

Legal Commentary on

Regulations of NGO Law

N. 149 for 2019 on Civic Associations



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This paper addresses nine of the most problematic points in regards to the implementing regulations of Law 149 of 2019 on civic associations. The regulations were issued by Prime Ministerial Decree 104 of 2021, nearly a year and a half after the law was issued in August 2019.

In the intervening period, the government worked on the regulations in total secrecy, refusing to release any drafts in order to avoid criticism from civil society organizations or the international community. The government also did not uphold its pledge that the implementing regulations would sidestep several restrictions imposed by the law¹. For example, the law deferred to the implementing regulations for procedures for the receipt of funds from natural or legal persons outside Egypt. The regulations require the administrative body to deny or approve such requests within sixty days, quite a lengthy period. Most problematically, the regulations also require the association to return all funds to donors within five days of receipt of a denial. This renders it practically impossible for the association to appeal the decision and actually make use of the funds if the court rules in its favor.

The law also left the regulation of international organizations to the implementing regulations, which requires them to submit a licensing application to the Ministry of Foreign Affairs but sets no deadline for a response from the ministry.

Both the law and the regulations enumerate many restrictions examined by this paper. They also provide for fines of up to one million Egyptian pounds for actions that should not be criminalized at all. This will inhibit the spirit of initiative within society and deter people from engaging in civil society, since their activities will be subject to unending security

¹ CIHRS " Draft NGO law before parliament is simply rebranded repression, must be rejected" July 11, 2019 <https://cihrs.org/egypt-ngo-bill-before-parliament-is-simply-rebranded-repression-must-be-rejected/?lang=en>

threats and bureaucratic complications, as well as a potential loss of personal freedom under the Penal Code. If it is clear that the law and its regulations are in part tailored to cripple rights organizations, the broader goal is to cripple civil society at large, particularly charitable and developmental organizations.

The following are the main problems of these regulations

I. Adjustment of status for entities engaged in civic activity

The law on non-governmental activity requires all registered entities to regularize their status within one year of the enforcement of its implementing regulations² by notifying the competent ministry. Failing to do so subjects an entity to dissolution, whereupon all its assets accrue to the Civic Associations and Foundations Support Fund.³ The process of status adjustment is essentially re-registration. Entities are subject to the same conditions outlined for registration, including that they must be engaged in a development-oriented activity that conforms to the state's development plan and meets society's needs. The administrative body may object to an association's re-registration if it deems its activity to be contrary to public order, public morals, and other vague standards whose interpretation is left to the arbitrary discretion of the administrative body.

Entities considered by the state to be engaging in civic activity but that do not take the legal form of a civic association or foundation—limited liability firms working in consulting and training, or law offices offering pro-bono legal services to the needy—must regularize their status as soon as the implementing regulations enter into force or upon notification from the administrative body, whichever comes first. If they fail to do so, the competent ministry may suspend their activities and instruct the original licensing body to suspend their license.

² Issued by a decision of the prime minister n. 104 for 2021

³ Article 2 of the law and Article 2 of the implementing regulations.

II. The activities and objectives of civic associations

Although Article 75 of the constitution⁴ explicitly defines prohibited activities for non-governmental associations as those whose statutes or activities are secretive or of a military or quasi-military nature, the law and its implementing regulations disregard the constitutional text, placing additional ambiguous, expansive restrictions on NGO activity. They also limit their spheres of action, restricting them to activities defined solely by the administrative body. The regulation is therefore likely unconstitutional as it subverts a right enshrined in the constitution.⁵

For example, the law and its regulations limit the work of NGOs to fields associated with social development, providing they adhere to state development plans and society's needs (Article 14). But the implementing regulations do not define "social development," opening it up to numerous interpretations that could be used to deny NGOs legal status or suspend their activities on the grounds that they do not conform to state development plans or that society has no need for a particular association's activities. The same applies to foreign NGOs (Article 68).

