



Unsolved Dilemmas: Issues of Internal Governance in Egypt's Human Rights NGOs

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The infographic features a central grey diagonal shape with the word 'مصر' (Egypt) written vertically in Arabic. To the left, it lists 'EGYPT' and 'NGOs' with the logo of the Arab Reform Initiative for Personal Rights. Below this, it mentions 'Law No. 153/1999' and 'الحكومة الداخلية' (Internal Government). To the right, it lists 'Internal Governance' and 'التمويل الأجنبي' (Foreign funding) with the word 'Donors' and 'المساعدة' (assistance). Below this, it mentions 'Law No. 70/2017' and 'Accountability' with the word 'Case 173'. At the bottom, it lists 'Foreign funding' and 'حملات قمعية' (repressive campaigns). The infographic also includes logos for 'النديم' (Al-Nadim), 'مجمع مدني' (Civil Society), 'تقييد' (Restriction), 'مجالس الإدارة' (Administrative Councils), 'مجلس المدینة' (Council of the City), 'ECESR', 'مركز القاهرة لدراسات حقوق الإنسان' (Cairo Institute for Human Rights Studies), 'ECRF' (Egyptian Commission for Rights and Freedoms), and 'afte' (Association for Freedom of Thought and Expression).



The proliferation of NGOs as well as the growing debate around how to define them and their roles had raised several questions about their internal governance. In particular, NGOs, though independent from the public state-affiliated sector, are perceived as dependent on semi- “public” funds as they receive funding from either local or foreign sources for public interest issues. As such, voices arose requesting more transparency and thorough scrutiny for NGOs, managerial structures, operations and mandates. Additionally, with the increasing number of NGOs engaging in advocacy for human rights, it becomes relevant to look into their claims of representation as well as their accountability to their proclaimed constituencies, donors and towards the state. These questions and controversies that dominated the international literature and the practices of NGOs in several countries have also been raised by Egyptian NGO, their detractors and their supporters.

Egyptian human rights NGOs, since the establishment of Egyptian Organization for Human Rights (EOHR) in the mid-1980s, have functioned in a restrictive political and legal environment. By late 2016, when the field work for this research was conducted, these organizations had been facing one of the worst crackdowns ever against civil society, particularly human rights NGOs. Facing such a crisis, the questions of internal governance of these organizations – primarily issues of accountability, representation, and the stigma around foreign funding – resurfaced. Over 35 years of practices, various generations of human rights NGOs and defenders (HRDs) emerged while the political and legal environment changed, from the early years of former president Hosni Mubarak (1981-2011), to the few years before the January 25th 2011 revolution, to the major expansion from 2011 to the end of 2013 and finally to the last four years (2013-2017) which witnessed unprecedented levels of human rights violations in Egypt as well as the harshest crackdown against NGOs and HRDs.

Methodology and Profiles of Organizations

This study was based on semi-structured in-depth interviews with 10 NGOs, mostly with CEOs, three donor agencies, and two independent experts in the field of civil



society in Egypt who had experiences as board members in several local organizations. CEOs interviewed came with diversified experiences as founders of several organizations, members of boards in other organizations; many also enriched the research with their “institutional memory” of several organizations within the human rights movement. All 10 organizations are registered entities with premises, hierarchy, staff, reporting systems and internal bylaws. The selection of the different organizations took into consideration the variations in scope and mandate as well as history and years of establishment. In particular, two were established after 25 January 25 2011, three were established in the 1990s, and four established in the period between 2005-2010 and witnessed enlargement of scope and growth after January 2011 and until 2014. Additionally, three organizations interviewed were feminist organizations; the other seven organizations had diversified mandates with focus on social and labour rights, freedom of thought and expression and personal rights. A key gap in the methodology of this study, however, is the lack of enough primary data from donors and funding agencies, as many donors approached for interviews had been reluctant to cooperate and provide information needed for this research. This gap was overcome with a review of the available literature on donors’ relation with the NGOs in general and within Egypt in particular. It is recommended, however, that for further research on this topic to encourage and push donors to share insights about their role and views on developing internal governance of human rights NGOs in Egypt.

Conceptual Framework

In order to conceptualize and look at the "internal governance" of NGOs and its elements, it is important to start briefly with the concepts of civil society and NGOs adopted for this paper.

•Civil Society

Civil society, according to the liberal school of thought, is defined as all types of organization between the family and the state.¹ Within this school, civil society is vital to counter the authority of the state and this goes back to the classical argument of Alexis de Tocqueville on the importance of having a vibrant and



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independent civil society that would enhance democracy and participation, counter the state domination of “natural rights” of human beings, and minimize state intervention.² This direct and classic relationship is often described in the literature as the “liberal” school of thought. It continued with Verba and Almond’s concept of civic culture. Huntington adopts this same view in his theories on modernization and democratization as does Putnam with the concept of “social capital”. Civil society was also addressed by the Marxist school of thought based on the works of Gramsci and Habermas on the public sphere. In this school of thought, civil society is not an independent space to counter state intervention but rather, for Gramsci, a “sphere that is occupied by the struggle for material, ideological and cultural control over the society, and this included for him, the state.”³

•Non-Governmental Organizations, NGOs

The concept of NGOs is also controversial and used by various authors to refer to different things. Altan-Olcay and İçduygu refer to this controversy and the various typologies of NGOs based not only on the type of activities and membership, but also the differences between northern “autonomous” NGOs and southern NGOs dependent on foreign funding.⁴ Pearce identifies two main factors in differentiating between NGOs: 1- NGOs which are usually made of middle class people who choose to work with the marginalized for a certain cause, and 2- grassroots organizations which are composed of people with specific identities and interests, dependent on their class, gender, ethnic origin, or cultural background who are in need for collective representation and organization.

