



The Proposed Law for Civil Associations and Institutions, 2013 A Model for Oppressive Laws and a Recreation of the Authoritarian System

Mohammed Elagati
Director of the Arab Forum for Alternatives

منتدى البدائل العربي للدراسات (A.F.A.)

العنوان: شقة ٤ - الطابق الرابع - ٥ شارع المساحة - الدقي - القاهرة (ج.م.ع.)

Website: www.afaegypt.org

Mail: info@afaegypt.org

Telefax: +202-37629937

Twitter: AFAalternatives

Facebook : <https://www.facebook.com/AFAalternatives>



**The Proposed Law for Civil Associations and
Institutions, 2013
A Model for Oppressive Laws and a Recreation of
the Authoritarian System**

Mohammed Elagati
Director of the Arab Forum for Alternatives



On the eve of President Mohammed Morsi's acceptance of the draft constitution, in his speech calling for a referendum on the draft, the Egyptian president limited three democratic pillars whose attainment had been one of the primary goals of the revolution. Those pillars are the judiciary, the media, and civil society. In this context, the government confronted us with a new civil associations and institutions proposal that can be described at the very least as a model for oppressive laws and as a proposal that would reinstate the outcomes of authoritarianism. The advisor in the Ministry for Social Solidarity who failed to justify this law during the Mubarak era was the same advisor who is advocating for it now. He returned to present the bill for SCAF after amendments made it more authoritarian, and it was rejected by the Committee for Human Rights in the Egyptian Parliament because of that. Now, the very same person has returned to present the law to the Shura Council, after additional amendments were added that have transformed it into a law blocking the democratic transition.

The International Center for Not-For-Profit Law (ICNL) offers classifications of the types of restrictions that are placed on civil society.^١ They include: a ban on founding civil society organizations, the inability to register as and secure the benefits of a legal entity, the inability to attain foreign funding, the right of arbitrary dissolution, an inability to discuss certain subjects, strict and arbitrary oversight from the administrative body, the foundation of parallel institutions working in the same fields with government support, and criminal penalties for individual members in the organizations. Basic characteristics of the Egyptian Law 84, in force from 2002 until today, are built on these criteria, including:^٢ granting near-absolute rights to the administrative body, instituting punishments and laws that overreach in regards to criminalization and sanctions, and using ambiguous terminology and broad expressions that enable the government to apply the law at any time against a target organization.^٣

The current law proposal has surpassed these characteristics of the old law by a significant amount. It is possible to discern new oppressiveness in the law in nine fundamental areas:

1. A significant lack of knowledge or ignorance of the nature and role of civil society in Egypt and internationally.
2. Expressions and terminology leading to indirect restrictions on the work of civil society.
3. Expressions and terminology leading to direct restrictions on the work of civil society.
4. Predominance of the administrative body and its control over civil society work.
5. Legalizing intervention by the security services in civil society work.
6. Elastic expressions that permit the authorities to interfere selectively.
7. The absence of mechanisms for transparency, freedom of information, and the community participation.
8. The control of a mindset infected by authoritarianism and conspiracy theories:
9. Strengthening punishments and expanding the powers of irrelevant authorities.

^١ ICNL, Constraints on Civil Society, Washington DC, January 15, 2006, pg 2.

^٢ Mohammed Elagati, Undermining Standards of Good Governance, http://www.icnl.org/research/journal/vol9iss2/special_4.htm.

^٣ Report by the Egyptian Organization for Human Rights, 2003.

The following is a breakdown of the provisions of the law that represent these characteristics:

First: **A significant lack of knowledge or ignorance of the nature and role of civil society in Egypt and internationally:** Particularly in its first articles, the proposed law reflects definitions that show a significant **misunderstanding of the definition of civil society**. For instance, in the first clause of Article 1, the definition of civil society work is limited to humanitarian and developmental goals, without mentioning human rights. Human rights are a fundamental goal of the programs of modern civil society groups, to the point that even organizations working toward humanitarian and developmental goals focus on empowering citizens to achieve their rights, not just on charity as in the past. Article 11, on the purposes and rights of civil associations, confirms that “associations shall work to achieve the purposes of social welfare and development.” When the topic of human rights is raised in Article 11, mentioning “legal and constitutional rights, social defense and human rights,” the associations are limited to raising awareness about these rights rather than defending them.

On **the nature of civil society and its division from the state**, Article 4 permits “any foreign community to establish an association observing the affairs of its members pursuant to the provisions of this law and with the condition of reciprocal treatment for the Egyptian community in that relevant country,” so that these communities are subordinate to the state and their denial is based on the behavior of a government with which they have no relationship. Meanwhile, the embassies representing these governments are enabled to found clubs or centers based on established international agreements. Likewise, the rigid mind did not see the potential in new creative names for associations when it required in Article 5 for an organizational name “which should be indicating to its purposes.”

