



**A Study of
The Sudanese Voluntary and Humanitarian Work Act
2006**

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Executive Summary

This report provides an analysis the different aspects of the Sudanese Voluntary and Humanitarian Work Act 2006 in comparison with Ethiopian, Egyptian and English Law. The method of research chosen was a comparative study of Laws. The English Law was chosen as a standard democratic law from a stable country in which to compare the Sudanese Voluntary and Humanitarian Work Act 2006 with reference to the Sudanese constitution, as well as, comparisons with two neighboring countries laws- Ethiopia and Egypt. Roundtable discussions were also conducted with members of Sudanese Civil Society Organizations, in order to understand their experiences on how this Act is implemented; their contributions were then incorporated into this report. The findings show that the Sudanese Voluntary and Humanitarian Work Act 2006 is used by the government to suppress Sudanese Civil Society. It is found to be unconstitutional because it deprives citizens of their right to associate and assemble. It is also found that implementation of the Act varies according to the whim of whoever is in control. It must be stated that this report has limitations due to difficulty of access to information regarding laws related to the HAC. This is because of the nature of secrecy surrounding all security related matters in Sudan.

Introduction

Non Governmental Organizations is a term that refers to any kind of private organization that is independent from government control, provided it is not-for-profit, non-criminal and not simply an opposition political party according to the definition adopted by the UN. They include a wide range of organizations according to the type of activities the organization carries on. These activities might include

human rights, environmental, or development work. The term "non-governmental organization" was first coined in 1945, when the United Nations (UN) was created and made it possible for certain approved specialized international non-state agencies—*i.e.*, non-governmental organizations—to be awarded observer status at its assemblies and some of its meetings. The civil society organizations (CSOs) played a very important role in consolidating the rule of law and democracy in the developed countries and the dissemination of those concepts in the underdeveloped world. The Guidance Note of the UN Secretary-General on Democracy refers specifically to that role as it says “A freely functioning, well-organized, vibrant and responsible civil society is essential for a democracy. This presumes an active role for non-governmental organizations and democratic reform groups, human rights groups, women’s groups, youth groups, social movements, trade unions, minority representatives, professional societies and community groups, watchdog associations and others. Such groups have historically made important contributions to the formulation, advocacy and defense of democratic rights and they also ensure the freedom of the media to perform their essential role and the right of the public to have access to information, which is critical to the democratic process. The UN actively assists and supports these vital elements of society”.¹The Human Rights Council in its resolution 21/16(October 2012) and resolution 24/5 (October 2013), emphasized the critical role of the rights to freedom of peaceful assembly and of association for civil society, and recognized that civil society facilitates the achievement of the purposes and principles of the United Nations. It further stressed that respect for the rights to freedom of peaceful assembly and of association, in relation to civil society, contributes to addressing and resolving challenges and issues that are important to society, such as the environment, sustainable development, crime prevention, human trafficking, empowering women, social justice, consumer protection and the realization of all human rights. However, defending human rights and building democratic traditions was not welcome by autocratic rulers. The role played in Ukraine’s 2004 Orange revolution

¹<http://www.un.org/democracyfund/fr/node/4>

by NGOs led authoritative regimes to become suspicious of the NGOs and the foreign funding. The next year Vladimir Putin, Russia's president, declared that "public organizations" could not receive foreign assistance; by 2012 NGOs that received money from abroad and engaged in "political activities", broadly defined, had to register as "foreign agents", a phrase that comes close to implying espionage. The implication of this suspicious mind regarding foreign funding shall prove as we shall soon see fatal to CSOs in the third world especially those concerned with governance and human rights issues.

The Sudanese Voluntary and Humanitarian Work Act of 2006 (VHWA) came into existence in early 2006 when the country was opening up as a result of the signing of the CPA and the adoption of the interim constitution in 2005. The introduction of the Voluntary and Humanitarian Work Act (VHWA) should have been the start of a wide operation aiming at reforming the laws to make them compatible with the constitution and the democratic atmosphere that everyone was hoping would prevail. However, soon it became obvious that the Voluntary and Humanitarian Work Act of 2006 and the regulatory body it created were not what the civil society was looking for. The purpose of this comparative study is to look into the way the Act regulated and monitored the activities of the civil society in comparison with the rules adopted by other countries. The law of England and Wales was chosen for being the country where democracy originated while Egypt and Ethiopia were picked for being countries living under similar circumstances as Sudanese far as the rule of law and good governance are concerned.