Another important debate in the literature on NGOs focuses on its role. Pearce again refers to the variety of roles expected from NGOs including advocacy, mobilization, democratization, and reconstructing civil society and others. Holmen and Jirstrom refer to “great expectations” from NGOs, which could be explained by several reasons; the first is the assumption that the proliferation of NGOs as autonomous actors creates a voice for a wider number of groups, and a momentum for more pressure on the state. NGOs can also be seen as entities that work with grassroots organizations on the alleviation of poverty and the empowerment of communities, which in turn increases participation in the political realm.⁵ Both arguments escalated within the rise of a global neo-liberal

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economic policy (adopted by the international financial institutions as well as many donors) that preached a limited role for the state, and the cutting of subsidies and welfare services for the poor. In this context, NGOs would play a role in empowering the poor, buffering the consequences of the retreat of the state and, in some cases, even become partners with the private sector in the provision of services.⁶

•NGOs and Internal Governance

The concept of governance started first in relation to the government and public sector then moved to the corporate sector and the non-profit NGOs sector. There have been different attempts to define good governance in NGOs. Most of the definitions and discussions of the concept emanated from voluntary governance codes adopted in various countries. The Code of Practice for Good Governance of Community, Voluntary and Charitable Organizations in Ireland defines governance as “how an organization is run, directed and controlled. Good governance means an organization will design and put in place policies and procedures that will make sure the organization runs effectively”.⁷ El Agati identified the key elements of governance as “authorization, transparency, accountability, participation, and empowerment.”⁸

On the other hand, Renz defines governance as “the process of providing strategic leadership to a non-governmental organization. It entails the functions of setting direction, making policy and strategy decisions, overseeing and monitoring organizational performance, and ensuring overall accountability. Non-profit governance is a political and organizational process involving multiple functions and engaging multiple stakeholders.”⁹ Again Renz in his definition attributes governance to the existence of a board that pursues the functions of policy design, strategizing, and oversight. Such a board is normally made up of volunteers elected by the wider members of the organization.

For the purposes of this study, NGOs are defined as non-profit, non-governmental organizations based in urban centres, particularly Cairo, with a focus on advocacy, lobbying, litigation and documentation in the field of human rights. The study focuses on NGOs with an institutional structure in order to be able to explore efforts to establish a mechanism for internal governance. Based on the above



overview, the key elements of internal governance include in particular: the level of internal democracy in the decision-making process, the existence of engaged boards that lead strategizing functions, internal & external transparency, and accountability towards donors, and represented constituencies. While the institutional structure in many of the cases includes NGOs registered as law or civil firms, the NGOs definition adopted for the purposes of this study applies to all researched organization regardless of their legal registration status.

Analysis of Findings

The above brief conceptual overview shows that most criticisms and accusations levelled against NGOs are focused on these key areas: dependency on foreign funding that would impact their agenda and priorities, NGOs claiming to represent marginalized groups or right bearers while they are not necessarily aware of the real needs and complexities of these groups (Holmen and Jristrom, 2009) and the accountability question at all levels – accountability towards its staff and teams, towards donors, towards the government and the state and more importantly accountability towards their alleged constituencies. Moore and Stewart stated: “NGOs set themselves as specialists and experts on problems that they define themselves, live entirely on foreign money, and can do what they want provided they keep their funders happy. They claim to speak on behalf of the poor, the disadvantaged, women, the disabled, AIDS victims or whatever, but how do we know that they are in any way representing or serving their clients?”¹⁰

This could be too harsh a statement but it is worth keeping in mind while researching issues of representation and accountability.

Through the following overview, the paper will address the various aspects of internal governance as discussed above, the different modes and levels of accountability, and how relevant are the various critiques in the literature regarding the situation of NGOs in Egypt.

The Decision-making Process: Relationship with Staff



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The decision-making process in all organizations varied based on their internal structure and hierarchy. A key feature among all studied organizations is the strong participation of staff in shaping programmes in particular and also in discussions of the internal bylaws that governs their relation with the institution and its management. With an adequate structure in place, each organization had a programmes unit and a financial unit. The programmes unit is divided to different programmes based on the scope and mandate of each organization as well as its size. The same applies to the financial and administrative unit, which may include, in bigger organizations, several staff with several roles and only one leading accountant in the cases of small organizations. Another key feature is that managerial authorities and tasks are not fully centralized in the hands of the chief executive officer (CEO) but rather the CEO would share his/her authorities with a senior management team. These would include; Associate Directors, Heads of Programmes, and Head of Administration, in the case of large organization.

While all the interviewed organizations stated that there was an internal bylaws document that had been discussed among staff, in general meetings and retreats, the actual implementation of those bylaws differed from one organization to the other. Many CEOs stated that they face a major challenge to convince their staff to abide by the bylaws.

As one CEO said, “you are asking about bylaws. We have them, but how can I convince those “activists” to turn to act like “employees” given all the risks they face every day to perform their tasks”. Another former CEO complained that while the bylaws were flexible enough for staff members to adhere to, he found it hard to implement the disciplinary actions against staff who do not adhere to it. “For example, one of my most competent staff, keeps on coming very late every day without a reasonable excuse, she also does not show up to work without calling or sending an email for no obvious reasons. We talked informally many times, and I counselled a lot. Finally, the admin would send the salaries report for my final approval at the end of the month, and I find that more than one third of her salary will be lost to disciplinary actions ... I reduce it to only 5% cut of salary”.