But the lack of knowledge by those who drafted this law does not stop here. It also extends to an **ignorance of the Egyptian Legislative System**, when Article 11 states, “It is also prohibited that the purposes of any association contain the following: Any political activities limited to political parties pursuant to the Law on Political Parties or any syndicate [or trade union] activities limited to syndicates pursuant to the Law on Syndicates.” The Law on Political Parties Number 12, Year 2011, does not include the purposes or activities of political parties, and the 1977 law that it amended states in its Article 3 on the role of political parties: the realization of political, social, and economic advancement of the nation, built on an alliance of the working people, social peace, and democratic socialism, and preserving the gains of the workers and farmers, all in the manner prescribed by the Constitution. These parties will work as national, popular, and democratic organizations to mobilize the people and to represent them politically. This definition is imprecise, and considering that the law was passed before the formation of modern civil society, and at a time with expressions about socialism and an alliance of the workers, it cannot serve as a reference. Likewise, the syndicate laws were not passed after the establishment of the new constitution. The author of the law reveals his **ignorance of the special circumstances surrounding Egyptian civil society** when, in Article 16, which limits foreign funding, he does not know that local funding is extremely weak in this field because of the prevailing culture for charitable work or personal support. Additionally, this article states in regards to the time period to attain funding, “60 days with no written objection from the Committee on the request,” which ignores the nature of these associations and the continuity of their work, and which insists on agreement with the funding and not the project, thereby blocking the continuity and regularity of the association.

The **lack of knowledge of civil society in its international context** is demonstrated in Article 60, which focuses particularly on foreign organizations and which states that they, “cannot be allowed to practice any activity in Egypt if it is proven that they receive direct or indirect governmental funding, or if its activity aims to spread trends or politics of a political party in its country...” This ignores the fact that there are states that are committed by their laws and principles to give a part of their budget to these organizations, in addition to the fact that there are organizations dependent on parties such as the Green Party or the Social Democratic Party that push their beliefs on preserving the environment or sustainable development.

Second: **Expressions and terminology leading to indirect restrictions on the work of civil society:** Here, **the proposed law clearly uses financial barriers.** In its definition of foundations in Article 1, it considers them, “a legal person established by one or more natural or legal persons, or both, with an endowment of no less than 250 thousand pounds at the time of establishment,” and then it transforms this amount into public funds in Article 3. This stipulation is a barrier to creating private institutions, since, as an example, if a group of farmers want to create a foundation in their village for some purpose or other, who among them will have such an amount? As a result, we can see a clear **class-based discrimination** here. Likewise, it is known that under Law 84, the security sector has the principal responsibility of dealing with foundations during the registration period. They were pressuring foundations to register as associations, for the purpose of their abilities to monitor and control associations, and they refused to register them as foundations (the state of the New Women Foundation).^٤

Additionally, we can observe the **manipulation of terms to put a democratic hue on repressive mechanisms.** In Article 6, the proposed law talks about establishment or organizations by notification, and it states that, “the legal personality of the association is affirmed by making such entry or by the elapse of 60 days after the notification of the Administrative Body by the application, whichever first.” However, it preserves the right of the Administrative Body over registration, upon which the founder must resort to the judiciary, so that the process of notifying the authorities is transformed into a license from the authorities. That is the current reality of these procedures on the ground, that it will be the same as it is in the current situation, which are a place of objection of organizations and experts in this field.

Third: **Expressions and terminology leading to direct restrictions on the work of civil society, and the violation of democratic and pluralistic principles:** There are articles that **clearly place restrictions on the work of civil society** in Egypt, so that after stating in Article 11 that, “Following commercial practices to realize profits assisting in the purposes of the association shall not be considered a violating activity, and the executive regulation shall define these terms,” which is a positive article, the proposed law returns in Article 17 to restrict them, stating that, “An association, for the purpose of meeting its purpose and

^٤ For more information see: Proceedings of Killing of the New Women Foundation, Hisham Mubarak Center for the Law, 2004.

enhancing its financial resources, may collect donations, as licensed by the Administrative Body. The Executive Regulation of this law shall define procedures and conditions for such license to collect donations.”

