

Cross-Border Philanthropy

**STATES, PUBLIC SPACE,
AND CROSS-BORDER PHILANTHROPY:
OBSERVATIONS FROM THE ARAB TRANSITIONS**

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Overview

In a quiet announcement in the official Gazette, the government of Egypt amended its provisions on foreign funding in the Penal Code (Article 78) to provide much harsher punishments in cases involving the offer or receipt of foreign funding. This move, taken in fall of 2014, signals the intent of the military-dominated government to exercise tighter control over which non-state actors can receive funding and for what purposes. An assessment of the ways states are currently attempting to regulate capital flows across their borders is an important element of the power struggles that mark a transition process under way across the Arab region today.

After four years of chaotic and unpredictable politics, earlier euphoria over the fall of aging dictators has given way to a weary public who desire stability. At least for the time being, the majority appear willing to trade their short-lived freedoms for a modicum of order. Countries like Egypt have seen increased public support for measures to restrict the space for civil society, including arrest of peaceful demonstrators, journalists, and bloggers, and reduced access to cross-border funding. For those who fought and paid a high price to rid the region of dictatorial leaders, these are disheartening reversals. By 2013, articles began to appear arguing that civil liberties had become more limited under the post-uprising state than during the Mubarak years.²

In light of these and other developments, some observers have been ready to declare the Arab spring over and its uprisings a failure. But on closer analysis, irreversible changes are occurring in the relationship between the state and its citizens, a dynamic that has yet to play itself out fully. State leaders are now required to take account of their politically awakened citizenry in ways that were unthinkable before. The present analysis is a mid-course attempt to identify some of the key issues molding policy regulation of an important aspect of civic life, the mobilization of funds for public purposes, particularly international funding flows for philanthropic purposes. We examine the impact of policy changes on domestic civic life, as observed through the lens of recent developments in the Arab region. Many examples are drawn from Egypt, where the author has most experience, with additional material from Tunisia, where civil society has arguably maintained a freer status over the past four years.

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² For example, see *Al-Ahram Online* (May 2013).

Three main premises are explored. The first is that when states restrict the flow of international philanthropic capital, the effects are felt most strongly by the citizen sector, predominately actors in civil society such as political parties, NGOs and more informal social action groups. This is because states reserve to themselves the right to accept foreign grants and donations with minimal or no oversight of how they are utilized. Furthermore, in recent years most countries have reduced restrictions on foreign direct investment in the private sector, a move necessary to remain competitive in the global economy. Thus it is predominately civil society that is weakened vis-à-vis the other sectors of society when policy restrictions are tightened.

Thomas Carothers has noted that more than 50 countries in recent years have enacted or seriously considered legislative or other restrictions on the ability of local NGOs to form and operate. At the core of many of these efforts are measures to impede or block foreign funding for civil society groups.³ Measures adopted include administrative and legal obstacles, propaganda campaigns against NGOs that accept foreign funding, and harassment or expulsion of external aid groups offering civil society support. The majority of governments engaged in pushback are semi-authoritarian regimes, a category applying to many Arab states before and during the Arab transitions.

The second premise is that it is generally agreed to be reasonable for contemporary governments to maintain some monitoring of and legal restrictions on the flow of capital and goods across their borders. As crime and terrorism have become increasingly globalized, these may constitute legitimate threats to public welfare when cash, weapons, drugs, or undocumented persons can move unimpeded across borders. Nonetheless, groups or individuals who are determined to use illicit means to send or receive funds across borders will be unlikely to be deterred by laws, which are notoriously difficult to enforce consistently. This leaves citizens and groups whose intent is to respect the law most likely to be disadvantaged when restrictive laws are passed.

In assessing restrictive cross-border funding policies and their implementation, some sort of means test is desirable that weighs the likely threat to basic public order or human welfare before judging those policies to be too harsh or lenient. Because such standards have yet to be agreed upon among western countries, let alone across the vastly different countries of the global south, there is ample room for debate and differences of opinion as to how these laws should be applied.

