



*Further background on Case No. 173 – the case against human rights NGOs*

### **Imminent Risk of Prosecution of HRDs accused of committing human rights work**

The prosecution of Egyptian NGO leaders on criminal charges related to their legitimate human rights work appears increasingly imminent. Over the past three months, the three investigative judges in “Case 173 on foreign funding” have issued at least four new travel bans (bringing the known total up to 12), added a further 9 individuals to the asset freeze trial (bringing the total up to 13) and summoned at least 5 further NGO staff for interrogation (bringing the known total up to 17 human rights defenders interrogated about their human rights work).

Over the past six months, **at least twelve Egyptian human rights NGOs** have been affected by specific repressive measures (including travel bans, asset freeze orders, summoning of staff or directors for interrogation, and closure orders) but the total number of NGOs targeted through temporary measures associated to case 173, and other repressive measures, could increase.

The acceleration of the investigation in Case 173 comes amidst an increase in arrests, long-term detention and prosecutions of political activists, as well as moves against the Journalists’ Syndicate and the few remaining critical voices in the media. HRDs currently imprisoned include labor rights lawyer Haitham Mohamadein, who worked for years for El-Nadeem Center for the Rehabilitation of Victims of Violence.

#### **What is the status of the investigations in Case 173?**

An indictment of NGO leaders, and possibly staff, will very likely occur soon since investigative judges have all they need to proceed with formally charging human rights defenders. The judges have interrogated security agencies who stated that these human rights organizations are harming national security through their activities. They have obtained a court order giving them access to private bank accounts of HRDs as well as their organizations’ accounts, and they have interrogated bank employees about incoming transfers to the relevant accounts. The judges could therefore formally charge/ indict

the human rights defenders at any moment. They have started to summon financial and program staff from various organizations to interrogate them about their groups' activities, funding and management.

### **What are the charges against HRDs?**

The actions being investigated in this case are the human rights work of these organizations. The components of these "crimes" are the transfer of funds to illegal entities (these rights NGOs) using those funds for illegal purposes, such as those listed in the following provisions. The charges listed in the case documents obtained by defense lawyers are under:

- Article 78 of Egypt's Penal Code, which carries a life imprisonment sentence (as amended by President al-Sissi in September 2014) for the receipt of money from abroad for the very vaguely worded purposes of "pursuing acts harmful to national interests or destabilizing general peace or the country's independence and its unity, or committing hostile acts against Egypt or harming security and public order."
- Article 98(c)(1) of the Penal Code which carries a penalty of 6 months' imprisonment for 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"
- Article 98(d) carries a penalty of 5 years for "all those who receive or accept directly or via an intermediary by any means, money or benefits of any form from 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, number 84/2002, failure to register is punishable by imprisonment for up to 6 months.

### **The evidence brought against human rights organizations:**

The evidence of these "crimes against national security" is in fact the work of the human rights organizations. In the case of one organization, the relevant security agency official submitted 107 screenshots of the organization's work online and testified before the judge that the organization's work aimed at "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."

In the reasoning of the June 15 verdict approving the asset freeze request against Al-Andalus Institute for Tolerance and Anti-Violence Studies, the judge relied on the report by National Security officer 3aqid (colonel) Mahmoud Ali Mahmoud stating that he was convinced that a crime had taken place and therefore ordered a freeze. The crime in question as set out in the National Security officer's testimony was the receipt of foreign funding with the purpose of spreading false information with the purpose of harming Egypt's image, spreading chaos, weakening state institution, causing divisions within Egyptian society in exchange for funding received from abroad. The acts in question committed by the organization were described as "spreading false allegations about the existence of discrimination against Coptic Christians and Bahais with the purpose of harming national security and tarnishing the image of the country abroad, and publishing false statements about the existence of sectarian strife in Egypt."

### **What measures have been ordered thus far by the investigative judges?**

In Case 173, the investigative judges have requested travel bans against NGO directors/founders and asset freezes of the accounts of these organizations and their founders.