Similarly, Article 11 prohibits, “field research or opinion poll projects in the field of civil society work without attaining the agreement of the Administrative Body.” With emphasis on the importance of this work for civil society, any effective civil society work is based on what is called “determining the needs of society,” which the organization will work to address. As a result, this is a clear restriction on effective work by civil society. However, it is not limited only to that. Additionally, they must attain agreement on their projects, and the law applies censorship as well. As we will see, this censorship is blocking the work of civil society by using the law.

Articles 65, 66, 67, and 73 are **violations of the concept of freedom to organize**, since they centralize all unions and forbid plurality, forcing organizations to join them and applying specific membership fees.

Fourth: **Predominance of the administrative body and its supervision of civil society work**: The dominance of the administrative body, represented by the Ministry of Social Affairs, is varied, beginning with the founding of the organization and even extending to its activities and finances. There is **control over registration and internal organizational elections**, which destroys the principle of notification that is present in Article 6, particularly for the founding of the organization, which was clarified previously. Then there is Article 35, which places restrictions on the founders and the organizations’ internal elections process by stating that, “The Board of Directors shall display the names of candidates for membership of the Board of Directors in the second day following the closure of the nomination period. The Regional Federation and the Administrative body shall be notified within the three following days and sixty days at least before the elections date. The Regional Federation, the Administrative Body and whoever concerned may notify the General Assembly within seven days following the display or notification of the list, as the case may be, by any objections on members not meeting the conditions. If the concerned candidate does not withdraw nomination within seven days of the notification to the General Assembly, the Administrative Body must issue a decision removing this person. The removed person, or whoever concerned, may submit a claim before competent court within seven days following the issuance of this decision. The court shall decide in the case before the date of the elections.” The administrative body accepts and refuses, removes and appoints, and it is on the aggrieved to approach the court to wait for the results of his objection, in the inverted logic of the situation.

Administrative supervision begins to use the terminology of censorship, rather than oversight, in Article 2, and the control over elections is followed by the same logic and style in controlling the administration of the organization in Article 24. “In cases where the association issues a decision considered by the Administrative Body as violating this law or the Articles of Incorporation, the Administrative Body may request the association, via a registered letter with receipt confirmation, to withdraw the decision within ten days of being

notified. If the association does not withdraw the decision in question the ten days as of being notified, the Administrative Body, following notifying the relevant Regional Federation, issues a decision annulling it within 15 days. The association can appeal that decision within 15 days from the date of its application. If the appeal is rejected or if 30 days pass without a response, the association is allowed to go the Competent Court within 60 days and the court rules on this issue urgently.” We have the same comments on this topic that we had on the issue of elections, but it also adds an expression that it is not possible to include in a well-guided law. It states that, “a decision considered by the Administrative Body as violating this law,” rather than, “a decision violating the law,” so that it comes down to what the administrative body sees and not what the law determines.

In Article 39, the authoritarian mindset attempts to complete its blockage of the administration of civil society organizations when it says, “Without prejudice to the Articles of Incorporation of the association, if the number of the members of the Board of Directors becomes insufficient for holding a valid meeting the concerned minister may at the time of necessity appoint a temporary Board, with the competencies of the Board of Directors, from the rest of the members or others. The temporary Board has to call for a General Assembly meeting to be held within a year from the date of its appointment as to elect a new Board of Directors. The mission of the temporary Board is concluded with the election of a new Board of Directors.” Here, the administrative body is making a clear intervention in solving the internal problems of the organization, rather than returning it to the General Assembly of the organization.

Supervision of work and activities is demonstrated in Article 68-A with the Regional Federations and in Article 76, which establishes a fund for the Ministry of Social Affairs to provide ongoing financial support to activities that are carried out by civil associations, institutions, and unions established in accordance with the provisions of this law, without the law determining the mechanisms for the basic functions of this fund. It should have been stipulated in the law that the provision of funds would occur through open projects and committees of experts to assess them, and despite the fact that the establishment of the fund is a good idea, the fact that it has been left without regulations and in the hands of the executive branch makes it a tool for control over civil society, particularly since Article 77 puts the “competent minister” at its head.

This fund brings us the idea of **financial control** through the creation of the Coordinating Committee in Article 57, “to decide on all that is related to the activities of the non-governmental Foreign Organizations and foreign funding.” Likewise, Article 16 approaches foreign funding by still using licenses, rather than the notification system used by all modern and democratic states in the world.