Thus a third premise of the paper is that one useful way to gauge the reasonableness of a law or policy restricting cross-border philanthropy is to apply a principle of proportionality: do the means of control and the punishments for noncompliance in a particular law match the purported severity of threats to society that it was designed to address? Are the laws precise enough to be effective in targeting harmful behavior, or are they written in such a way as to bring collateral damage to socially desirable entities or causes? A related problem is identified in the dearth of studies that measure concretely the societal good generated from those civil society programs and services supported by external funding. In the absence of empirical evidence of benefit, it becomes easier for governments to argue that blanket restrictions serve the public interest.

³ Carothers (2014).

Protection, Civic Freedoms, and the Social Contract

In liberal democracies, the basic pact between the government and the governed should be one of balanced power. Officials face popular elections on a regular basis, and in the interim period it is understood that a free and active citizen sector (including an independent media) acts as a watchdog to guarantee the proper functioning of government. Thus legislation to curtail the activities of civil society faces special scrutiny; in cases justified by special circumstances such as war or terrorist threats, laws typically include sunset clauses to limit the duration of application. In recent years, strong opposition to laws such as the U.S. Patriot Act or policies framed around protecting homeland security have received harsh and sustained public criticism as contested issues in election campaigns and elsewhere.

The situation in authoritarian states and in many transitioning countries of the global South is quite different. There the state assumes a position elevated above the people it governs, in a form of dominance that does not recognize inalienable rights of assembly or civic rights for citizens. In the Arab region in particular we can see a blend of this kind of state supremacy, which exists alongside a form of paternalism that is fundamentally hostile to a free and open civil society. In this view of correct governance, often spearheaded by security forces, citizens are incapable of acting for their own benefit in organizing civic life. They must therefore be regulated by agencies that take on the moral authority to decide what is beneficial and what brings harm. This fundamentally patronizing stance by governments toward their citizens is typically expressed in the language of “protection” or maintenance of order, with state media utilized to support policies through fear or mobilization of anger toward opposition groups. For example, throughout 2014 in Egypt, young activists and revolutionaries were blamed regularly by state-affiliated television and newspaper commentators for the state of the economy or the lack of order in society. This deflects attention from responsibility of the security forces to maintain order, and from state management of the economy and the transition process in general.

The patriarchal framework is applied to cross-border philanthropic giving in authoritarian settings through two official tenets, repeated throughout the state bureaucracy until large parts of the public accept their veracity as well. The first is that foreign donors never have helpful or altruistic motives for their donations, and in fact they are in the service of foreign governments and/or political groups. The second operating assumption is related—that those in the local society who accept foreign-sourced donations must therefore be working as external agents and cannot be patriotic citizens. These damaging assertions are made routinely and in multiple venues, so that they take on the air of invincible truths. State media, public statements of high officials, security prosecution investigations, and judicial verdicts all operate to reinforce these views.

Thus the place of “foreign funding” in political discourse in many if not all Arab states is to keep large parts of the organized citizen sector alienated from the broader public, constantly on the defensive, and fearful of legal action should their activities or budgets grow to have significant impact. This is possible, in turn, because of the underdevelopment of local philanthropic sources, especially in the sensitive areas of rights, democracy promotion, and protection of minorities.

It initially appeared that the anti-foreign funding discourse would lose its potency following the Arab uprisings beginning in 2010. Young revolutionaries were globally connected in terms of ideas and networks but not for the most part beholden to outside financing. These

were initially seen as largely domestic uprisings with domestic consequences, although in each case elements of external political influence eventually interceded, Bahrain being the most dramatic case in point. Regional and international influence became increasingly apparent in the transition period of early elections (in Egypt) or constitutional negotiations (in Tunisia). It was often unclear whether states or private actors were behind the money flows, especially in support of groups like the Salafists, which entered politics for the first time after 2011. In Egypt, the picture became increasingly murky, with Qatar, the U.S., and Turkey ultimately accused of supporting the election and subsequent conduct of the short-lived Mohamed Morsi regime in Egypt. A discourse of dangerous foreigners that had prevailed during the Mubarak years was once again installed as a way of mobilizing public support for the post-Morsi interim government and presidency of Abdel Fattah al Sissi.