At the same time, the law enumerates a long list of ill-defined, vague activities prohibited to associations, among them:

- Activities not mentioned in the notification of establishment;

4 Article 75 of the 2014 constitution states, "All citizens shall have the right to form civic associations and foundations on a democratic basis, and they shall acquire legal personhood upon notification. They shall practice their activities freely, and administrative bodies may not interfere in their affairs or dissolve them, their boards of directors, or their boards of trustees except by court order. The establishment or continued operation of civic associations and foundations whose statutes or activities are secretive or which are of military or quasi-military nature is prohibited, as regulated by law.

5 "The legislative authority exercises its discretionary prerogatives—except in regard to the restrictions imposed by the constitution—apart from the judicial oversight of the Supreme Constitutional Court. [The court] may not use its own subjective criteria to weigh or question the policy pursued by the legislator on a particular topic, or delve into the suitability of its practical application, nor may it ascribe to the text under appeal objectives other than those cited by the legislator or assess choices made within the remit of the legislative authority. On the contrary, it is sufficient for [the court] that the legislative authority exercise these prerogatives, drawing on goals dictated by the public interest in the matter subject to legislative regulation and that its methods in achieving the goals it defines are rationally based". SCC case no. 16/15JY, 14 January 1995, Technical Office 6, part 1, p. 494.

- Political, partisan, or union-related activities, or the use of association offices for these purposes;
- Activities likely to infringe public order, public morals, national unity, or national security;
- Advocacy for discrimination or any activity advocating racism or incitement to hatred;
- The conducting or publication of opinion polls or their findings, or conducting field research or making its findings known prior to approval from the Central Agency for Public Mobilization and Statistics, to confirm their accuracy, neutrality, and their relevance to the association's activity;
- Agreements with a foreign body located within or outside the country without prior approval from the administrative body (Article 15), with the exception of funding agreements, which are themselves subject to multiple restrictions that will be examined below.

III. Impediments to the right of associations to fundraise

While the old NGO law (Law 84/2002) restricted the right of associations to fundraise within and outside Egypt, the new law is much more onerous in this respect, and the implementing regulations introduce additional restrictions that deny associations access to important funding sources.

The law provides for the receipt of funds within Egypt by notification, whether the source is natural or legal Egyptian persons or foreign NGOs licensed to operate in the country. Foreign NGOs are in turn subject to various restrictions in registration or cooperation with Egyptian organizations (Article 24 of the law). Notably, the law disallows diplomatic missions from supporting associations' activities through simple notification.

Regarding the receipt of funds from abroad, the law sets up several obstacles and the implementing regulations add their own:

- The law requires prior permission for the disbursement of funds received from abroad, requiring that an association “notify” the administrative body within thirty working days of the receipt of funds. The administrative body may approve or deny the funds within sixty working days. Neither the law nor its implementing regulations enumerate the grounds for denial of funds (Article 27).
- The implementing regulations make it unfeasible to appeal the administrative body’s denial of funds, requiring the association to take action to return funds to the donor within five days of notice of denial⁶ and obligating banks to return funds within five working days of receipt of a letter to return the funds.⁷ The regulations thus render moot the association’s right to appeal the denial of funds before the courts within sixty days; if the court rules in its favor, the order cannot be executed since the funds will no longer be in the association’s bank account.

The status of funds received from diplomatic missions in Egypt or the international development offices of states and their foreign ministries is confused and ambiguous. The law permits the receipt of funds from foreign legal persons outside the country on condition of approval from the administrative body (Article 27). Although the Egyptian civil code defines states and their public agencies as legal persons,⁸ the implementing regulations introduce ambiguity here in regulating the receipt of foreign funds. For example, they require the submission of full information about the donor and the license permitting its operation and activities.⁹ These conditions apply to non-governmental international organizations and multinational firms, but are less relevant to, for example, government agencies. It is unclear how a state’s foreign ministry can submit its legal operating license, unless the legislator’s intent is to limit the receipt of funds to states bound to Egypt through bilateral cooperation agreements.

⁶ Article 44 of the implementing regulations.

⁷ Article 45 of the implementing regulations.

⁸ Under Article 52 of the civil code, legal persons include “the state, directorates, cities, and towns, according to the conditions defined by law, as well as departments, divisions, and other public facilities to which the law grants legal personhood.”

⁹ Article 42 of the implementing regulations.