Five: **Legalizing intervention by the security services in civil society work:** Article 57 concerns, “A Coordination Committee shall be formed to decide on all that is related to the activities of the non-governmental Foreign Organizations and foreign funding. The committee shall be formed by a decree of the Prime Minister and shall be chaired by the

competent Minister and representatives of the ministries and the following institutions, chosen by the appointed ministers, shall be its members: a representative of the ministry of foreign affairs, a representative of the ministry of justice, a deputy of the head of the State Council, chosen by the head of the Council, a representative of the ministry of the interior, a representative of the ministry of international cooperation, a representative of the ministry of social affairs, a representative of the national security institution, and a representative of the central bank.” This committee inserts the security and intelligence services into a censorship role over civil society, and it brings in the government as an actor in controlling the organizations in a way that transforms all of them **from non-governmental organizations (NGOs) to governmental non-governmental organizations (GNGOs)**. This committee was formed without any participation by civil society, even the imposed federations that were stipulated in this law. It represents a violation of the principal that civil society is a third sector that is independent of and separate from the public and private sectors.

Six: **Elastic expressions that permit the authorities to interfere selectively:** The law includes several undefined terms, such as: Article 4: an appropriate management center – Article 27: The General Assembly shall convene by an invitation to be notified to all its members...[by] the Administrative Body as deemed necessary – Article 56: In all cases, such activities shall be consistent with the needs of the Egyptian environment and observing public order and morals. The concept of sovereignty without regulation of it is not something that can be interpreted clearly; for instance, the Syrian regime presents a completely different definition from the French regime for this concept.

Phrases of discretionary power: We previously presented the idea that the administrative body sees violations of the law, and likewise the administrative body determines whether or not the association realizes its goals. Add to that Article 78, which permits the Board of Directors of Associations and Foundations Support Fund to, “take necessary actions to develop the resources of the fund.” In Article 79, the resources of the fund include, “any other resources approved by the Fund’s Board of Directors.” And in Article 42, the administrative committee has the right to go to the courts to request the dissolution of an association in several circumstances, including, “if the association fails to achieve the objectives it was established for.” This situation creates an ambiguous state in which it is possible for the government to apply the law in the time of its choosing and against the organization that it wants to target. By leaving organizations alone if they have not annoyed the government, even if they might have committed violations, the administrative body or security services can hold onto those violations as a weapon in their hands for the appropriate time.

Seven: **The absence of mechanisms for transparency, freedom of information, and the community participation:** Despite all of the restrictions in this proposed law, there is a philosophy of disclosure in this law, not with a view toward transparency, societal oversight, or accountability, but with **a goal of clearly stating its intervention in and power over civil society**, and not for the freedom to exchange information or for an increase in

participation by society. As such, in Article 11 it bans “field research or opinion poll projects in the field of civil society work without attaining the agreement of the Administrative Body,” rather than requiring for the results to be published. The **lack of societal oversight** is highlighted in Article 66, “Every association or foundation falling under provisions of this law shall submit annual progress reports to its Regional Federation indicating type and size of activities performed during the year, the services it rendered to the people or to the development programs set by the state.” Instead, this information should be published in newspapers or on the websites of the associations. But of course, as a supporting factor of democracy, increasing the participation of society by activating popular oversight is not a goal of this oppressive proposal.

Eight: The control of a mindset infected by authoritarianism and conspiracy theories: This mindset is clearly highlighted in several articles in the law, all linked to foreign organizations or any form of cooperation between Egyptian civil society organizations and international civil society organizations. Thus **any cooperation between civil society and a foreigner is a kind of treason** in this mindset:

Article 14 demonstrates this when it says, “An association may perform any activities not contradicting with its purposes in cooperation with any foreign association, agency or organization provided the Administrative Body and the Regional Federation are notified and the elapse of 60 days of the notification date with no written objection from the administrative body. The Executive Regulation shall define controls for such cooperation and the contents of the notification of data and information.” Similarly, Article 16 discusses foreign funding as was mentioned previously.

There are also articles expressing the **authoritarian mindset** that carries out the idea that, “the government knows your interests better than you do, and it is upon the government to inform you what it will do to realize your interests!” For instance, Article 68 states that the regional federations should be responsible for, “implementing general policies for civil work as formulated by the Board of Directors of the General Federation of Associations and National Foundations,” while in Article 74 they see successful experiences as being limited to “promoting small and medium enterprises assisting in poverty alleviation and creating job opportunities.” Additionally, it is possible to dissolve an organization that is not able to achieve its interests based on a report by the administrative body if it is determined based on Article 42 that the organization “fails to achieve the objectives that it was established for.”

