

RISING TO THE POPULIST CHALLENGE

A New Playbook
for Human
Rights Actors

César Rodríguez-Garavito
and Krizna Gomez (eds.)



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A NEW PLAYBOOK FOR HUMAN RIGHTS ACTORS

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HOW TO SURVIVE BETWEEN A ROCK AND A HARD PLACE: THE EXPERIENCE OF HUMAN RIGHTS ORGANIZATIONS IN EGYPT

Khaled Mansour

Between 2014 and early 2018, the Egyptian government cracked down with unprecedented fury on civil society organizations (CSOs), including political and labor activists, student unions, and sports club fan groups, etc., and, in particular, human rights defenders (HRDs). Previous regimes worried about international reaction and reputational risk, and, to a lesser extent, maintaining the appearance of freedom of association. The current regime, however, feels far more empowered on both fronts. It has committed with impunity some of the most egregious human rights violations in Egypt's modern history: crushing nearly all forms of public dissent, killing thousands of protesters in the span of a few days, and imprisoning tens of thousands of people. Finally, the regime has strangled and demonized human rights actors by portraying them as traitors and foreign agents, restricting their movement, and drying up their funding streams especially from foreign sources.

The regime has deployed almost all the tools in the authoritarian arsenal against human rights advocacy and CSOs. These include restrictive laws and regulations, vilification and labeling, media censorship, and lawsuits charging HRDs with harm, national security violations, and tax evasion.

The regime has appeared to mollify the protest movement that reached its zenith in mid-2013. However, anger seems to be simmering once again, ostensibly fueled by the persistence of deteriorating socio-economic problems. The regime has benefitted from the prominence of counterterrorism, migration, and stability issues in the domestic policy agendas of countries in the region (e.g., Israel and Arab gulf countries) and the foreign policy agendas of countries interested in the region (e.g., U.S. and Russia). The Egyptian regime's regional and global support enables the domestic evisceration of Egyptian politics. Egyptian CSOs have been squeezed by the high price of dissent from unaccountable security measures, and the few remaining independent media platforms have likewise been squeezed into a very tight corner over the past four years.

The regime has strangulated and demonized human rights actors by portraying them as traitors and foreign agents, restricting their movement, and drying up their funding streams, especially from foreign sources

FOCUS ON FOREIGN FUNDING

Similarly to other authoritarian, populist, and right wing regimes (e.g., India, Russia, South Africa, and Hungary), restricting foreign funding has been a central weapon of the Egyptian regime against human rights organizations. Ambiguous and elastic Egyptian laws (Law 84 of 2002 replaced in 2017 by the more draconian Law 70) declare that foreign funding must be pre-approved by the state before it can be used by NGOs and other entities registered with the Ministry of Social Solidarity.

Advocacy and research entities that are registered as law firms or civil companies can be prosecuted either under Law 70 articles or under the penal code for receiving foreign funds unless they receive such funding under commercial service contracts. Sentences can be as harsh as twenty-five years in prison and EGP \$500,000 in fines (about USD \$28,000). Since 2015, all independent advocacy and human rights NGOs registered with the government have not received government approval for their foreign funding.

Restricting foreign funding allows the government to undertake a two-pronged attack against human rights actors: (i) a legal attack with Egypt's restrictive and ambiguous laws; and, (ii) an ideological attack through vilification in the media with a hyper-nationalist discourse that has been coopted or bought by the government or pro-government parties. The twists and turns of judicial case No. 173 of 2011

(see Miller and Suter 2016) lay bare the dynamics of this crackdown, including the motivations of the regime, the behavior of foreign donors, and the coping mechanisms of human rights defenders and organizations.

In the first phase of this case, security forces stormed five foreign organizations in December 2011.¹ Forty-three people (including nineteen U.S. nationals) were indicted based on alleged “evidence” found in these raids. In mid-2013, they were sentenced after being convicted of founding and running branches of international organizations and receiving foreign funding without licenses and permits. A mass media campaign accused the defendants of being part of a “foreign agenda” and conspiring “against national stability,” even though the real charges were far more mundane administrative violations.