- **Travel bans:** thus far, the investigative judges have banned at least 12 NGO directors, founders and staff from travel:
  1. Gamal Eid, director of the Arab Network for Human Rights Information (ANHRI), banned on February 4, 2016
  2. Hossam Bahgat, founder of the Egyptian Initiative for Personal Rights (EIPR), February 23, 2016
  3. Mohamed Zaree, Cairo office director of the Cairo Institute for Human Rights Studies (CIHRS), May 26, 2016
  4. Hoda Abdelwahab, executive director of the Arab Center for the Independence of the Judiciary and Legal Profession, June 20, 2016
  5. Mozn Hassan, founder and executive director of Nazra for Feminist Studies, June 27, 2016
  6. Nasser Amin, founder of the Arab Center for the Independence of the Judiciary and Legal Profession, July 14, 2016
  7. Reda al Danbouky, Executive Director of the Women’s Center for Guidance and Legal Awareness, 15 July or earlier.
  8. Esraa Abdelfattah, Egyptian Democracy Academy director, January 2015
  9. Hossam el din Ali , Egyptian Democracy Academy staff, December 2014
  10. Ahmed Ghoneim, Egyptian Democracy Academy, December 2014
  11. Bassem Samir, Egyptian Democracy Academy December 2014
  12. Mohamed Lotfy, director of the Egyptian Commission for Rights and Freedoms, as yet unclear whether related to Case 173 or another investigation:
  
- **Asset freezes and freeze requests:** (provisional measures pending a final verdict once the criminal trial concludes) affecting 14 individuals and 6 organizations:
  - o On June 15, 2016 the North Cairo Criminal Court ordered the freezing of the personal accounts of Ahmad Samih and of the organization he directs Al-Andalus Institute for Tolerance and Anti-Violence Studies.
  
  - o On September 17, a Cairo Criminal Court is expected to rule on the asset freeze of NGO leaders’ personal accounts and that of their organizations: at the start of each session, the judge read out a list of 13 names of individuals whose assets are subject to a freeze (listed here) and the names of three organizations; CIHRS, Hisham Mubarak Law Center and the Egyptian Center on the right to Education. The prosecutor’s submissions confirm that both the personal and the organization’s bank accounts are at risk of being frozen.
    1. Hossam Bahgat, EIPR
    2. Gamal Eid, ANHRI
    3. Gamal Eid’s wife
    4. Gamal Eid’s daughter, Lina, a minor
    5. Bahey el Din Hassan, CIHRS

6. Bahey el Din Hassan's wife
7. Bahey el Din Hassan's daughter
8. Bahey el Din Hassan's daughter, a minor
9. Bahey el Din Hassan's daughter, a minor
10. A CIHRS staff member
11. A CIHRS staff member
12. Mostafa al Hassan, Hisham Mubarak Law Centre
13. Abdel Hafiz el Tayel, the Egyptian Center on the Right to Education

- **Summons to NGO staff for interrogation:** the three investigative judges have already carried out their interrogations of witnesses for the state, including security agencies, Central Bank employees and employees of the private banks where NGOs have their accounts. In March 2016 they turned to the accused and have thus far summoned one NGO director, Mozn Hassan as an accused person, one deputy director, a former manager and 14 NGO staff for interrogation as witnesses which would not preclude them from being themselves indicted in this case.

- o Three members of Nazra staff
- o Mozn Hassan, Nazra for Feminist Studies' founder and executive director
- o Three members of the Cairo Institute for Human Rights Studies
- o Rawda Ahmad, deputy director of the Arab Network for Human Rights Information
- o Two current and one former staff members of Andalus Institute for Tolerance and Anti-Violence Studies
- o A former member of the management team at the Egyptian Initiative for Personal Rights
- o Chief accountant at the Egyptian Initiative for Personal Rights
- o Taher Abul Nasr, lawyer and former Hisham Mubarak staff
- o Tarek Abdel Al, lawyer and former Hisham Mubarak staff
- o Karim Abdelrady and Fahmy, staff at the Arab Network for Human Rights Information.

#### **Measures against other NGOs:**

- **The Nadeem Center** for the Rehabilitation of Victims of Violence has operated for years as a rehabilitation center registered with the ministry of health. On 17 February officials served the Nadeem Center with a closure order by the Ministry of Health for "breach of license conditions." On April 5, four ministry of health officials went to the premises to implement the closure order and ordered the staff to leave. When the founders refused to leave the premises, the officials threatened to call the ministry of interior but ultimately ended up leaving.
- **United Group: Director Negad El Borei** has been interrogated six times on charges of "establishing an unlicensed entity, receiving illegal funds, and deliberately spreading false information with the purpose of harming public order or public interest" in relation to a workshop he organized to draft an anti-torture bill.