Internal bylaws do not only include rules regarding attendance and annual leaves, it also includes codes of ethics and respect for privacy especially in the cases of women’s rights organizations and feminist groups. It also provides rules and



mechanisms for protections of employees/staff in cases of arrest or when facing any types of harassment from the state and its security institutions as well as recruitment procedures and a salary scale. In all organizations, the structure and internal dynamics were flexible enough to adapt the bylaws to their creative, non-bureaucratic staff as all CEOs were aware that NGOs in general and human rights organization in particular recruit not just “employees” but rather activists, advocates and defenders. But while the CEOs or executive directors and senior management of all interviewed organizations were conscious and persistent to engage staff in the decision-making process to various levels, the existence and roles of boards of directors was a more complicated dilemma in all organizations.

The Decision-Making Process: Boards

One of the main pillars of effective governance in NGOs is a functioning governance board of director, separate from the managerial team. The CEO is accountable to this board that performs key functions, which mainly include; 1) developing the organization's mission, vision, and core values, 2) recruit and select the organization's executive director, 3) support and assess the performance of the organization's chief executive, shaping the organization's future strategy, 4) ensure that the organization has financial and other resources adequate to implement its plans, 5) enhance the organization's credibility and public image, 6) represent the organization and advocate for it. The board of directors in some cases is called also, the board of “advisors” or trustees”. Board members advise on strategies and develop vision; they should be the first accountability bearers within the whole accountability chain as they help to raise funds (or agree to fundraising strategies performed by the organization) and assess the performance of CEO and his/her team and finally they direct the organization as the main body that the CEO and team report to.¹¹

The existence of functional, engaged boards is one of the main challenges of the NGOs in Egypt in general and not only in human rights NGOs. There is usually a mix between the role of governance and role of management. As one experts on civil society and NGOs in Egypt said:

“in big NGOs, it is the management which gets into the details of administering



daily affairs but also dominates the board, whose role is minimized. While in the case of small NGO, especially community development associations (CDAs), the board is the management and all is mixed up. So, the equation between governance and management is problematic in the NGOs sector as much as it is problematic in the state, between an executive that has it all and a weak legislature”.

Among the interviewed 10 organizations, only two had effective and engaged boards. In one of these two, the board members are not managing any programmes in the organizations. There are several reasons that could explain the dilemma of governance boards in the NGOs sector in Egypt.

Atop these reasons is the restrictive legal and political environment of the NGOs sector in Egypt. Law no. 84 for year 2002¹² has been a key obstacle towards a conducive and effective civil society in Egypt. The 2008 Human Development Report¹³ had clustered the key areas of friction in the law. The first area of friction is the requirement that all civil society organizations “adjust” their legal status and register with the Ministry of Social Solidarity (MSS). But under the jurisdiction of MSS, NGOs can be seriously penalized for a number of infringements. This power to criminalize NGOs and their chairs is predicated on the basis of vaguely worded provisions, therefore, creating or managing an organization or a group whose purpose is to “call for obstructing the provisions of the Constitution” can result in a prison term. A second controversial provision is the right of the state to dissolve a civil organization, which should be only done under judicial jurisdiction and in cases of major violations even though through several procedural steps before dissolution, including appealing the legal decision according to Article 42 of the law. In general Law 84/2002 uses terminology that is open to interpretation; such as “the public order”, “public ethics”, and “threat to national unity”. Explanations can vary according to time, place and circumstance, allowing the authorities a range of responses to NGO activities, and the tools to censor and oversee activities.

This restrictive law had pushed most NGOs to register as law or civil firms; where the legal structure of the organization does not require the establishment of a board. Even in the case of some NGOs that were willing to register under this restrictive law, they were denied the registration approval and had to resort to



courts for years to gain the registration status. For example, the Egyptian Organization for Human Rights (EOHR) that was established in 1985, attempted to register under Law No. 32 of 1964 and was denied registration. It was also denied registration under Law No. 153 of 1999 and even after Law No. 84 of 2002 was issued, EOHR had to go to the administrative court to appeal the denial of registration by the government and finally gaining its registration status in June 2003 after 16 years of legal battles. Similarly, the New Women Foundation managed to register under Law No.84 in 2002 after a prolonged legal and bureaucratic battle.¹⁴

In addition to legal restrictions, the political restrictions are even worse. The protest law, anti-terrorism bill and the current investigation in what is known as the “NGOs foreign funding case” along with the freeze of assets of prominent HRDs have all added to the deteriorating political and legal contexts of civil society structures in Egypt since 2013. It is not surprising that many of the interviewed NGOs stated that they all started some attempts to establish boards or activate their existing boards in the period between 2011-2013, when the political situation in Egypt was more conducive and open with fewer infringements on the right of association. The same period also witnessed a quick expansion and enlargement of several organizations, which sought to establish a board to support them in their enlargement efforts.

In addition to the restrictive legal and political environment, was the challenge of selecting and recruiting board members. Because most of these NGOs started as initiatives of human rights activists and evolved into institutions, they have around them a community of experts and supporters who are ready to provide technical advice but do not want to get involved in logistics, administration or finance issues. They are willing to offer time, networks, and connections, but not to the extent of assuming roles as members of governance boards. They prefer to have advisory rather than governance functions also to avoid legal liability.

One of those experts who was a member of several boards stated that “a dear friend and respected human rights activist would call me and tell me that he needs to put my name as member of the board in a new organization he is establishing, I accept of course, and I know it is more symbolic... I cannot remember when was the last time I attended a board meeting for any of these organizations.”



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Many CEOs' interviewed for this paper stated that it was a difficult task to find board members who have genuine interest in human rights, ready to bear the legal liability of an NGO in such a restrictive environment and also have the time to engage effectively with their responsibilities.