After U.S. government pressure, the Egyptian authorities allowed the foreign defendants to leave the country on bail. Twenty-seven people were sentenced in absentia while eleven received suspended sentences (Youssef 2013). The case came after the U.S. ambassador to Egypt, Ann Patterson, told the U.S. Senate Foreign Relations Committee that sixty-five Egyptian NGOs received USD \$40 million in U.S. government funding for democracy-support programs after the revolution on January 25, 2011 (El-Din 2011).² Egypt’s Minister for International Cooperation, Fayza Aboul Naga, said that Egyptian CSOs had received USD \$175 million in only four months (March–June 2011), while foreign funding between 2006 and 2010 for the same purpose was only USD \$60 million, a discrepancy that could be charged as political interference.³ Neither these monetary amounts nor the names of the organizations that received them were well documented or publicly disclosed. Most independent human rights organizations in Egypt have declined any U.S. government funding for years.

This infamous case was reopened in 2016, and by the end of 2017, twenty-

1 Four of the organizations were American and one was German. The organizations included the International Republican Institute, the International Democratic Institute, Freedom House, the International Center for Journalism, and the Konrad Adenauer Foundation.

2 Patterson told the U.S. Senate’s Foreign Relations Committee in April 2011 that the “US has already granted \$105 million to various non-governmental organizations (NGOs) to assist with their participation in the political life of the country.” Ironically, almost all independent and semi-independent human rights organizations had long ago stopped accepting or had never accepted U.S. government funding.

3 Ms. Aboul Naga is now the National Security Adviser for President Abdel Fattah El-Sisi, the former Minister of Defense, who overthrew the Muslim Brotherhood government after massive street protests in mid-2013.

eight human rights defenders were prohibited from leaving the country and sixteen were interrogated and released (nine of whom paid bail ranging between EGP \$1,000 and \$30,000 or between USD \$57 and \$1,700). Seven human rights organizations and ten defenders had their assets frozen (AI 2016a, 2016b; CIHRS 2016).⁴ NGOs suspected of being affiliated with or sympathetic to the Muslim Brotherhood—most of which were development and service-provision organizations—had already suffered a harsh crackdown in 2014. The government froze the assets of more than one thousand associations, some of which had been providing millions with health and education services for years (EIPR 2014).

For decades, foreign grants have been the predominant, if not the only, source of funding for all independent Egyptian human rights organizations

For decades, foreign grants have been the predominant, if not the only, source of funding for all independent Egyptian human rights organizations. The business community has rarely supported these organizations, as most operate as companies or law offices instead of as non-profits. Moreover, local funding is extremely difficult as none of them have been able to operate as a membership-based organization or be based in a specific community.

FOREIGN FUNDING: THE PRETEXT OF LEGITIMACY

As a foundational part of international law, one could plausibly argue that states should maintain oversight over the relations and transactions of funds between local actors and foreign powers. Sovereign states have the right to ensure that only domestic forces are directly shaping the country's political developments, especially given that foreign funding can support illegal activities. This right, however, has been extensively abused by authoritarian states who make local fundraising difficult and foreign fundraising nearly impossible for CSOs.⁵ Several human rights organizations in Egypt have in turn registered as companies to avoid the Associations Law and its various restrictions, especially on foreign funding. However, this has raised transparency and accountability issues since companies are owned by individuals and accountable to shareholders rather than to the public.

4 Final numbers are based on a database of a leading Egyptian human rights organization that was shared with the author.

5 For a reasoned argument on the right of states to control foreign funding, see Poppe and Wolff (2016); for an opposing view, see Baoumi (2016).