Section One

Constitutional Framework

The Interim National Constitution of Sudan (INC) 2005 guarantees the right to associate and the right to peaceful assembly as well as other basic human rights. The INC provides:

The right to peaceful assembly shall be guaranteed; every person shall have the right to freedom of association with others; including the right to form or join

political parties, associations and trade or professional unions for the protection of his or her interests.

Formation and registration of political parties, associations and trade unions shall be regulated by law as is necessary in a democratic society.

No association shall function as a political party at the national, or state level unless:

(a) Its membership is open to any Sudanese irrespective of religion, ethnic origin or place of birth.

(b) It has a program that does not contradict the provisions of this Constitution.

(c) It has a democratically elected leadership and institutions.

(d) It has disclosed and transparent sources of funding.²

It further states:

All rights and freedoms enshrined in international human rights treaties, covenants, and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill.³

Sudan is a party to the *International Covenant on Civil and Political Rights (ICCPR)*, the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and the *African Charter on Human and People's Rights (ACHPR)* and therefore is bound by all the international and regional standards provided in those covenants with respect to freedom of association and the right to peacefully assembly.

The International Covenant on Civil and Political Rights (ICCPR) reads: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."⁴

² Article 42 of the Sudanese Interim National Constitution of 2005

³Article 27(3) of the constitution.

⁴ Article 21 of the International Covenant on Civil and Political Rights

Article 20 of the universal declaration of human rights reads: “(1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.”⁵

Article 11 of the African Charter on Human and Peoples' Rights reads “Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”⁶

The right of freedom of association is the right to join a formal or informal group to take collective action. The above provisions work together as a constitutional safeguard to the right of freedom of association that includes the right to organize and join CSOs. Nevertheless, with all the above provisions incorporated in the constitution, the legislature, as we shall soon see, allowed certain provisions that are not compatible with such right to creep into the Act.

However, freedom of peaceful assembly and association like all other public freedoms is not absolute. This means states may place certain restrictions on practicing such right. But such measures must be prescribed by law. The law itself must be compatible with the constitution and the international standards. Furthermore, the restrictions imposed by the law must be “necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” Any restrictions on the right to freedom of association must meet a strict test of necessity and proportionality. In that context the Human Rights Council, reminded the States of their obligation to respect and to protect fully the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of

⁵ Article 20 of the Universal Declaration of Human Rights

⁶ Article 11 of the African Charter on Human and Peoples' Rights

the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.⁷⁸

Section Two

Basic Organizational Forms:

A) Sudanese law

The Sudanese Voluntary and Humanitarian Work Act of 2006 (VHWA) recognizes two different national organizational forms:

- A “charitable organization” which is defined as an “organization that may be established by citizens, groups or individuals and having the financial ability to establish and sustain charitable activities.”
- A “civil society organization” is “a civil society organization that practices voluntary and humanitarian work for not-for-profit purposes and which is registered in accordance with the provisions of [the Act].”

It further defines foreign voluntary organizations as non- governmental, or semi governmental organizations, having international, or regional capacity, which is registered under the provisions of the act, or licensed to work in the Sudan, in accordance with country agreement.⁹

B) Egyptian Law

On the other hand, the Egyptian NGO Law 84 (2002) establishes three main types of NGOs: societies, public welfare societies and Civic Foundations. The Act defines societies in as follows ‘A society, as far as the application of the provisions of this Act are concerned, means a group of not less than ten natural or juridical persons organized for a definite or indefinite period of time to achieve purposes other than

⁷ Resolution 21/16 of the United Nations Human Rights Council (October 2012)

⁸ Resolution 24/5 of the United Nations Human Rights Council (October 2013)

⁹ Article 4 of the Sudanese Voluntary and Humanitarian Work Act (VHWA) 2006

financial gain.’¹⁰ It also allows societies aiming to achieve purposes that are beneficial to the public to acquire a public welfare status by a Presidential Decree at its own request or that of either the Ministry of Social Affairs or the General Federation of Societies, provided the society’s consent is obtained in both cases.¹¹ On the other hand, Civic Foundation is established by allocating a fund for a definite or indefinite period of time, for the realization of a purpose other than profit.¹²

C) Ethiopian Law

The Ethiopian Law recognizes 4 types of charities:

- a. Charitable Endowment
- b. Charitable Institution
- c. Charitable Trust
- d. Charitable Society

D) English Law

The English Charities Act 2011 defines “charity” as “an institution which is established for charitable purpose only.”¹³ Then it continues to define “charitable purpose” as one which is for “public benefit” and falls within any of the purposes described under section 3(1) of the Act.¹⁴

The Act establishes four different structures for charities:

Unincorporated Association: an organization that is set up through the agreement of a group of two or more persons who come together for a reason other than to make profit.