It is important to note that feminist organizations in particular were more cautious in the recruitment of new board members, as according to a CEO of a feminist organization it is even more difficult to find “like-minded board members who believe in feminist values...we even agreed as founding members and members of the board that our decisions should be by based on consensus and unanimity and not by majority voting...this helped the ‘group’ to continue and develop in full harmony.”

But the restrictive environment and difficulty to recruit engaged board members are not the only reasons behind the weak NGOs' boards. The problem existed even in the period from 2005 to 2010 which was relatively less restrictive compared to the period (2014-2016).

As one CEO interviewed stated “we were very relaxed in the period from 2005-2010, although there was a very good chance to re-think and address the questions of governance and boards but we did not. We had the recognition of the international community and we were less harassed by the state. We surrendered to the more comfortable status-quo and lost a good opportunity to address this question.”

Another CEO had a different view regarding the importance of a board. Based on the experience of this organization, staff members have been more capable of drawing the organization's strategy, and while they tried to recruit a group of outsiders, friends/advisors for the organization to help staff members during the expansion period of 2011-2013, the experience was not successful.

Another model for governance that was developed by one organization before 2011 was establishing a general assembly of staff rather than recruit independent volunteers to act as a board. This alternative model was adopted by some NGOs to evade a crisis similar to the one that hit the EOHR in 1993. The crisis led to the split in EOHR after several primarily politically motivated members infiltrated the



general assembly.¹⁵ In this model, the staff meets for an end-of-year retreat where they discuss the final report and budget, hold the COE to account and finally elect a new CEO for a one-year term. This model was described by most interviewees as lacking key governance elements, as the CEO is accountable to this assembly of his/her own staff one day per year, while they are accountable to him/her the rest of the year. This model also had its limitations as it created conflicting blocs among staff who are supporting one candidate for the post of CEO over another in a non-healthy managerial environment. In spite of the obvious limitations of this model, it was mainly seeking to limit the powers of the CEO in his/her relationship towards staff and ensuring a more participatory approach in decision making within the organization rather than holding the CEO and the whole organizations accountable to an external stakeholders group who supports and leads the organizations.

Decision Making Process: Founders and Chief Executive Officers

The lack of strong governance boards in most interviewed organizations resulted in decentralized managerial responsibilities while the ultimate authority lies with the CEO or the executive director. Most of the researched NGOs had a structure that included some form of a core senior group leading the organization. This core senior group had different names, its membership would include in some cases administrative staff members while in other cases it was only for senior programme officers. The CEO in some cases may have deputies or associate directors, while other NGOs may have a programmes manager that ensures synergy among all programs. These structures gave a consultative role to this core group and provided for a mechanism of delegation of authority in case the CEO was absent for any reason.

One key challenge that all NGOs faced has been related to the founder/s. As the case in most NGOs, human rights organizations start as an initiative founded by an activist or a group of activists who as founders exerted all efforts to develop and enhance the organization that started as a small idea. Founders devote years of their lives to the organization, face the risk of arrest and legal harassment and



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engage in several battles and hence become almost wedded to their organizations and do not leave the position of the CEO. Moore and Stewart addressed this dilemma in a succinct manner stating that, “individuals or small groups who are dedicated to the organization and the cause it represents, see their own dedication and commitment as the reason for success, and, perhaps, feel that they are entitled to reap the fruits of success, even if these fruits only come in the form of such intangibles as fame, respect, and status. Like small business people, the founders of NGOs may not want to share managerial authority and status with newcomers at the point where the organization has the potential to take off into rapid growth.”¹⁶

Interviewees talked about both legal and moral responsibilities that impact their decision to stay in position or leave as the following quotes show.

“I started a certain initiative and it is immoral just to withdraw and leave without ensuring its sustainability and that it will continue, but as for my future plans I don’t want to continue in this position forever.” – current executive director of an organization.

“I cannot let the organization fall apart after I leave. I am drained and unable to write or research. [But] before leaving I [should] make sure that funding is secured for some time in order for me to withdraw...the contract of the law firm is in my name...I am the legally responsible and accountable person in case the organization faced any legal difficulties...I cannot put my staff at risk.” – former executive director of an organization.

“Of course, I was afraid of taking the step to leave the post of CEO, but I was tired and drained. [Though] I also have grown embarrassed of having all these unlimited authorities.” – former executive director of an organization.

Even if an executive director decided to leave to genuinely pursue another career or an academic aspiration, they face the challenge of finding a replacement. In the absence of boards, there is no clear mechanism for choosing of a new director. In spite of the attempts of some NGOs to empower many staff members and delegate certain authorities to some to attend meetings with donors and stakeholders, the founders are looked upon for advice and for articulating key positions and



strategies that hold the institution together.

The founders' challenge and how it weakens internal governance of NGOs was described by “first generation institution” theory under which founders exert disproportionate level of control and make it unrealistic to have autonomous and effective boards.¹⁷ This remains a serious challenge to human rights NGOs in Egypt, as it hinders institutional development and professionalization. In some cases, the influence and power amassed by founders had hindered the growth of the organization in dynamic and effective ways.

Foreign Funding and Accountability to Donors

Foreign funding is the subject of one of the most protracted debates in the literature of NGOs in general and in Egypt in particular. Research from Asian countries such as India and Bangladesh is full of critique to the so-called NGOs business model, blaming the international donor community for shifting what should have persisted as community-based, member-supported NGOs into professional, non-politicized entities.¹⁸ Human Rights NGOs in Egypt have been also criticized for being too dependent on foreign funding, hence their precarious position in case the main donors change their priorities and agenda.