#### **Who are the organizations at risk of prosecution this time?**

There are 37 organizations named in the Fact-finding Committee report who are 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.

Over the past six months the following organizations have been targeted:

1. The Arab Network for Human Rights Information: travel ban and asset freeze against director Gamal Eid, summons to deputy Rawda Ahmad
2. The Egyptian Initiative for Personal Rights: travel ban and asset freeze against founder and board member Hossam Bahgat, summons to the chief financial officer and a former member of the management team.
3. Cairo Institute for Human Rights Studies: travel ban against Cairo office director Mohamed Zaree, asset freeze order reviewed by court against director and 2 staff, summons to three of their staff.
4. Nazra for Feminist Studies: travel ban against founder and executive director Mozn Hassan, interrogation of three Nazra staff.
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 license conditions.” Second attempt to enforce closure order on April 5.
6. Hisham Mubarak Law Center: asset freeze request targeting both the organization and its director, Mostafa al Hassan.
7. The Egyptian Center for the Right to Education and its director Abdel hafiz el Tayel are subject to an asset freeze request; el Tayel has been summoned for interrogation by the investigative judge.
8. Al Andalus: on June 15, 2016 a criminal court froze the assets of the organization and its director Ahmad Samih.
9. The Arab Center for the Independence of the Judiciary and Legal Profession: travel bans against its two directors Nasser Amin and Hoda Abdelwahab.
10. The Egyptian Democracy Academy: travel bans against director and staff as well as interrogation.
11. United Group: director Negad al-Borei was interrogated by prosecutors 6 times (the last time in June 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, deliberately spreading false information with the purpose of harming public order or public interest.”
12. Egyptian Commission for Rights and Freedoms: founder and board member Ahmad Abdallah imprisoned April–September 2016; director Mohamed Lotfy subject to a travel ban since June 2015.

**The legal framework which independent NGOs in Egypt have been operating under for decades:**

The Egyptian government is claiming that these NGOs are operating illegally or covertly which is not true. The NGOs are all recognized legal entities registered as limited liability companies or law firms or clinics. The groups are compliant with tax and labor law requirements and 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.

The Egyptian government has repeatedly publicly declared its commitment to amending Law 84 on Associations, most recently during its November 2014 UPR process, to bring it into compliance with the 2014 constitution. Yet now the government is pushing an investigation which uses that same law as the starting point for determining which organizations to prosecute.

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."

### **Who is at risk of being prosecuted?**

This is the second part of the prosecution of NGO staff for the receipt of foreign funding based on a 2011 government fact-finding committee report. The first trial in 2012 focused on four US and one German organization based in Egypt and resulted in prison sentences ranging between 1-5 years, for 43 staff members. This investigation now targets Egyptian NGOs and could result not only in **heavy prison sentences** (in the 2012-13 trial, directors were sentenced to 5 years' imprisonment, but in this phase, the legal framework now includes additional provisions carrying a life sentence), but **also the closure of the organizations** as occurred in the 2013 verdict.

On March 21, the judge issues a gag order on reporting on the investigations in Case 173.

### **Timeline of events:**

- **August 15, 2016:** criminal court hears pleadings of the defense of the staff of the five human rights organizations, adjourns to September 17 when he says he will pronounce verdict on the request by investigative judges for freeze of assets.
- **July 17, 2016:**
  - o Zeinhom criminal court asset freeze session; judge hears defense requests, adjourns to August 15.
  - o Investigative judge interrogation of EIPR chief financial officer and Arab Network for Human Rights Information deputy director Rawda Ahmad.
  - o Summons received by Karim Abdelrady and Noor Fahmy, both staff at the Arab Network for Human Rights Information.
- **July 14, 2016:** Nasser Amin director of the Arab Center for the Independence of the Judiciary and Legal Profession banned from travel
- **June 27, 2016:** Mozn Hassan, founder and executive director of Nazra for Feminist Studies, is banned from travel.