Foreign funding indubitably raises questions about the allegiance, credibility, accountability, and very legitimacy of human rights organizations. Foreign funding carries the risk of clientelism that could undermine what should be the genuinely domestic nature of a CSO and its priorities. The reliance on foreign funds could force the recipient NGO into “structures, agendas and programs that fit the interests of their patrons, be they foreign governments or private foundations, rather than addressing real problems in their proper contexts” (Adly 2018). Some of these concerns did not apply to the organizations studied in Adly’s paper. In fact, he showed that the exact opposite could be said of several organizations. The foreign-funded Egyptian NGOs—some of which garnered funding from mainstream Northern foundations—adopted a strong anti-neoliberal stance in clear opposition to the policies of successive Egyptian governments and international financial institutions, such as the International Monetary Fund and the World Bank (Adly 2018).

As foreign funding does not necessarily impose an external agenda neither do domestic funds necessarily come without strings attached. There is no evidence that local funding in Egypt could enhance NGOs or make them more independent. Other countries show mixed evidence. Forty-five philanthropic organizations established by South Korea’s largest corporations were set up either to evade gift and inheritance taxes or to protect large corporations from hostile business takeovers (Shahin 2017). Such an environment does not encourage transparency and could lead to corruption, especially given that local organizations protect themselves by not disclosing financial information or donor identities. The main culprit, however, is a state that imposes a regulatory and administrative framework that leaves CSOs in this Catch-22 situation.

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DUTY OF CARE OR RETURN ON INVESTMENT?

Alongside government pressure on Egyptian NGOs to scuttle foreign funding, many foreign donors concurrently cut back on their funds to Egyptian human rights organizations (including those working externally). These are some of the primary reasons:

1. Registered organizations must obtain permission from the government to receive foreign funding. By 2015, these permissions became almost impossible to acquire for both registered organizations and other non-rights based organizations engaged in progressive research projects.

2. Certain NGOs became worried about entering into new contracts or receiving foreign funds from old contracts lest they become embroiled in a lawsuit like case 173 of 2011.
3. Several conventional donors began to shun human rights organizations because they were worried that such transactions would be considered illegal under Law 84 of 2002 (or the successor Law 70 of 2017). Some donors expressed that it no longer made sense to “invest” in Egyptian human rights organizations because of the restrictive environment. Other foundations and governments did not want to undermine their local operations with development and service-provision NGOs.
4. Some donors argued that their duty of care required that they not put recipients in a legally compromising position.

This distancing by external donors and partners became more visible with multilateral and UN organizations, which preferred to work with development-oriented and politically safe advocacy CSOs. This almost automatically excludes partnerships with human rights organizations. This issue was complicated by government donor agencies that continued to work with governments in the global South, including Egypt. They became increasingly interested in issues related to their own national priorities, including refugees and violent extremism, which further crowded out the human rights sphere.

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NGOs: RESILIENCE OR METAMORPHOSIS

Human rights organizations in Egypt adopted various responses and strategies to tackle the increasingly closed civic space. A few closed, while others relocated activities overseas. The majority of independent organizations, however, soldiered on with a variety of adaptation mechanisms.

The Forum of Egyptian Independent Human Rights Organizations was formed in the late 2000s by around seventeen independent organizations. Most of these organizations stayed in Egypt after 2013 but had to cut staff and reconfigure or decrease activities. This was especially true of those whose assets and accounts

were frozen. Nazra for Feminist Studies,⁶ the Center for Egyptian Women's Legal Assistance,⁷ and Al-Nadeem Center for the Rehabilitation of Victims of Torture,⁸ for example, had to cut down their activities, while the Cairo Institute for Human Rights Studies⁹ had to relocate almost all its activities to Tunis, with the exception of a small Cairo program. The leading remaining organizations are the Association for Freedom of Thought and Expression (AFTE),¹⁰ the Egyptian Initiative for Personal Rights (EIPR),¹¹ The Arab Network for Human Rights Information (ANHRI),¹² the Egyptian Commission for Rights and Freedoms (ECRF),¹³ and Adalah.¹⁴ To be able to continue working, these organizations have largely limited their activities to Cairo, the capital housing 20% of Egypt's population, and to a much lesser extent Alexandria, the country's second most populous city.