These critiques do not take into consideration, however, the legal context that imposes barriers to local fundraising. According to the 2008 Egypt Human Development Report, “NGOs have the right to receive donations only following the approval of the Ministry of Social Solidarity (MSS). Permission from the Ministry is required for all funding from foreign sources. Fundraising campaigns such as organizing fairs and public events to collect money also require prior approval and complex procedures that the MSS controls. The law gives MSS the Ministry exclusive authority to control NGOs' management of finances.”¹⁹

In addition to these legal constraints, NGOs working in the field of human rights find it very difficult to seek funding from local businesses who are reluctant to help, even if indirectly, in exposing human rights violations as this could backfire on their business interests. Additionally, such business people often have strong



relations with the ruling regime especially in a country where networks of corruption and cronyism are important for big business.²⁰

Additionally, there is no evidence that local/domestic funding could enhance NGOs, or make them more independent. In fact, experiences from some Eastern Asian countries like South Korea, where several corporations established local philanthropies, show poor governance and corruption. “A total of 45 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... Over a third of the philanthropies’ board members were linked to corporations or to founders’ families”.²¹ Even in a very restrictive setting like China, a series of cases of misappropriation of funds have discredited NGOs (in the field of community development) prompting the government to put in place fiduciary rules for GO-NGO (government-funded NGOs).²²

All interviewees for this paper agreed that Egyptian NGOs cannot survive without foreign funding, but several HRDs have long voiced concerns that this funding was “the unfortunate necessity with the lack of sources of domestic funding.”²³ This may be explained in light of the stigmatizing environment around foreign funding and “foreign intervention” as alleged by the pro-government and hyper-nationalist media.

But not all interventions in reality are motivated by agendas to serve external interests. One donor interviewed for this paper argued that, “funding coming from international donors is more transparent, it has clear rules, it requires clear financial and programmatic reporting... unlike funding coming from the governments of Libya and Iraq in the 1990s, for example.”

As the debate and the stigma around foreign funding is complex, this section will focus on two main aspects relevant to the objectives of this paper: (a) accountability shifting and agenda setting, and (b) donors impact on internal governance

Accountability Shifting and Agenda Setting



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Foreign funding is accused of shifting accountability of organizations towards their donors rather than their communities and domestic constituencies.²⁴ Donors, according to this view, impose their own agenda, trends or fashions, buzzwords that corrupts the field and the essence of the “cause”. While this argument may be true especially in the case of funding directed towards community development, a different approach is in order when assessing the question of accountability in the case of human rights organizations.

According to the mapping of the International Council for Human Rights Policy (ICHRP), one key accountability relationships for NGOs was the one with their donors. “NGOs generally make great efforts to explain to their donors what they do and what they achieve and why the costs of their activity are justified, while donors normally attach conditions to their grants, related to financial reporting, impact assessment and evaluation. The clearly contractual nature of the relationship means that it receives the lion’s share of attention in debates on accountability. Yet the view that NGOs are primarily accountable to donors is sustainable only on a narrow interpretation that reduces accountability to little more than financial probity.”²⁵

All NGOs interviewed for this study had asserted that they set their own agenda, draw their strategies with their teams and boards of directors or advisors.

A former executive director of one NGO stated, “we have ideas for projects and we decide on the right timing... to start a new program. Donors do not impose programmes on us. If they accept our new project, fine, but if they come with a ready-made one, we simply refuse”. Another director stated that his organization had “very good relationships with donors.” They, the director said, “listen to our needs, and if not we do what we want ... for example they advised us to slow down in expanding in new governorates ... while this was a very valid advice, I could not inform my team which has been working for two years in their governorate that we shall not start our programme there and we started it.”

It is important to take into consideration that in cases where NGOs have a confrontational relationship with the state because of their work documenting and exposing human rights violations, for example, the organizations’ staff members and victims of these violations could be at risk, and hence a



transparency and accountability tool like publishing financial reports on the internet could become, in their view, counterproductive. As similar experiences from Latin America suggest, “it is essential to analyze the context before formulating generic demands for greater accountability... it is not possible to apply the same requirements for organizations that work in democratic environments to those that work in authoritarian contexts”.²⁶

Donors and Internal Governance

Donors are not made from the same mould. There are plenty and diverse types of donors, whose policies and procedures vary, which impacts the way they select and work with their grantees, the level and depth of communication they have with local NGOs, their reporting requirements, and their influence.

NGOs interviewed for this study differentiated between donors who perceive organizations as partners and others that perceive them as mere grantees. Partner donors in particular had better working relations with NGOs, as they share the same values and build the relationship on mutual understanding, transparency and dialogue. A majority of these donors were international human rights foundations and/or international feminist (or women-focused) organizations. Most NGOs in Egypt prefer funding from private foundations as compared to governments. All of the interviewed NGOs specified that they do not seek funding from the US Agency for International Development (USAID) in particular and that they would prefer to work with Scandinavian government agencies due to their neutral political positions and the absence of any “colonial” history in the Arab region.

There are also differences and variations among international philanthropic donors. These differences in approaches and types of partnership influence internal governance structures.

As one interviewed donor stated, “there is a responsibility upon donors to advise NGOs and work with them to develop their boards, to provide capacity building for better strategizing. They also request terms of references and job descriptions of project officers... All these efforts and mutual discussions help NGOs to become more institutionalized, effective and enhances the impact of their effort.”