Domestic Politics in Transition: The Case of Egypt

With that framework in mind, a quick review of Egypt's 2011 uprising and subsequent transition period illustrates how the dialectic between local and international politics has impacted the free expression of dissent and the funding of democratic forces in that country. This sets the backdrop for a closer look at restrictions on international or cross-border funding of civic and philanthropic entities that have emerged over the ensuing transition years.

The relationship of state, law, and civil society shifted multiple times during the four years following Egypt's January 25th revolution.⁴ That uprising was sparked by converging forces within the citizen sector, including labor unions, opposition parties and groups like Kefaya ("Enough"), and newer youth movements such as 6th of April and We are All Khaled Said. Within days the protests in Tahrir were joined by a range of Islamist factions, most prominently the Muslim Brotherhood. By the end of the dramatic 18 days, it was clear, however, that it was the armed forces who were firmly in control and behind the sudden departure of President Mubarak on February 11. Over the early months of rule by the Supreme Council of the Armed Forces, street protests and labor actions were continuous, and the army was initially reluctant to intervene. Then a sit-in in Tahrir square was aggressively removed mid-summer, and a peaceful march in support of Coptic Christians was violently dispersed with many deaths in October 2011.

As police forces began to reappear on the streets, and in response to a series of bloody protests, security forces steadily regained the upper hand. Presidential elections took place before a constitution was drafted and under an election law that did not stipulate or enforce transparency in campaign finance or equal access to media. Following the announcement of victory for Muslim Brotherhood leader Mohamed Morsi in June 2012, public demonstrations took on a sectarian tone, largely male and unfriendly to women, with flags of Gulf countries, al Qaida, and the Brotherhood appearing alongside the ubiquitous Egyptian flags of previous periods. However, as opposition to the policies of the Morsi regime mounted, huge street demonstrations reemerged, particularly following his unilateral decree increasing presidential powers at the expense of the judiciary. These were reminiscent of the original Tahrir protests, more diverse in terms of class and gender, but preyed upon violently by murky groups that were variously identified with the Brotherhood or remnants of the Mubarak regime. By July 2013 two huge

⁴ Egyptians tend to call the events of January and early February 2011 a revolution, while political scientists and others prefer to use the term uprising. In all cases, it will be several more years before we know definitively if those events result in profound governance changes.

opposing camps had gathered in major squares in Cairo, one supporting the elected government and the other challenging its legitimacy and calling for early elections.

Military and pro-Mubarak groups aligned with the young leaders of the Tamarod movement mounted a massive anti-Morsi recall petition and encouraged throngs to gather in Tahrir. State-controlled media kept sentiments high against the MB as the army once again stepped in to “save the nation,” calling on Morsi to negotiate. He refused, the military moved to arrest him and his top officials, and formal power transferred to the armed forces once again. Under a military “roadmap” for the country, an interim president was appointed along with a new prime minister and cabinet.

From that point onward and until early 2015, independent citizen action was progressively curtailed, whether it was initiated by pro-Morsi supporters or secular rights groups opposed to military actions they believed violated human rights or due process. The military regime accomplished this with little public outcry, using media campaigns around an official “war on terror,” and later by encouraging a “back to work” and normality campaign. These were welcomed by what appeared to be a majority of Egyptians, tired of the chaos and hopeful of restoring a seriously dysfunctional economy.

How are the tightening restrictions on domestic political expression linked to laws and regulations governing cross-border giving? Given the global communications and networks in which civil society operates now in all parts of the world, lines between domestic and international actions are increasingly blurred. Governments use this to their advantage to paint local citizen groups as unpatriotic for associating internationally, as noted above. In a sense, this might be seen as a validation of the strength and impact of empowered citizen-led initiatives. But a vibrant civil society sector can be quickly undermined by legal restrictions on cross-border relationships coupled with threats of prosecution and jail time. That is clearly illustrated in Egypt, both in the past by the overreactions of an aging Mubarak regime with a weak hold on power, and later during the uncertainties of a transition period. The means used by both governments are surprisingly similar, as described below. In that evolving context in Egypt, we can examine the three interlinked propositions.