It has been almost impossible to document possible violations committed by the regime because of counterterrorism measures

Most challenging for these organizations has been the documentation of regime violations and public advocacy. It has been almost impossible to document possible violations committed by the regime because of counterterrorism measures. Very few reports have been released, especially given the ongoing counterinsurgency operations in the Sinai Peninsula and its collateral damage to civilians and infrastructure, including forced displacement.¹⁵ It is risky and almost illegal under current ambiguous law to report on these possible violations, which can expose human rights defenders to physical harm as they conduct research. Furthermore, mass media smear campaigns and possible prosecution may ensue after a report is published. Independent organizations have resorted to several other adaptation mechanisms in addition to curtailing staff members, programs, and the scope of activities. Most of these mechanisms can be categorized as follows:

6 See <http://nazra.org/en>.

7 See <http://www.cewla.org/>.

8 See <https://www.alnadeem.org/en>.

9 See <https://www.cihrs.org/?lang=en>.

10 See <https://afteegypt.org/?lang=en>.

11 See <https://eipr.org/en>.

12 See <http://anhri.net/?lang=en>.

13 See <http://www.ec-rf.org/>.

14 See <http://www.adalahaeg.org/>.

15 One of the very few reports on the conditions in the Sinai Peninsula, a site of major counterterrorism efforts since 2012, is EIPR (2017). *Mada Masr* is the only domestic news organization that sometimes still provides independent reporting from the Sinai. See *Mada Masr* (2018).

- *Adaptation*: These include cutting down programs, tailoring activities, allowing staff members to work part-time for better paying jobs, overseas offices for better protection of sensitive programs, and transferring funds more innovatively. Due to the effective ban on media coverage of human rights organizations (since most media is either pro-government or owned by the government), human rights communications have increasingly utilized social media.
- *Raising the cost*: Some human rights defenders have continued strenuous international advocacy within Western countries and their media. This has probably helped keep pressure on them to a minimum, at least with respect to preventing arrests of HRDs. However, with Western liberal democracies focused on security, refugees, and counterterrorism, they have also become less interested in pressing global South ally governments on human rights issues and civic space. After all, some of these governments, such as the U.S., have been waging their own illegal acts of war in various countries, thereby ignoring human rights norms. Many governments in the global South have also become inured to criticism from Western media.
- *Coalition building and alliances*: Some Egyptian human rights organizations have long worked well with regional and international alliances and coalitions. Global South–North coalitions are most useful since civic space is being increasingly restricted worldwide. Governments in the global North that used to defend human rights organizations and advocates in the global South are either no longer interested or even busy discrediting their own civil society. This calls for more concerted and organized global civil society action (including on funding, joint programs, national advocacy, etc.). Global civil society coalitions are also good platforms to pressure multinational conglomerates that are negatively affecting environmental and labor conditions, especially in the global South. By exercising consumer pressure over apparel producers at points of consumption in Europe and the U.S., for example, South Asian rights organizations could have a greater impact on improving working conditions in the textile and apparel industries.

Global South–North coalitions are most useful since civic space is being increasingly restricted worldwide

These coalitions can also work locally. Maina Kiai, former Special Rapporteur on the rights to freedom of assembly and of association, pointed out a good example when Kenyan CSOs were able to reverse a government decision to

enact a law curtailing foreign funding. This law would have starved “critical CSOs by limiting foreign funding, and also [by] creating a state body that would determine which CSO could work where and with what resources. But because the draft law was very broad, the human rights NGOs that were the targets got the development CSOs to take the lead and show how much damage the law would create for humanitarian work and for development work” (Hudson 2017). Egyptian CSOs could not achieve such a feat, however, and the new, extremely restrictive May 2017 law put all foreign funding completely under the control of security agencies. Development and aid organizations are the largest recipients of this foreign funding, but they did not fight pro-government claims that the law only targeted politicized organizations working on human rights and policy advocacy. Essentially, there is little coordination between human rights and development organizations to improve the Egyptian regulatory environment. A similar failure took place in Uganda against a comparable restrictive funding law (Jjuuko and du Toit 2017).