Some directors interviewed share this view and state that donors' requirements had helped NGOs in Egypt to develop better internal structures, adequate reporting mechanisms, bylaws, and more importantly, keep transparent and effective financial systems. One director said that, "donors' requirements enhanced NGO's public credibility and protected them when they were scrutinized by state regulatory bodies. Without these requirements, it could have been worse."

Other donors, on the other hand, opt for a more distant relationship with NGOs. They only request standard accountability mechanisms of programmatic and financial reporting but prefer not to be directly engaged in the efforts of NGOs to develop their internal governance.

The relationship between donors and NGOs is a very complex one. In essence, it is a power-relationship with donors holding relatively more influence tools because they are the givers. At the same time the shared values of "human rights" somewhat permeate this complex relationship. Donors "can play a supportive and positive governance role if they recognize the competing accountabilities that grantees must manage, respect the decisions of organizations that have sound and effective decision-making systems, and support efforts that organizations make to improve their accountability. On the other hand, bureaucratic and inflexible reporting requirements soak up NGO resources and time, and when donors impose their own priorities they could undermine effectiveness."²⁷

Representation and Accountability to Constituencies

Donors-NGOs relationships are inextricably linked to the issue of "to whom" NGOs are ultimately accountable and what forms and mechanisms of accountability they have towards their own constituencies or the communities or groups they claim they are defending. ICHRP identifies the constituencies to which NGOs should be accountable as "the people for, with, or on whose behalf NGOs work." In the case of human rights NGOs, the core constituency would normally be the victims and survivors of human rights violations; for other NGOs, it would be the



beneficiaries of their work, or members. Ensuring the participation of such beneficiaries and giving them a central role in the work of the NGO might seem only proper and normal.²⁸

In a famous liberal polemic, *The Economist* questioned the claims of representation of and accountability of NGOs to the “people”. It wondered whether, “[t]he increasing clout of NGOs, respectable and not so respectable, raises an important question: who elected Oxfam, or, for that matter, the League for a Revolutionary Communist International? Bodies such as these are, to varying degrees, extorting admissions of fault from law-abiding companies and changes in policy from democratically elected governments. They may claim to be acting in the interests of the people – but then so do the objects of their criticism, governments and the despised international institutions. In the West, governments and their agencies are, in the end, accountable to voters. Who holds the activists accountable?”²⁹

This polemic triggered a wave of relevant research and calls for NGOs to abide by certain accountability rules. Democratic states whose ruling institutions depend on voters may have an argument to make here, demanding voluntary organizations or associations to justify and prove how representative and accountable they are. But this argument disappears under authoritarian regimes which cannot question the representative credentials of these NGOs since these regimes themselves rely on restrictive laws and unaccountable regulatory bodies hoisted over the civil society.

The question of representation and accountability to constituencies preoccupied the human rights movement in Egypt since it evolved in the 1980s. The splintering of the EOHR in the early 1990s was caused by heated differences on these very issues of representation and legitimation. On the one hand, there were those who advocated for a wide membership organization to mobilize constituencies and integrate human rights action within “people’s real struggles”, like Hany Shukralla, while on the other hand, certain activists argued for a closed professionalized organization that drives its legitimacy from the universality of the international human rights bill. The latter included Mohamed el Sayed Saed and Bahey eldin Hassan, who went ahead to form the Cairo Institute for Human Rights Studies in 1993.³⁰



All the NGOs which were established before 25th January 2011 and were interviewed for this paper, have always operated as “closed” professional/expert organizations. However, they managed to build strong representational relations with several constituencies. These relations developed through NGOs activities and programmes of litigation, advocacy, capacity building, and summer trainings for students, etc. Over time, NGOs and HRDs connected with networks of workers suffering from and fighting the increasing privatization of the public sector. Workers approached NGOs seeking legal aid. University students disciplined for expressing their views on campuses, women seeking equal rights at the workplace, and victims of tortures, illegal detentions and their families, and others, found allies in Egyptian human rights NGOs.

The two years after the 25 January 2011 revolution witnessed an unprecedented opening of the public and political spheres in Egypt. NGOs welcomed and embraced this opportunity to expand their constituencies. Several NGOs expanded to many governorates outside Cairo, contesting the criticism posed against NGOs as being urban based and disconnected from the audience they represent. The geographical expansion was accompanied by expansion of scopes and programmes as well. It is within this new context that creating a “wide national human rights membership organization” returned to the agenda of the human rights movement in Egypt. The premises of many NGOs turned into hubs for new initiatives, groups, volunteers and networks of activists.³¹ Reminiscing, the director of a human rights organization said that the “human rights discourse was then in the streets, people were chanting: Human Dignity, Freedom and Social Justice”.

But this opening did not lead to clear claims of representation and better mechanisms for domestic accountability. There remained limitations to how NGOs could become accountable to these constituencies. These limitations are not peculiar to the Egyptian case. A similar debate erupted within the Latin American human rights NGOs, where some institutions considered that defending international human rights standards gives legitimacy to human rights organizations, while others argued that NGOs represent unorganized groups that cannot give an express consent nor mandate. However, in this case, the obligation to be accountable is even greater and could happen through information sharing



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with constituencies and hence representation develops through accountability and a continuous practice that builds mutual trust.³²

Two of the interviewed NGOs were established after 2011. While both registered as “law firms”, their initial structures were designed as membership organizations, with branches in several governorates. In each branch or office, there were three members and several volunteers. The new attempted structures did not evolve further due to the crackdown by the state and the forceful return to restrictive political and legal measures as of July 2013. The following years saw one of the worst crackdowns against NGOs since they evolved in the 1980s.

Some NGOs curtailed programmes or put them on hold. One director said his organization “had to put the volunteers programme on hold, it is a huge responsibility and we cannot put young students at risk of arrest or any other legal liability.”