Premise 1. Cross-border funding restrictions disproportionately impact civil society

This first premise may appear obvious; nonetheless, through examining the factors underpinning it, avenues for redress could become clearer. In the Arab region, a close reading of laws restricting access to cross-border partnership and funding suggest that behind state discourse around protecting national interests and public order are a set of alternative motivations. First, one can see a clear distinction between the application of laws to primarily development organizations—those providing social services like health care, education or childcare, for example, which are largely left to work unfettered—and those engaged in rights or democracy promotion. States selectively apply restrictive laws and regulations to civil organizations in those fields based on the perception that they exist to provoke opposition to the state or its policies. With no quarter allowed for the concept of loyal criticism, the fact that these organizations maintain foreign ties is in itself evidence of disloyalty. Proof of harm is rarely or never established except for guilt by association. Usually it is enough to publicly imply unpatriotic motives to the group under scrutiny and then subject it to legal prosecution.⁵

⁵ NGO Law Monitor: Egypt (2014).

Thus the Mubarak regime in Egypt repeatedly assured western governments that its anti-terror laws would never be used except to prosecute drug traffickers, armed groups, and avowed terror organizations. However, local human rights and democracy defenders were subjected to legal proceedings based on its provisions, including the provisions against accepting foreign funding without permission.⁶ Civil society organizations with close ties to the regime during the Mubarak years received large grants, including many from external sources, without being subject to review or prosecution.

Similarly, in the period immediately following the fall of Mubarak, international NGOs in the process of registering to operate in Egypt found themselves subject to prosecution for democracy-promotion activities that had been frequently and carefully coordinated with relevant officials. The line between civic education and politics is murky in transitioning countries, and when the military leaders wanted to stop those activities, it was enough to circulate rumors that NGOs were using foreign grants to “divide” the country and to carry out Israeli plots; arrests, trials, and prison sentences ensued. It stretches credulity that those who ordered these investigations really believed the NGOs capable of “undermining national sovereignty,” but it was convenient to use those charges for two reasons: to signal to other international groups that Egypt was not welcoming to cross-border philanthropy, and to intimidate local groups from developing independence through their funding sources. This case is discussed further below in the context of disproportionate punishment.

By 2014 there were heightened fears among the human rights and civic education community in Egypt that similar selective prosecution was on the increase. A directive from the Ministry of Social Solidarity over the summer of 2014 required all entities serving a social purpose, regardless of their current registration, to re-register with the Ministry and be subjected to its regulations. A 45-day deadline for registration was renewed until October, with notice that violators after that date would be prosecuted. The fact that similar requirements were not enforced for private companies, which routinely engage in social responsibility projects and grant-making, and whose foreign funding infusions are many multiples higher, suggest the targeting of civil society.

Taken together, selective application of laws and regulations create a crushing environment for the citizen sector and reduce much-needed support for Egypt’s transition at a time of economic crisis. Under the current trend to increase penalties and prison sentences for infractions of the foreign funding laws in Egypt, for example, organizations such as Oxfam UK, which has operated in the country for over 30 years, suspended its local operations and later closed down. Other western donors have shifted their programs to Tunisia, where the climate for international cooperation is more open. Egyptian human rights organizations have made arrangements to place staff on indefinite leave in order to protect them should an investigation take place, and some are moving their core operations to other countries in the region for an indefinite period.

This has the effect of further weakening a sector already suffering from the extreme polarization of politics that arose in 2013 around the removal of Mohamed Morsi’s Muslim Brotherhood government and subsequent prosecution of his followers. It removes from public

⁶ The case of the Ibn Khaldun Center and its 28 defendants shook Egyptian civil society over the period 2000 to 2003, when the state subjected its staff and chairman to three trials involving seven-year prison sentences, for accepting foreign funding without state permission.

life the very organizations with the leadership and values that could enable them to initiate reconciliation efforts across that deep divide.