¹⁰ Article 1 of the Law on Non-Governmental Organizations no. 84/2002

¹¹ Article 49 of the Law on Non-Governmental Organizations no. 84/2002

¹² Article 56 of the Law on Non-Governmental Organizations no. 84/2002

¹³ Article 1(a) of the English Charities Act 2011

¹⁴ Article 2(1) of the English Charities Act 2011

Charitable Trust: a fiduciary arrangement set up to manage money or property for a charitable purpose.

Charitable Incorporated Organization (CIO): a body corporate set up for charitable purposes and regulated by the Charity Commission.

Charitable Company: a limited company with charity aims.

Analysis

While the Sudanese law regulating civil societies does not regulate charitable endowments leaving them to different laws, the Ethiopian, Egyptian and the English laws treat them as civil society organizations. This is possibly due to the influence of Sharia, which regulates them as part of the family law. The Egyptian law tackles charitable endowments under the title of Civic Foundations. Both English and Ethiopian laws use the word charity in a wider meaning that include all civil society organizations as long as they are associated for a reason other than to make profit. On the other hand the other two use it in a strict sense which means to give material benefits to a certain group without a sufficient consideration. While incorporation is necessary for all types of CSOs in the other three laws, for the English law it is needed only for Charitable Incorporated Organization.

The wide definition of CSOs adopted by the Sudanese Act brings almost every CSO under its jurisdiction. This was a major concern to the civil society in view of the vast powers the Commissioner and or the registrar have over registration, control, and cancellation of the registration of the organizations. This caused some CSOs to register under other laws that allow CSOs organizations to register and work such as Cultural Groups Act and the company law. However, the CSOs that sought refuge in the jurisdiction of those laws soon got to discover, that arbitrary powers are not confined to VHWA. Three CSOs registered as cultural groups had their registrations revoked in the last few months¹⁵

¹⁵Mahmood Mohamed Taha Center, National Civic Forum and Writes Union

Section Three

The Corporate Nationality

A) Sudanese law

The Sudanese Voluntary and Humanitarian Work Act of 2006 (VHWA) defines two different types of organizations according to their corporate nationality: National and foreign voluntary organizations. National voluntary organizations are voluntary organizations registered by following the procedure and fulfilling the requirements laid down by paragraph (1) or (2) of Article 9 of the (VHWA) while foreign voluntary organization is an organizations incorporated in a foreign state subject to the provisions of the laws of its state of origin prior to its registration in Sudan according to Article 9 (3) (VHWA). According to VHWA it looks like the corporate citizenship of voluntary organizations is determined only by the law under which they are incorporated and not by the national composition or citizenship of their members as paragraph (1) of Article 9 does not require Sudanese nationality for qualifying for membership of national voluntary organizations. However a foreign voluntary organization cannot be registered neither if its headquarters is a state at war with the Sudan, or is boycotted by Sudan nor if its country of origin comes within either category of states.¹⁶

VHWA requires a foreign voluntary organization to produce a certificate of incorporation from its country of origin, legalized by the Sudanese Embassy there and also to file an application showing the type of the work it intends to carry out in the Sudan.¹⁷

Furthermore, it poses the following restrictions on the activities of foreign voluntary organizations:

Not to interfere in the internal affairs of the Sudan, in such a way, as may prejudice the sovereignty of the country.

¹⁶ Article 9(3)d of the VHWA 2006

¹⁷ Article 9(3)b of the VHWA 2006

To implement its projects jointly, or in co-operation with one or more national organization.¹⁸

To sign a country agreement that comprises the provisions, regulations and directives, organizing the entry of the organizations into the Sudan, and conducting its activities therein.¹⁹

Any other condition, as the minister may lay down, from time to time²⁰

B) The Ethiopian law

The Ethiopian law recognizes three forms or types of civil society organizations, which may be established as either charities or societies. These are “Ethiopian Charities or Societies,” “Ethiopian Resident Charities or Societies,” and “Foreign Charities or Societies.” The legal definitions of these categories are provided under Article 2 of the CSP as follows:

1) “Ethiopian Charities” or “Ethiopian Societies” shall mean those charities or societies that are formed under the laws of Ethiopia; all of whose members are Ethiopians; generate income from Ethiopia; and are wholly controlled by Ethiopians.²¹ Here it should be noted that the law includes an exception to the general rule concerning the generation of income from within Ethiopia. Accordingly, organizations can still be considered “Ethiopian Charities or Ethiopian Societies” “if they use not more than ten percent of their funds which is received from foreign sources”. The 10% restriction relates to the use of foreign funds and not to the amount of foreign income the organization is receiving.