ICHRP elaborates further on the dilemma of representation and accountability to constituencies especially in a restrictive context. It argues that it was important “to acknowledge that reality is often far more complicated. For instance, access to this core constituency may be restricted or limited, as it is for NGOs that work on behalf of people who are dead or disappeared; or prisoners; or detainees held in secret. An NGO that works to better the situation of a group may also explicitly claim not to “represent” them or their cause. In other instances, some causes advanced by NGOs may involve a very broad or diffuse constituency (for example, advocacy to protect the environment or promote general rights awareness).”³³

This can lead to tough decisions. An executive director of an NGO described one such decision in her interview. The issue was the relationship between the Cairo-based headquarters of this professionally-institutionalized organization and nascent feminist non-institutionalized initiatives outside Cairo. “[W]e worked with these groups and provided capacity building and mentorship. Many of them wanted to become chapters or branches for the organization in their communities. We collectively refused. We don’t want the new initiatives to be us, we want them to develop independently, within their communities.”

In spite of all these challenges, some interviewees still believed that it was possible



to develop a membership organization that would enhance accountability of NGOs towards the society and their constituencies and address the question of representation.

One NGO director said he did not want “to swallow the new initiatives.” “We are looking at a slow process of including members who believe and respect human rights. We need to capitalize on the momentum that January 25th created around human rights, in spite of all the difficulties. We could start including 10 members, then another 10 recommended others and so on.”

Collective Action and Voluntary Regulation

Almost all debates about NGOs’ governance, accountability, representation, claims of corruption and accusations of non-transparency have identified voluntary regulation and codes of conducts as one of the tools that could enhance internal governance in this sector. Examples include the 2004 Conference of NGOs in Consultative Relationship with the UN (CONGO) voluntary code of conduct that stressed the responsibilities attached to representation. In the same year, the World Association for Non-Governmental Organizations WANGO³⁴ issued a similar code of conduct. In 2006, 11 leading international NGOs adopted the International NGOs Accountability Charter.³⁵ All these documents and charters cover good governance, management, fundraising, and multi-stakeholder engagement; and refer specifically to respect for universal principles (such as the Universal Declaration of Human Rights), independence, responsible advocacy, effective programming, non-discrimination, transparency, and ethical fundraising.

In addition to international codes of conduct, there have been similar attempts on the national level in many countries in the same regard. In the Asia Pacific region for example, there are: Australia’s ACFOA Code of Conduct, the Philippines’ Code-NGO, Indonesia’s LP3E, Japan’s Codes of Ethics for development NGOs, and Pakistan’s NGO Forum Code of Conduct.³⁶

Most of the collective action of human rights NGOs in Egypt focused on coordinating positions or activities. The most important coordinating body has



been the 19-member Forum of Independent Human Rights Organizations (the Forum). One good example of a purpose-specific joint group has been the Front to Defend Egyptian Protesters (FDEP) that was established as an informal group of activists and national NGOs employees to defend citizens' rights to freedom of assembly and provide them with legal aid following the 2008 El-Mahala labour strikes.

The Forum held regular meetings to harmonize positions and discuss joint activities. The last major effort it undertook was a joint submission to the Human Rights Council in late 2014 on the occasion of the Universal Periodic Review of Egypt at the Council at the time.³⁷ The FDEP provides free legal assistance to detained protestors and disseminates information on the status of protestors especially when they are arrested or referred to trial across the country. FDEP has been active prior to 2011 and relies on volunteers rather than institutional coordination.

As explained by some of the interviewees, human rights NGOs attempted to draft a code of conduct in 2000, amid concerns over the 1999 restrictive NGOs law. Unfortunately, the attempt was not successful. Although there was not a public document or code of ethics of human rights NGOs, there have been always discussions and consultations on individual basis among various organizations as well as through the Forum.

Conclusion

Internal governance of NGOs is crucial for its efficiency, effectiveness, and credibility. However, it is difficult to assess the state of internal governance of NGOs without taking into consideration the very restrictive legal and political context surrounding them and affecting their work. Political accusations and security threats impacts the level of transparency and disclosure NGOs could allow as they have a moral and ethical obligation to protect both their staff members and constituencies from possible risk of arrest or other types of legal or extra-legal harassment.

A restrictive NGO law also discourages advocates of human rights from volunteering as board members for these organizations for fear of becoming



legally liable. It also complicates the relationship with donors and hinders its development towards a mutual equitable partnership. Above all, a restrictive legal and political environment hinders outreach efforts, expansion and further engagement with larger numbers of stakeholders.

The legal and political environment, however, is not the only element affecting the internal governance of NGOs. The main structural characteristics of Egypt's human rights movement, and the way it has evolved also had affected the internal governance of NGOs. These evolutionary phases could be divided as follows:

- **The Establishment of the Movement and its Evolution (1985 and 2005)**

During this phase, NGOs faced several challenges. The first was the split of the EOHR in 1993 and the second was the repressive Law No. 159/1999 that was later replaced by Law No. 84/2002. Within this establishment phase, the first generation of the movement faced several questions that continued to haunt NGOs later. On top of these questions was whether to set up open membership organization or to go for a closed structure made up of experts. The infiltration of several non-supporters of human rights to the membership of certain NGOs had pushed HRDs to opt for the closed organization model when establishing new organizations to avoid losing control or being compromised by pro-government members or by security agents. Instead of recruiting governance boards, organizations at this phase established distorted models of general assemblies, made of staff members rather than external members as an alternative for the challenge of internal governance. The second feature of this phase is the decision to receive foreign funding, after the initial tendency was more in favour of relying only on local donations and self-funding. The phase also witnessed an important model for co-ordinated action among the various organizations that succeeded in repealing the association law of 1999.