The law gives the administrative body the right to infringe the banking confidentiality of organizations or entities engaged in civic work, at the request of the public prosecutor and in violation of Articles 97¹⁰ and 98¹¹ of Law 88/2003 on the Central Bank of Egypt (Article 10). The exception creates a problem since the request for bank disclosure is not linked with the commission of a crime that would justify a request for the breach of confidentiality.

The law treats the assets of associations like public funds (Article 23), meaning that in criminal matters association officials are treated as public officials. In turn, they are subject to harsher penalties for financial malfeasance, up to life imprisonment.

10 Article 97 states, “All clients’ accounts, deposits, trusts, and funds in banks, as well as related transactions, shall be confidential. They may not be accessed and no information about them may be disclosed directly or indirectly except by written order of the owner of the account, deposit, trust, or fund, one of his heirs, a legatee of all or part of the assets, or the legal representative or authorized agent, or pursuant to a court or arbitration judgment. The prohibition set forth in the foregoing paragraph shall apply to all persons and bodies, including those bodies authorized by law to access or obtain documents or data whose confidentiality may not be breached in accordance with the provisions of this law. This prohibition shall remain extant even if the relationship between the client and the bank is severed for any reason.”

11 Article 98 states, “The public prosecutor, or a duly authorized public solicitor of at least grade one, at his discretion or pursuant to a request from a public body or a concerned party, may petition the Cairo Appellate Court for an order to access or obtain any data or information related to the accounts, deposits, trusts, or funds set forth in the foregoing article, or related transactions, if it is required to discover the truth about a felony or misdemeanor where serious evidence exists of its commission. Any party concerned by the determination of claims, in the event of the sequestration of a bank subject to the provisions of this law, may file a petition with the competent appellate court as set forth in the foregoing paragraph. The court, convening in chambers, shall adjudicate the request within three days of filing after hearing the statements of the Public Prosecution or concerned party. The public prosecutor or the duly authorized public solicitor of at least grade one, or the concerned party, must notify the bank and the concerned parties of the court’s order within three days of issuance. The schedule for the determination of claims shall begin from the date of notification of the bank of the court order. The public prosecutor, or his duly authorized public solicitor of at least grade one, may order the disclosure or receipt of any data or information related to the accounts, deposits, trusts, or funds set forth in Article 97 of this law, or related transactions, if it is required to discover the truth about a crime enumerated in part one of chapter two of book two of the penal code or crimes enumerated in Law 80/2002 on the suppression of money laundering.”

IV. The registration of local NGOs

The law requires all entities engaging in civic activity to register under the law and it imposes penalties for entities deemed by the administrative body to be engaged in civic activity without registering. These penalties include substantial fines (LE100,000–1 million) as well as the closure of the association's offices, the seizure of its assets, and a ban on any activity for up to one year (Articles 94 and 97).

Although the law ostensibly allows formation of an association and acquisition of legal personhood by simple notification, the law and its implementing regulations set up numerous obstacles that effectively turn the notification process into a licensing regime. These include:

- The administrative body has the right to object to or suspend the activities of an association based on broad, ill-defined grounds, such as deeming the activities to be in violation of the constitution or any law. The only option for the association founders' agent is to rectify the mistake identified by the administrative body or appeal the decision before a court (Article 9).
- The administrative body must approve the association's office based on a physical survey to ensure that it meets the law's conditions for appropriate premises. The regulations interpret appropriate space to mean that the office should have an adequate entrance allowing for unimpeded entry and not be designated for any other activity aside from the association's activity.¹²
- An association can only open a bank account after the administrative body issues a letter to a bank under the oversight of the Central Bank to open an account for it (Article 10),¹³ meaning that an association under establishment cannot engage in any real activity since it lacks a bank account.

¹² Article 15 of the implementing regulations.

¹³ Article 39 of the implementing regulations.

V. Registration of foreign NGOs

Registration for foreign NGOs is subject to prior approval from the competent minister, and they are prohibited from engaging in any activities before receiving the necessary license (Article 65). The registration process for international organizations is extremely complex. The establishment of an international organization in Egypt may take years. The law and its implementing regulations require the organization to submit its papers to the foreign ministry, which considers the licensing request (Article 66). Neither the law nor its regulations set a deadline for the ministry's consideration of the application. In fact, the Foreign Ministry is not even required to formally acknowledge the filing of the application and supporting documentation with a receipt.