2) “Ethiopian Resident Charities” or “Ethiopian Resident Societies” shall mean those charities or societies that are formed under the laws of Ethiopia, and that consist of

¹⁸ Article 9(3)f of the VHWA 2006

¹⁹ Article 9(3)g of the VHWA 2006

²⁰ Article 9(3)h of the VHWA 2006

²¹ Article 2(2) of the Ethiopian Charities and Societies Proclamation (CSP)

members who reside in Ethiopia, and that receive more than 10% of their funding from foreign sources.²²

3) "Foreign Charities" shall mean those charities that are formed under the laws of foreign countries or which consist of members who are foreign nationals or are controlled by foreign nationals or receive funds from foreign country sources. This means that if either criterion applies, the organization is considered a "Foreign Charity."²³ Accordingly, an organization receiving more than 10% of its funds from a foreign source could be classified as foreign charity even if all its members are Ethiopians and it is controlled by Ethiopians and consequently shall be denied Ethiopian corporate citizenship.

The CSP makes Ethiopian nationality (or corporate citizenship) a requirement for engaging in governance and advocacy activities, which means organizations that receive more than 10% of their income from foreign sources are effectively excluded from working on the advancement of human rights, good governance and conflict resolution.

C) Egyptian Law

Foreign non-governmental organizations can enter an agreement with the Ministry of Foreign Affairs. Based on that agreement they can obtain a permit from the Ministry of Social Affairs, to allow them to carry out the same activities as the Egyptian societies and civic foundations subject to the provisions of the Act, and according to the rules set forth therein.

Foreigners can join Societies and Non Governmental Institutions and they remain subject to the same registration requirements and the same rules and regulations. However, the Act only requires that in societies or Non Governmental Institutions

²² Article 2(3) of the CSP

²³ Article 2(4) of the CSP

involving foreign members, the percentage of Egyptian directors shall be at least similar to their percentage to total members of the association²⁴.

It is worth noting that the present Act is soon to be replaced by a new one. The new draft released by the Ministry of Social Affairs to replace the current Egyptian NGO law proposes new restrictions for registering foreign organizations. For example, the draft law requires them to obtain a license from a governmental committee comprised of Interior Ministry and Intelligence Service representatives in order to register and carry out activities in Egypt.²⁵ This license could be declared void or suspended if the international organization is found to be in violation of the rules for engaging in the licensed activities or any provision of the draft law.

The draft law further prohibits any international organization from operating in Egypt if it accepts any government money, “directly or indirectly,” if its activities “infringe on national sovereignty,” or if it seeks to disseminate “the outlooks or policies of a political party.” It further stipulates that “organizations must spend their funds in a way that realizes their purposes and accords with the rules of the activity for which they are licensed in Egypt.”

D) English Law

The organization set up under the laws of another country cannot be registered in the UK.

Only charities governed by the laws of England and Wales can be registered. If the UK branch takes its instructions directly from the main charity and is not in control of its own affairs it will probably not be eligible for registration.

If the branch is an independent organization in its own right, it may be eligible to register as a charity providing:

- Its aims and activities are recognized as being charitable in England and Wales
- Its office is based in England or Wales
- It is set up for the benefit of the public

²⁴ See Article 32 of the Law on Non- Governmental Organizations 84/2002

²⁵Article 57 of the Draft Law on Civic Work Organizations of Egypt.

-If it meets these criteria for registration, it will be asked to provide:

-The organization's governing document signed trustee declaration

-Proof of income for the organization being over £5,000

-Certificate of incorporation (if the organization is a company)

However, foreigners can still set up a CSO by using the vehicle of a 'company limited by guarantee' which is a limited company that has members but no shareholders, who agree, as a condition of membership, to pay a fixed nominal sum (laid down in the company's Memorandum of Association) if the company has to be wound up. Once the company has been registered under the company law it can then apply for registration as a charity. The Directors (Trustees) of the Charity and Company (the same people) can be resident outside of the United Kingdom, and do not have to be British. The Memorandum of Association and the Articles of the company governs the method of acquiring its membership.