- **The New Generation of NGOs (2005-2010)**

During this phase, new organizations were established by a younger generation of HRDs. Although the political and legal environment was relatively less repressive, the questions of internal governance were not adequately addressed.



Organizations established learnt from the experience of their predecessors. On top of these lessons was the lack of participation of staff members in the decision-making process and the often-unchecked powers of founders and executive directors. Hence, there was more concern with internal decision-making processes, participation of staff members in decision-making and programme design. But there were no serious attempts to establish engaged and active governance boards. Bylaws were in place yet not activated or at least not all the time, and CEOs authorities were slightly limited by engagement of staff and involvement of a senior management team. In terms of scope, organizations in this phase were more professionalized and had specialized mandates such as academic rights, personal rights, freedom of expression, women's rights, etc. Regarding foreign funding, this new generation of organizations managed to build stronger partnerships with donors and funding agencies on more equal footing and overcame the stigma around foreign funding as one of the key dilemmas that faced the first generation of organizations.

- **The Expansion Phase (2011-2013)**

In the previous two phases, organizations managed to build strong relations with their constituencies, but the question of accountability was not satisfactorily tackled. Organizations were seeking a wider outreach and expansion of their activities. The January 25th revolution opened up the public sphere dramatically; citizens became highly mobilized and politically engaged. Organizations started to rapidly expand their thematic and geographic scopes. Offices started to open in various governorates, staff members increased many folds, outreach and involvement of constituencies started to increase, and new organizations were established. During this rapid expansion phase as well as the concomitant fast political developments, questions of governance boards and accountability towards constituencies started to surface back into the discussion among organizations. Some started to consider activating their boards and enhancing their roles, others decided to revisit the “membership organization” model. Unfortunately, the crackdown against the organizations that started in late 2013 hindered a possible progress on issues of governance.

- **The crackdown (2014-2017)**



Human rights organizations faced one of the most severe crackdowns that threatened the continuation of the organizations while several key HRDs faced a serious risk of imprisonment and had their assets frozen or were banned from travel. Several organizations had to downsize programmes and cut down staff. Staff members reported that they were highly engaged in decision making regarding the future of the organizations and its impact on their freedoms and lives. While it was expected in such a crisis that organizations intensify collective action in order to be able to resist the crackdown of the state, the reactions of organizations varied. Some preferred to follow the international advocacy path, other preferred to speak up domestically against the state's crackdown and a third group decided to register under the NGOs Law No. 842002 or in some cases activate an existing registration under this restrictive law that was replaced by even a more draconian one in mid-2017. Some organizations adopted a mix of these strategies, but the diversity of actions weakened their collective impact on the state.

Through all these four distinct phases, human rights NGOs continued to face unsolved dilemmas that had a direct impact on internal governance as comprehensively overviewed in the analysis of the findings. Those are:

- Creating a balance between professionalization and bureaucratization; how to activate bylaws, set up a hierarchy and structures, enhance mechanisms for recruiting staff and developing their skills, etc., within a framework of flexibility that would leave a space of creativity for HRDs and activists. Most of these organizations are to a large extent staffed and/or led by activists who have an automatic negative reaction to bureaucratization and professionalization. On the other hand, to be able to secure foreign funding, which became the lifeline to many, they had to professionalize!
- Accepting foreign funding, even if mostly unconditional and in response to projects designed by the organizations themselves, automatically creates accountability measures towards donors. How to manage this accountability and ensure autonomy or independence stays a challenge. Additionally, when some human rights NGOs and HRDs received foreign funding they remained unable to overcome the related stigma and could



not publicly defend their independence except by admitting that such funding was “a necessary evil”. Local funding is not the only answer. Rather, in many cases it would come from the local business sector and would likely be tied to political or social agendas that contradict the very causes human rights organizations advocate for, such as the environmental rights of a certain community suffering from industrial pollution or the right to housing for communities facing business corporations involved in real estate development.

- Additionally, donors have to provide capacity building and support to their partners regarding the development of their governance structures without fearing that they are intervening in NGOs strategies or agenda. Many NGOs are seeking partnership relations with donors, based on mutual trust, which should make donors act like partners and provide tools and mechanisms to NGOs to grow strategically, establish boards and create a healthy managerial environment in their organizations. The balance between intervention and support, however, is very delicate.
- Limiting CEOs authority through actively engaged governance board is necessary. Most executive directors are also founders who are unwilling or incapable to exit the organization and this impedes the ability of organizations to develop and grow. The so-called “sweat and blood” phenomenon of the founders who are unable to leave the organizations they exerted huge efforts to establish, in some cases, kills the potential for the organizations to grow and leave them stuck with the balance of power forged by the relationships among the founding members. Meanwhile, where founders and CEOs are willing to exit, it is not easy to recruit a new CEO or rely on an actively engaged board.
- Building constituencies and expanding outreach but without real channels of accountability. The dilemma of engaging constituencies in the strategizing and policy formulations processes, agenda and priorities setting in the context of the power relationship between the "benefactors" and "beneficiaries" remains the most difficult dilemma to be solved. NGOs also face the challenge of creating a balance between empowering the emerging human rights initiatives and networks of activists while at the same time giving them the space to grow within their local contexts and communities. While several NGOs were able to mobilize networks of



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volunteers in several places outside Cairo especially after January 25th uprising, ensuring that those volunteers truly believe in and respect human rights values and principles remain a difficult task, though indispensable if an organization wants to be ultimately accountable to these very volunteers or members.



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