmental organizations, by engaging qualitative and regional unions, and human rights activists in decisions making processes related to monitoring the implementation of the law and its executive regulations, and by looking into proposals made by nongovernmental bodies to ensure easier implementation of the law.

Your excellences,

I hereby thank the permanent mission of Egypt to the UN for giving me this unique opportunity, I thank you all for your attendance and would like to stress on the importance of constructive collaboration between government and nongovernmental organization for the development of our country to be able to face the many challenges ahead of us.