Analysis

The justification normally presented for distinguishing between foreign and national CSOs is that the right to freedom of association is a democratic/political right and not a human right. Consequently, since this right is not a human right, it does not belong to all human beings. Rather it is said to belong to citizens alone; as such, the enjoyment of this right is said to be limited only to citizens. The logical result of this position is that since freedom of association is a right that exclusively pertains to citizens, foreigners cannot exercise it either directly by establishing a CSO, or indirectly by funding local CSOs. The overall tone of the justification is that these restrictions are necessary to ensure that those CSOs involved in the designated sensitive areas truly represent national interests and are not vulnerable to manipulation by foreign elements through foreign funding. However, this justification does not stand in view of the latest development in the international law which makes human rights issues in each country concern the whole international community and the principle of sovereignty of the state does not

prevent the international community from interfering in case of grievous violation of human rights.

The Sudanese law looks less restrictive than the Ethiopian law but in practice this is not that evident.

The Sudanese law itself imposes very few restrictions. The most important restriction imposed on the foreign NGOs is requiring them to implement their projects jointly, or in co-operation with one or more national organization. This is a serious restriction as it often allows funds wasting by involving inexperienced or ineffective organizations in the project just because they are labeled by the law as Sudanese.

However, restrictions are allowed by the Act rather than being directly imposed. The Act requires foreign NGOs to sign a country agreement that comprises the provisions, regulations and directives, organizing the entry of the organizations into the Sudan, and conducting its activities therein. Those agreements are unnecessary restrictive and in most cases obstructive to the activities of the foreign NGOs. The same can be said about the technical agreement that the NGOs are required to enter into in order to have their projects approved,

Again the list of restrictions is left open ended by giving the Minister the power to add more restrictions which is an arbitrary power as it is not limited by any purpose or guideline.

Treating the foreign NGOs with suspicion and sometimes as spies is part of the official policy irrespective of the provision of the law. On 9th March 2009 the Government expelled 13 international NGOs after the International Criminal Court (ICC) issued an arrest warrant for President Omar ElBashir on war crimes charges. The NGOs expelled included very prestigious organizations like Oxfam GB and Médecins sans Frontières.

At least four aid organizations have been banned from working in the deeply impoverished eastern region of Sudan, as appears on the BBC website.

They include Save the Children Sweden and Ireland's Goal, diplomats say.

An unnamed Sudanese official told the AFP news agency the aid groups had "failed in their planned projects".

A BBC reporter says Sudan has in the past restricted the work of foreign humanitarian agencies, accusing them of working to destabilize the country.

"The HAC decided to expel four international NGOs working in eastern Sudan because they failed in their planned projects," the HAC source told AFP.

"Also, there is a weakness in these international NGOs," the source added, without elaborating²⁶

In February 2014 the Sudanese government has ordered the International Committee of the Red Cross, which helps well over a million people in conflict areas in Sudan, to suspend its operations in the country. "The I.C.R.C. has not met the state's guidelines for humanitarian work, which has made us suspend its work until we reach an understanding," Suleiman Abdelrahman, an official with the government's aid commission, told the news agency²⁷.

Section Four

Purpose

A) Sudanese Law

The VHWA lays down the objectives of humanitarian work of the organizations, registered under the provisions of the act to include, but not be restricted to rendering the following services (including services of human rights and protection of the environment):-

(a) Emergent relief to citizens suffering from disasters natural or otherwise, by concentrating on the most affected group (b) Parrying, reducing and managing the risks of disasters (c) Tying aid relief with resettlement, reconstruction and development (d) Care for the internally displaced people, refugees and returnees, through preparing and implementing the programs of relief, reconstruction and resettlement, in accordance with bodies concerned; (e) Reconstruction of economic

²⁶ "Khartoum expels foreign aid agencies from eastern Sudan"
<http://www.bbc.com/news/world-africa-18296430> , 1 JUNE 2012

²⁷ New York Times February 3, 2014

and social infrastructure , which have been destroyed by war , or natural disaster , in co-ordination with national institutions , established for such purpose : (f) Specifying priorities for relief , resettlement, re-housing and reconstruction , in consultation and coordination with concerned beneficiaries and government authorities ; (g) Building of local capacities, to enable national organizations to depend upon their capabilities; (h) Implementing relief and humanitarian services projects, through non- governmental and charitable organizations, voluntary organizations, or civil society organizations, whose objectives are harmonious with public policies and beneficiaries' interests, funding and grants, rallied and received.