Community-based funding or market-supported solutions were never seriously pursued by Egyptian human rights organizations

- *Constituency building*: Some Egyptian organizations tried to build networks of volunteers and broaden their constituencies but this did not succeed in any meaningful way. Some organizations, especially those in the dwindling independent media sector, tried to fundraise locally through contracting out their own production services, getting proceeds from artistic performances and events, and creating special membership programs for individual supporters. They succeeded to a certain extent.

Egyptian human rights groups have not succeeded in generating new local fundraising business models because of the restrictive legal and administrative framework and possible repercussions caused by security agencies and pro-regime media. However, the human rights defenders interviewed for this paper were unable to mention a sustained, systematic attempt at domestic fundraising. Community-based funding or market-supported solutions were never seriously pursued by Egyptian human rights organizations.

At least one organization tried to enlist a large number of volunteers as an alternative to a membership-based organization. This has not succeeded. Such efforts need to start in an environment of political openness without extreme authoritarian security measures. Attracting membership requires an enabling

legal environment and several years of groundwork. There are good examples like the Moroccan Association for Human Rights (AMDH), but almost no other known human rights organization in North Africa or the Middle East has been able to become membership-based.

In the face of a repressive regime with public collusion, there are no easy solutions or immediately effective countermeasures for human rights organizations. Human rights work cannot take root, advance policy reforms, and change norms, behaviors, and practices in an unchecked authoritarian environment without a popular constituency pushing for such changes.

Human rights work cannot take root, advance policy reforms, and change norms, behaviors, and practices in an unchecked authoritarian environment without a popular constituency pushing for such changes

Without this public constituency and decent international support, human rights action withdraws to the realm of documentation and/or survival through hibernation. Though no amount of foreign funding can fix these problems, complete withdrawal of foreign support could weaken an organization's resilience.

Kiai noted, however: "What states don't understand is that with or without foreign funding, true activists, true believers in democratic values will still find a way to work" (Hudson 2017). He is partly right. Yet, what these activists need to focus on, especially in Egypt, is expanding their constituencies and working with them, rather than on their behalf. Tunisia and Morocco provide successful examples of partnerships between human rights activists, CSOs, and social movements. To be fair, of course, Egyptian human rights defenders have struggled tremendously under successive regimes that have each worked hard to close civil society and political space and leave a security state in its stead.

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Rising to the Populist Challenge: A New Playbook for Human Rights Actors collects and analyzes a repertoire of responses by human rights organizations to the crackdown against civil society in the populist context. Written by scholars and advocates in challenging political settings from around the world, *Rising to the Populist Challenge* offers ideas and inspiration to their peers in the human rights community who are grappling with and resisting the erosion of democracy and rights.

Ironically, the rise of populist leaders could have an unexpected positive effect: to push the human rights movement to transform its architecture and its strategies for combat in this hostile landscape. These transformations were already imperative even before this new wave of populist governments, but now they are simply urgent.

This collection takes two steps towards clearing the path for this civil society transformation. First, it clarifies the specific challenges to human rights raised by contemporary populist regimes and movements. What is the populist playbook against human rights? Second, it contributes to documenting and learning from a wealth of initiatives by human rights actors. What innovations are human rights actors introducing into their strategies and narratives to counter those of populist regimes? In short, what is the human rights playbook against populism?

From meticulous documentation of abuses in Turkey to more grassroots forms of social networking in Hungary, from peace caravans in India to finding new ways of being useful under 21st century dictatorships in Venezuela, like war correspondents reporting from the trenches, our authors step forward to share their own continuing struggles to help their communities.

Based on evidence from populist governments in India, Venezuela, Hungary, Turkey, Russia, the United States, and Ecuador—as well as crackdowns against civil society in South Africa, Egypt and other countries—this volume provides hope, solidarity, and reinvigoration for the human rights movement.