Premise 2: Reasonable monitoring of and restrictions on the flow of capital and goods across borders are acceptable, but not selective application

Following the first parliamentary elections in Egypt in 2012, the Carter Center, which maintained an office in Cairo, commented on a range of issues it felt warranted concern, though it was unable to investigate them fully under its international observer mission. One was the apparent influx of unattributed outside funding to election campaigns and the lack of effective oversight of campaign contributions. Rights activists have long decried the practice of paying voters in cash or food for going to the polls. Further concerns were raised when raids on the Muqattam headquarters of the Muslim Brotherhood in 2013 allegedly turned up documents detailing large sums of Gulf funding allocated for specific individual candidates who were also members of that group. These appear to be legitimate instances of potential harm to the free and fair election process. It is an area where established democracies have labored for long to set limits on funding sources and amounts and to enforce them.

Outside campaign funding and lack of transparent accounting for campaign spending were the most frequently mentioned concern in transitioning Tunisia as well, as reported in a recent FRIDE study on foreign funding there.⁷ Opposition politicians and their supporters expressed the view that Ennahda's electoral victory was a result of the party's deeper financial coffers, which they were convinced came from abroad. Ennahda party's "funding from Qatar" is a recurrent theme that many in Tunisia take for granted, despite the lack of hard evidence.⁸ Interestingly, other civil society groups like human rights and community-based NGOs have mostly welcomed external donor support, noting that local philanthropy is almost completely lacking. When questions are raised, it is usually by community members who can be reassured by open sharing of information about the project in question and origin of funding.

Tunisia seems on the whole to have escaped the media-fed suspicion around external funding sources that is rampant in Egypt, and its interim government has encouraged international partners in the transition process. At least three major private donors that originally planned to establish programs in Egypt in 2011 have switched to working in Tunisia. The same is true of a consortium of European donors who wanted to contribute to the Arab spring opportunity but were discouraged by Egypt's unwelcoming climate and are now operating in rural Tunisia.

In Egypt, suspicions of possible cross-border funding of political candidates and parties rose to new heights in the period following Morsi's removal and the lead-up to presidential elections in 2014, with the arrest and prosecution of a number of foreign journalists on allegations of working for the Muslim Brotherhood. These cases, and the standards of evidence allowed during the ensuing court trials, have raised both local and international concern. A different area of media bias was raised by the Carter Center observer mission in 2014, which commented on the unequal access to local media during the presidential campaign, noting that one candidate had excessive access to state media through a position in the cabinet. Similar concerns have been raised by Egyptian authorities, who shut down a number of local private

⁷ FRIDE (2013).

⁸ Kausch (2013).

satellite channels for alleged ties to the MB, yet have little control over channels viewed in Egypt but licensed and broadcast from abroad. If non-Egyptian channels choose to promote a political viewpoint or party (as was the accusation against channels in the Al Jazeera group) there is very little legal recourse. These are the gray areas of cross-border funding and influence that bear further scrutiny and standards that are internationally accepted.

But what about cases where “harm” is a shifting matter and states change course in their views on cross-border cooperation? In the previously mentioned NGO trial case, accused organizations had early indications from Egyptian authorities that their activities were welcome. The prosecuted international organizations originated in the U.S. and Germany, two countries where Egypt has strong links through joint counterterrorism programs. During the protracted legal proceedings, prosecutors ignored attempts to convince them that NGO activities for democratic education and training, such as preparing women and youth to compete in legislative elections, are in fact one way of building a strong non-violent polity and civil sector, essential in the fight against terrorism.

Support for the view that these prosecutions and others like them may have intentions other than protection from harm comes from the case mounted against Dr. Amr Hamzawy, an activist, professor of political science and politician elected to the first short-lived parliament after January 25. In one tweet, he used his Twitter account to express dismay over the way evidence was marshaled and the verdict reached in the NGO case. As a result he was prevented from traveling to attend an overseas academic conference and charged with insulting the judiciary, a serious criminal act. Many similar Twitter comments by other irate Egyptians with less public prominence were ignored. In a letter to the Egyptian Minister of Justice concerning the case, the Academic Freedom Committee of the Middle East Studies Association stated in part:

... At the beginning of June 2013, an Egyptian court ruled that several Western-backed non-governmental organizations operating in Egypt aimed to “undermine Egypt’s national security and lay out a sectarian, political map that serves United States and Israeli interests” and were receiving funding from outside to pursue that aim. The ruling prompted critical responses from both inside and outside Egypt. Several critics suggested that insufficient evidence had been provided to prove the allegations and so, they appeared to be political in intent. Indeed, this was precisely what Dr. Hamzawy posted in a single tweet on June 5. It reads: “Verdict in case of foreign funding of CS shocking, transparency lacking, facts undocumented & politicization evident.” It is for these words that he is now being accused of insulting the Egyptian judiciary.