- **June 20, 2016:** Hoda Abdelwahab, executive director of the Arab Center for the Independence of the Judiciary and Legal Profession, is informed of a travel ban against her.
- June 15, 2016: North Cairo criminal court confirms an asset freeze on the accounts of Al Andalus and its director Ahmad Samih
- **June 5:** Negad al-Borei, Director of UG Law was interrogated by prosecutors on 5 June 2016, the sixth interrogation session on charges of “establishing an illegal entity for the intent of inciting resistance to the authorities as well as deliberately spreading false information with the purpose of harming public order or public interest.”
- **May 26:** Mohamed Zaree, Cairo office director of the Cairo Institute for Human Rights Studies is banned from travel.
- **May 17:** Negad al-Borei summoned for questioning in connection with his draft torture law workshop
- March 22: the Investigative judge formally summons Mozn Hassan as the first executive director to appear before him as an accused on March 29, which was postponed
- **March 24:** Zeinhom court session on asset freeze.
- **March 22:** investigative judge interrogates three staff members of Nazra for Feminist Studies
- **March 21,** 2016: the judge issues a gag order on reporting on the investigations in Case 173
- **March 20,** 2016: Hossam Bahgat and Gamal Eid’s lawyers attend the asset freeze trial for the first time, judge adjourns to March 22 to allow defense requests.
- **March 17:** MENA news agency reports that a Cairo Criminal Court circuit will review an asset freeze order against Hossam Bahgat and Gamal Eid and his wife and daughter.
- **March 15,** 2016: A United Group accountant is summoned and interrogated by the investigative judge.
- **March 3,** 2016: United Group’s director Negad al-Borei is interrogated by a different investigative judge on charges of establishing an illegal entity and spreading false information.
- **February 23,** 2016: Hossam Bahgat learns of travel ban at airport when attempting to fly to Jordan
- **February 17:** a police official sent by local authorities serves the Nadeem Center for Rehabilitation of Victims of Violence with an administrative closure order by the Ministry of Health for “breach of license 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.
- **February 4,** 2016: Gamal Eid learns of travel ban against him at the airport as he attempts to travel.

- **February 2, 2016:** investigative judge submits asset freeze request for court approval, airport receives list of names banned from travel in connection with investigation.
- **Late January 2016:** Abdel hafiz el Tayel is summoned for interrogation by the investigative judge
- **January 28, 2016:** then-minister of justice Ahmed El Zend says in a televised interview that the prosecution of the foreign funding case will soon move ahead.
- **October 2015:** Egyptian daily Al-Youm Al-Sabea leaks a scanned copy of a request by the investigative judge in on 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.
- **June 2015:** airport officials inform Mohamed Lotfy, director of the Egyptian Commission for Rights and Freedoms, that he has been banned from travel as he attempted to travel to Berlin.
- **June 2015:** Cairo Institute for Human Rights Studies received a [visit](#) from the Ministry of Social Solidarity technical committee.
- **July 2015:** Hisham Mubarak Law Center is visited by the Ministry of Social Solidarity technical committee.
- **March 2015:** Esraa Abdelfattah and two others from the Egyptian Democracy Academy are summoned for interrogation by the investigative judge
- **December 2014:** the investigative judge issues travel bans against Esraa Abdelfattah the director and two staff members of the Egyptian Democracy Academy
- **Late 2014,** investigate judges appoint 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.
- **June 2013:** a Cairo criminal court sentences 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 organizations in question, the International Republican Institute, the National Democratic Institute, Freedom House, the International Center for Journalists and the Konrad Adenauer Foundation.



## **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."

Indeed, in the Egyptian government's report to the UPR in November 2014, the government stated, as cited in the report of the working group paragraph 20:

"Since 2011, the Government has been involved in a review of Law no. 84 of 2002 regulating civil associations and non-governmental organizations (NGOs). The total number of registered NGOs now stands at around 47,000, compared with 26,000 in 2010."

In paragraph 80, the report of the working group states:

Ambassador Hisham Badr noted that engagement with civil society was a key pillar in the political and social transitional process, and that civil society was a natural partner for the Government.... A new association law, to be adopted by Parliament, was being discussed with civil society organizations, of which 800 had been consulted so far. On 26 October, the Ministry of Social Affairs announced that it would facilitate the registration process of unregistered NGOs

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: <http://www.icnl.org/research/monitor/egypt.html>

From 2011 onwards, successive governments have promised to amend Law 84 and have submitted multiple drafts. Human rights groups have at times been consulted by—or 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).