After the Foreign Ministry considers the application and the competent bodies approve it,¹⁴ the application is sent to the competent minister with the ministry's opinion, and the permit is to be issued within fifteen days of receipt of the request from the ministry. The law also requires foreign organizations to pay a fee of up to LE50,000 (about \$3,000), which increases twenty percent upon renewal of the license (Article 67). Since the implementing regulations fail to specify the actual fee, as they did for local associations and foundations, foreign organizations' registration may be delayed pending amendments to the regulations, the issuance of a decree setting fees, or payment of the maximum fee with the possibility of a subsequent refund of the difference to the organization, which also requires legislative action.

The law gives the competent minister authority to suspend or revoke the NGO's license if the organization violates the law or the rules of its licensed activity. The license may also be revoked administratively based on ill-defined grounds such as a threat to national security or public peace or infringement of the public order (Article 74). The implementing regulations did make the law less severe in this respect, requiring the Central Unit to first notify the offending organization of the violation. If it fails to rectify the situation, the minister, with

¹⁴ Articles 108 and 109 of the implementing regulations.

the approval of the competent bodies, may issue a decree suspending or revoking the license. In the latter case, the organization's assets are to be liquidated within thirty working days.¹⁵

VI. Restrictions on the freedom of associations to fulfill their objectives

Although the law affirms the right of local associations to affiliate, join, or cooperate with local peer organizations after notifying the administrative body (Article 19), and sets no penalty for offenders, the implementing regulations set arbitrary conditions that could impede such cooperation,¹⁶ such as requiring that there be some positive, concrete benefit to affiliation or cooperation. The assessment of the benefit of cooperation is left to the discretion of the administrative body, meaning that it can reject such cooperation as it deems fit.

In addition, the law prohibits local associations from any form of cooperation with foreign organizations, in Egypt or abroad, without a permit from the administrative body after the approval of the competent minister (Article 19). Similarly, the implementing regulations set forth arbitrary measures for the finalization of such cooperation:

- Approval of the general assembly of the local organization.
- The submission of justifications for cooperation and the financial obligations it entails, which are subject to the assessment of the administrative body.
- The submission of information about the foreign organization, its legal permit, and information on the members of its board.

¹⁵ Article 115 of the implementing regulations.

¹⁶ Article 31 of the regulations states, "Joining with, affiliation, partnership, or cooperation with the local body is conditional on:

1. There must be a concrete, positive benefit from the joining, affiliation, partnership, or cooperation.
2. The local body must have previous experience in the association's area of work.
3. The local body must practice its activities legally."

- The foreign organization may not engage in activity that threatens national security.¹⁷
- The administrative body has sixty days to consider the application and solicit the opinion of the competent bodies; any steps toward cooperation prior to receipt of the necessary permit are prohibited.¹⁸

The law and its implementing regulations also set unreasonable restrictions on associations' reliance on foreign staff, regardless of their occupational level. The law requires the association to obtain a permit from the competent minister (Article 72), after soliciting the opinion of the competent bodies,¹⁹ before recruiting or appointing any foreign national in the association. The implementing regulations require the submission of a request to the Central Unit at least sixty days prior to the recruitment of a foreign national, while making an exception for specific categories in the public interest as defined by the competent minister.²⁰

VII. Administrative penalties

The law allows the competent minister to issue a decree suspending the activities of an association or closing its offices for up to one year (Article 45). The minister may also suspend its board of directors and appoint caretakers during the suspension.²¹ The grounds set forth for these penalties are not proportional to the action, including:

- Engaging in activities not listed in the association's founding statute, even if the activity is legal, such as operating literacy classes.
- Moving to a new office without notifying the administrative body.

17 Article 32 of the implementing regulations.

18 Article 32 of the implementing regulations.

19 Article 113 of the implementing regulations.

20 Article 113 of the implementing regulations.

21 Article 78 of the implementing regulations.

- Engaging in activities in the border regions without a permit.
- Launching an initiative or campaign for a civic activity without a permit.
- Opening domestic branches without notification.