We are fully aware that insulting the judiciary is a crime in Egyptian law; however, we fail to see how the above words can be read as defamatory. Instead, the charges against Dr. Hamzawy appear to be part of a broader, systematic effort to stifle critical free expression....⁹

That legal case was eventually dropped against Dr. Hamzawy, who remains a critic of the government’s ban and prosecution of the Muslim Brotherhood, though himself an avowed secular liberal within the Egyptian political constellation. From past experience, however, it can be revived whenever his public statements run afoul of official positions.

⁹ Letter Concerning Charges Against Amr Hamzawy (2014).

The most direct threat to free citizen expression in Egypt came with the passage by presidential decree of a controversial Protest Law in November 2013. Public expressions of opposition to government policy or practice were effectively silenced through intensified arrests and prosecution of citizens who mount peaceful demonstrations. The stiff penalties in this law for any form of protest not directly approved in advance by the Interior ministry was the clearest indication to date that the same citizen mobilization that had enabled the military to topple Morsi was no longer to be tolerated.

Article 8 of the new law requires that organizers of any public assembly, whether a protest, march, or general meeting, submit a written notice to the nearest police station with their plans at least three working days in advance. Article 10 allows the Minister of Interior or the concerned security director to cancel, postpone, or change the route of a protest.¹⁰ The terms of this law will receive constitutional challenge in due time. They violate access to free association enshrined in the latest constitution of 2014, which grants rights for public demonstrations following “notification of the relevant authorities” only.

Currently, hundreds of activists are in prison, some held without charge, others serving three- to five-year prison sentences for violating the provisions of the new law. They view their actions as peaceful civil disobedience of an unconstitutional law. Many face deteriorating health following prolonged hunger strikes. However, public opinion appeared willing to accept these measures, along with others like the closure of private television channels and newspapers, and bringing security forces back onto university campuses. The approval rating for the performance of President Al Sissi ranged between 45 percent in early summer to 82 percent in September 2014 as terror threats against security forces escalated.¹¹ These are well beyond the actual numbers he garnered in the spring presidential ballot, where turnout was low. At least in the short run, a combination of suppression of dissent and fear of increasing violence trump public support for free expression.

Premise 3: Protecting domestic political space from external “harm”: is proportionality applied?

Whereas the previously mentioned registration directive and the Protest Law are aimed primarily toward curbing domestic political expression, the September amendments to Article 78 of the criminal code are a direct challenge to foreign funding and cross-border capital flows for philanthropic purposes. The new provisions impose life imprisonment and a fine of 500,000 LE (roughly US\$72,000) for anyone who solicits, assists, or receives funding or other support from a foreign source with the intent to “harm the national interest,” “compromise national sovereignty,” or “breach[] security or public peace.” A foreign source is defined in the law to include “a foreign country, any individual who works for it, a legal person, a local or foreign organization, or any other entity not affiliated or working for a foreign country.” The amended law likewise imposes the penalty of life imprisonment on anyone who gives or offers such funds, or “facilitates” their receipt.

That means in theory that the entire staff of an organization, whether a private foundation like the Ford Foundation or the semi-governmental Canadian International Research Center (IDRC), donor agencies operating in Egypt for over 50 years, could be subject to these draconian

¹⁰ Egypt’s Protest Law Nov (2013).

¹¹ The Egyptian Center for Public Opinion Research (Baseera) (2014).

punishments. Could an IDRC grant to teach research methods to young policy change advocates be seen as “harming the national interest?” Would the program officer who made the grant and the clerk who issued the check be liable to life sentences mandated under the new penalty clauses? Proportionality is absent in this law, both because of its vague wording and because it does not specify graduated penalties for differing degrees of responsibility and harm.