Nine: Strengthening punishments and expanding the powers of irrelevant authorities: Although informed about civil society in several other states through the framework of comparative studies, this law features an **expansion of powers given to inappropriate actors**, such as the right of judicial regulation given to bureaucrats, as in Article 20, which states that, “Representatives of the Administrative Body, specified via a decision from the Competent Minister, may enter to the association premises or its branches to monitor its activities and review its records, from the administrative, financial and technical perspective,

to ensure that they are compliant with the provisions of this law. The representative of the Administrative body shall have the judicial investigation status and they can ask for the cooperation of any of the concerned state bodies.” As we can see from the expressions about entering the headquarters, it appears to be like the process of a raid, and it seems as if the expressions were written by a security officer and not a lawmaker.

Then the scope of the law is expanded to arbitrary supervision, so that the law includes entities not actually covered under the law. In the same article [Article 20], the authoritarian legislator adds that, “Any activities, within the objectives and fields of the work of the associations, practiced by other legal personalities, of any legal frame even if it is not based on the procedures of the establishment of an association or a foundation with the objective of doing so, is subjected to the provision of this law and the supervision of the Administrative Body.” Of course, this article is the most basic violation of legal traditions, and the intended target here is clearly human rights organizations, which are able to register as legal companies for lawyers.

Strengthened punishments are clearly highlighted by the issue of dissolving associations, and despite the existence of elastic expressions in Article 41 that the included punishment be appropriate for the nature of civil society work as stipulated by the text, “In all cases, it is not allowed for the member of the Board of directors proven to be personally responsible for the violations that led to the removal of the Board or the dissolution of the association to elect him/herself for the membership of the Board of Directors of any association for the period of four years from the date of the issuance of the ruling of removal or dissolution.” They continue in Article 42, which stipulates the dissolution of the entire associations and not just its Board of Directors. This is a violation of the freedom to organize, even if it was a judicial ruling dissolving the Boards of Director and not the entity itself. It also establishes discretionary reasons for the administrative body to resort to dissolution that are not part of that body’s affairs or discretionary powers, leaving state bureaucrats to make technical decisions that are not a part of their specialization, such as when an organization “fails to achieve the objectives that it was established for.”

The punishments developed in Article 80 bring us to sanctions that are inappropriate for volunteer work, since they stipulate, “Without prejudice to any more severe penalty stipulated in the penal code or any other law, imprisonment for a period no less than one year and a fine no less that 100 thousand pounds or either one of those penalties...” Then in item 6 of the same Article, it goes beyond the scope of confinement listed under the law, stating that, “Whoever establishes an entity under any name or form other than that of the form of associations or foundations established in accordance to the provisions of this law and exercise one of the activities of these associations or foundations without following the provisions stated in it. The court shall rule for the closure of headquarters and confiscating the funds related to it and its referral to the Associations and Foundations Support Fund.”

Conclusion:

The freedom of civil society has become a fundamental part of any measurement of democracy in a state, while the experiences of democratic transitions show that civil society has been one of the key supporters of these transitions. As a result, if we are to establish laws that contribute to the democratic transition and not to a return of an authoritarian regime, we must abandon this authoritarian mindset and stay away from figures of the old regime forming the laws of revolutionary Egypt.[°] Furthermore, in the situation surrounding the civil society law, there are a group of principles that we must adhere to when forming this law to agree with the standards of democracy in the field of civil society. The first of these principles is that the concept of freedom should govern the law (and bans should be the exception), and that should be accomplished by replacing consent to register and receive funding with notifications, through the freedom to amend internal organization, and by forbidding interference of the administrative apparatus in the process of conducting meetings, elections, or other activities. Second, the law should apply penalties commensurate with the extent of responsibilities and the nature of volunteer work, and any violations should be referred to the general law. Third, there must be clear definitions for the concepts, terminologies, and procedures of the law, without leaving any vague expressions. Likewise, the law must support the concept of transparency with the logic of providing information for mutual benefit and enabling accountability, instead of the law existing as a source of oversight and constraint. It is important for the judiciary to play its natural role as a mediator between the executive branch and civil society, since it is not permissible for either side to take action against the other unless it is through recourse to the law. It is also important for society to become a principal player in civil society, through resources that enable society to get to know civil society and how to benefit from it, or even how to intervene in a state of dissatisfaction (for instance, requiring civil society organizations to publish their budgets online and in official newspapers). Additionally, the oversight apparatus of civil society institutions needs to be unified in one limited institution with clear powers. Finally, it is necessary to get rid of the idea of authoritarian unions, leaving the issue to associations who can form their own representative, democratic, and elected entities as an alternative to the public union for associations that existed prior to the January 25 Revolution.

[°] Mohammed Elagati, Egypt in Transition to a New Authoritarianism: The New Associations Law as a Model, <http://shorouknews.com/columns/view.aspx?cdate=21012012&id=b00bd09b-0e99-4238-b3d1-3074868327cd>.