VIII. The Central Unit for Civic Associations and Work

The law leaves the functioning of the Central Unit for Civic Associations and Work vague, especially as concerns oversight of NGOs, specifying only that it is subordinate to the competent minister, who has the authority to form the unit (Article 76), and laying out its relationship with other state agencies. In this respect, the unit must establish an instrument for the exchange of information with the competent authorities if any civic organization is suspected of involvement in funding terrorism or acting as a front for the collection of funds by terrorist groups (Article 80).

The law also gives employees of the Central Unit and its subunits judicial police powers without limiting the exercise of this capacity to violations related to their remit.²² This gives the unit staff authorities that far exceed the scope and prerogatives of their work, making them quasi-police officers.

²² For example, Article 69 of Law 10/2003 states, “By decree of the justice minister, in concert with the competent minister, workers defined by the authority, the armed forces, and the national security agencies may be invested with judicial police powers for crimes committed in violation of the provisions of this law and which are related to the functions of their offices.” Similarly, Article 5 of Law 175/2018 on the suppression of information technology crimes states, “By decree of the justice minister, in concert with the competent minister, judicial police powers may be granted to workers in the authority or to others defined by national security bodies for crimes committed in violation of the provisions of this law and which are related to the functions of their offices.”

IX Financial penalties

The law sets forth a fine of no less than LE100,000 (roughly \$6,300) and no more than LE1 million (\$63,000) for²³:

- The receipt of funds from foreign or local bodies in violation of the law;
- The disbursement or allocation of funds by the board for purposes other than those for which the association was created;
- Engaging in civic activity despite a court order or decree suspending or dissolving the association;
- Engaging in civic work without complying with the law;
- Engaging in activities likely to infringe public order, public morals, national unity, or national security;
- Forming clandestine associations or military or paramilitary formations, or advocating for, supporting, or funding violence or terrorist organizations.

A fine of no less than LE50,000 (\$3,000) and no more than LE500,000 (\$310,000) is levied on the following violations²⁴:

- Relocating the organization's office without notifying the administrative body (the organization may be subject to judicial dissolution for a repeat offense);
- Preventing the administrative body from monitoring and examining the organization's work;
- Disbursing organization funds despite a decree or judgment of dissolution or liquidation;
- Spending organization funds on activities other than those for which it was established;
- Engaging in activities not listed in the organization's founding statute;

²³ Article 94 of the law.

²⁴ Article 95 of the law.

- Engaging in political, partisan, or union-related activities, or using association offices for these purposes;
- Advocating discrimination between citizens or engaging in any activity advocating racism or incitement to hatred;
- Conducting or publishing opinion polls or their findings, or conducting field research or making its findings known prior to approval from the Central Agency for Public Mobilization and Statistics, to confirm their accuracy, neutrality, and their relevance to the association's activity;
- Concluding an agreement with a foreign body within or outside the country without a permit.

It should be noted that the penal code provides for more severe penalties for actions falling within the scope of associations' work. For example, it sets a penalty of life imprisonment and a fine of no less than LE500,000 for anyone who seeks money or other things from a person or body, local or foreign, with intent to commit an act injurious to the national interest or to infringe public security and peace (Article 78). Anyone who establishes, founds, or administers an international association or branch of it without a license is subject to a maximum sentence of six months imprisonment and a fine of LE500,000 (Article 98); the organization shall also be dissolved and its assets, furnishings, and documents confiscated (Article 89e). A term of three months imprisonment is prescribed for anyone who joins such an association or participates in it in any form (Article 98d). Anyone who establishes an association whose purpose is to advocate the obstruction of the constitution or law or harm national unity or social peace is subject to imprisonment (Article 86 bis). This is in addition to counterterrorism legislation, which broadly defines the crime of terrorism to permit the punishment of civic associations²⁵.

25 CIHRS "Two counterterrorism support laws and a suspension of the demonstration law: a new upending of the constitution " April 15, 2014

<https://cihrs.org/two-counterterrorism-support-laws-and-a-suspension-of-the-demonstration-law-a-new-upending-of-the-constitution/?lang=en>