While the expressed intent of the law is to curtail funding for armed insurrection or terror organizations, such vague wording leaves open to wide interpretation those activities or causes that could be seen as harmful. Generic language such as “harm the national interest” or “compromise national sovereignty” gives prosecutors vast discretion to use the law selectively. The potential effect on fragile democratic practices is great, given that common acts—such as criticizing the indictment of individuals in political cases or sending observer missions to monitor national elections in Egypt—have been defined repeatedly by the state as infringements on sovereignty. The latter is invoked so regularly that most citizens believe monitoring—whether by local citizens or international observers—to be a suspicious political act. However, the Egyptian Ministry of Foreign Affairs routinely sends its own observer missions to monitor other countries’ elections. Consistency does not seem to be a high priority in these matters. Or perhaps, as was previously noted, the state takes for itself privileges that citizens are not felt to be capable of managing.

State sovereignty often emerges as the value that trumps all other values or rights in non-democratic states, especially during periods of military rule. It is a curiously elastic concept because on the one hand, state powers are free to define what are perceived as threats to sovereignty, while allowing themselves free access to the very resources or relationships that are described as “harmful.” So funding for citizen groups that originates beyond national borders is automatically suspect and subject to scrutiny or oversight in the laws of many Arab states. But government bodies have license to freely solicit huge amounts of foreign-sourced grants, loans, and in-kind supplies of weaponry and surveillance equipment, for example, for which there is no oversight or concern over potential harm.¹²

From the perspective of foreign donor states and organizations, the amended law has similarly dangerous implications, as their representatives may be held liable under the new provisions. The amendments state: “Anyone who gives, offers or promises any of the above mentioned things for the purpose of committing any of the crimes stated for in the previous paragraph shall be subject to the same penalties. Anyone who facilitates the commission of any of the above mentioned crimes shall be subject to the same penalties.” This puts donors as well as their Egyptian partners and employees at potential risk as well.

It has been noted by the International Center for Not-for-Profit Law and others that the new amendment specifies even stronger punishment for state employees than for private citizens who violate this law, including death sentences for public officials. Those provisions open the way for legitimate court challenges to members of regimes that solicit foreign donations if those can be shown to harm the vague concept of national interests. This double-edged sword aspect of

¹² Interestingly, however, a case brought against the state by rights groups in Egypt late in 2014 does appear to have halted, at least temporarily, the application of a sweeping effort to collect and review email and other internet communication using foreign-sourced equipment and software. The case is based on the new penalty clauses and the argument that such indiscriminate infringement of the privacy of normal citizens creates a form of national harm.

the law, clearly drafted with Morsi government officials in mind but capable of application to any subsequent government, may in fact be sufficient reason for its further amendment in the future.

Conclusion and Recommendations

The above assessment is bleak on a first reading, with wider implication in the Arab region given the historic role Egypt plays as an intellectual and political trend-setter. Tunisia presents a more hopeful case where pluralistic politics and openness to international cooperation mark for the most part their transitions period. Some historians of Egypt would balance the picture by noting that xenophobic tendencies have coexisted with periods of cosmopolitan assimilation for millennia in Egypt. And experiences in Latin America and elsewhere suggest that heightened nationalism and rejection of foreign influence were hallmarks of military regimes throughout the 1980s and 1990s. That did not prevent the ultimate ascendance of more democratic and open societies at the end of a transition period.

What efforts might local civil society and its partners internationally take to ease the current restrictive situation in Egypt and elsewhere in the region? The suggestions made here are an amalgam of observations from working inside the philanthropy sector and from studying the role of philanthropy in transition successes elsewhere. They are also indebted to an interesting set of ideas by Akrum Bastawi,¹³ who reviewed the methods utilized by Mubarak-era economic reformers in Egypt for possible lessons applicable to civil society and cross-border donors.

1. The international philanthropic community can help by developing codes of conduct for cross-border work based on respect for local cultures and legal traditions that also enshrine basic shared principles of human welfare as well as operating procedures that lend greater transparency and accountability to their endeavors. They also have a role to play in compiling and sharing effective practices with governments and lobbying through their global associations such as WINGS and the OECD Net-Forward group of private donors.
2. International donors would be well-served to work more collaboratively with each other in cross-border settings, especially during the unpredictable and fast-changing situations brought on by sudden regime change or the end of war or civil conflict. This would enable them to share credible insights on the political and social environment in which they hope to invest and therefore be more likely to “do no harm” when engaging with local counterparts. This would also increase chances that programs are sustained beyond the usual two- to three-year post-regime change period in which international enthusiasm is highest. Civil society development needs long incubation and steady support, especially in environments such as Libya or Yemen where the sector was severely restricted under an *ancien régime*.
3. Cross-border donors who are reluctant to take risks in a transition setting such as Egypt or Tunisia with direct grant-making have a number of alternatives. The one with longest-term potential impact is to support the growth and effectiveness of local philanthropy. Whether foundations, endowments, social businesses, or more informal citizen and community funds, local philanthropy has a better chance of staying the

¹³ Akrum Bastawi is a specialist in international economic relations and a former adviser to the Egyptian government.

course regardless of the restrictions that may be placed on external capital. When a flourishing and diverse local philanthropy sector emerges in the Arab region, foreign funding will recede as a political hot-button issue. It can then take its rightful place as one auxiliary source of support among others.

4. Consider support for (and the registration of) local for-profit entities that have both an income-generating and a social purpose. While an unusual move for most donors, this could have a dual advantage. Social businesses, as they are often called, can cross-subsidize their public benefit activities with the revenues from for-profit activities, whether fee-based social services, consulting, or a novel solution to a pressing societal problem. They may also be able to maintain company legal status and avoid the harsh measures applied currently to non-profits.
5. Civil society in local settings can begin a serious process of self-assessment and self-regulation. This begins with admitting that violations of law and ethical standards do occur, which hurt everyone else. Standards can be drawn up and education programs instituted within the sector that display to government bodies a seriousness of purpose about truly serving the public good.
6. Local civil society needs to take itself seriously in the coming period and act less like youthful rebels and more like professional partners in development. By this we mean that the strategies built around street politics and engagement have their place and will always be one of the tools in the struggle for civil liberties. But the waning support for young activists in countries like Egypt is a wake-up call that the important work of building broad constituencies, raising awareness beyond the urban centers, and providing tangible benefits to the public must also be part of the next phase of Arab civic life.
7. This does not in any way suggest a deflection from the essential watchdog and defense functions of rights and public policy groups. It will require, however, taking steps toward greater empathy with one's supposed "enemy." If security forces awake each day to deal with suicide bombers, drug lords, and fraudsters, and they see evidence that civic groups have no respect for their work, how can the wall of mistrust ever be lowered? What are the tactics for finding and working with individuals within state agencies who may be sympathetic and willing to show flexibility and innovation? How do we prepare "our" candidates for influential public office? There are lessons to be learned from other transition contexts where pressure to change institutions was exercised while also making concerted efforts to reduce levels of mistrust on both sides.
8. One data-driven lever for greater influence of the civil sector might come from a credible estimation of its total contribution to the GDP. Using economic models to monetize the services, information dissemination, and voluntary labor generated by the sector would shift the debate from one of liabilities to one of assets. In countries like Egypt where the sector is large, it could eventually shift the way government agencies negotiate with civic leaders and bring them to the policy table. An academic research team in Egypt is pursuing this project in 2015, on the assumption that once a new parliament is seated in the summer, its members will benefit from factual evidence to

enable them to evaluate a draconian NGO draft law which the government recently circulated.

9. Western governments need to do more to put teeth and consequences into their rhetoric about support for civil society around the globe. If the U.S., Canada, Japan, and EU countries were to work in tandem to impose meaningful consequences on governments that are happily receiving foreign aid but restricting their civil sector from doing the same, it is certain that changes would happen rapidly.
10. Perhaps with serious collective efforts at all levels, the unfortunate momentum of anti-civil society and anti-global cooperation legislation can be stemmed and reversed.

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