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As we see the Act adopted the “open list” approach and provided for enumerated activities that qualify as charitable but are intended as examples and not as an exclusive list.

B) Egyptian law

In lieu of providing a list of acceptable purposes, the Egyptian NGO law enumerates a list of prohibited activities such as forming a military, threatening national unity, visualizing the realization of profit, etc.²⁹

C) English Law

The issue of the purposes of organizations is provided for in different forms. For example, the English Charities Act 2011 specifies a list of purposes that are considered charitable and adds a “catch-all” provision that includes all purposes that can be reasonably considered “analogous to or within the spirit of” the purposes mentioned.³⁰ As mentioned above, the purpose must fall under this list and satisfy the “public benefit requirement” which has two aspects:

²⁸ Article 6 of the VHWA of 2006

²⁹ Article 11 of the Egyptian Law no.84/2002

³⁰ See Article 3(1) of the English Charities Act of 2011

“The benefit aspect”: must be objectively beneficial and any detriment that results from the purpose must not outweigh the benefit.

“The public benefit”: benefits the public in general or a sufficient section of the public and not give rise to more than incidental benefit.

Section Five

Registration

A) Sudanese Law

Both the Sudanese VHWA and the Egyptian law 82 require all organizations or associations to register in accordance with the law and even provide for penalties for carrying out any activities as an organization without registering.

The first condition the VHWA specifies for registering an organization is submitting an application containing a list of not less than 30 promoters.³¹ This signifies that a group of less than 30 people can be denied their right to associate. Although the Article further stipulates that a group of less than 30 members can form an organization upon the approval of the minister, it remains an unnecessary restriction as it puts the issue at the discretion of the Minister and moreover, it is heavily burdened by the requirement to exhibit financial ability, continuity and sources of funding; a matter which is extremely difficult for an organization to establish at its early stages.

The VHWA requires the Registrar to issue a registration certificate within a month from filing for NGOs satisfying the requirements of registration and within three months for eligible foreign organization.³² Unlike the Egyptian law, the Act failed to award an automatic registration as a matter of law in case of non-response beyond the prescribed period. The language used by the Act makes it clear that only NGOs satisfying the requirements of registration can receive a registration certificate within the prescribed time. This provision allows the registrar to keep the applicant

³¹ Article 9(1)a of the VHWA of 2002

³² Article 10(2) of the VHWA of 2002

waiting forever without any remedy and without being able to start any activity so as not be exposed to the penalties prescribed in Article 24 of the VHWA.

Requiring renewal of the registration on annual basis is another burden that NGOs must bear especially as such renewal of registration is subject to any conditions the regulations specify.³³ This allows the HAC to add any further restrictions and to deny renewal based on any grounds it specifies on the regulations.

Again the new rule lately adopted by HAC that requires a State registration in order to allow the NGO to carry out its activities within the concerned State has rendered National registration de facto ineffective.

B) Egyptian Law

The Egyptian NGO law is substantially less restrictive when it comes to registration requirements as it requires a minimum of ten founders for Societies and does not require minimum number of founders for Civic Foundations. On the other hand, the English Charities Act only requires that a charitable trust have a minimum of three trustees on the board for the purpose of decision-making.

Unlike the Sudanese law, the Egyptian NGO law obliges the Administrative Authority to register the association within sixty days from filing the registration application and if the sixty-day period lapses, the association shall be deemed registered as a matter of law.³⁴

Furthermore, it demands that an Association have premises and a deed of occupancy of the Association's head office be filed along with the Articles of Association at the Administrative Authority in order to register.³⁵ While the VHWA does not require such obligation, HAC regulations do.³⁶ This requirement imposes severe hardship on small groups seeking to register in order to conduct small non-profit activities.

³³ Article 11 of the VHWA of 2002

³⁴ Article 6 of Egyptian Law no. 84/2002

³⁵ Article 5(3) of Egyptian Law no. 84/2002

³⁶ See Article 5(d) of the Regulations for Registration of National and Foreign Organizations, Civil Society Organizations and Charitable Associations of 2013

C) English Law

The English Charities Act 2011 stipulates different registration requirements for each of the abovementioned structures. Unincorporated Associations and charitable trusts are not required to register with the charity commission unless their annual income exceeds £5,000.³⁷ This exemption serves as an important guarantee for freedom of association as it enables groups of people to form small associations and conduct charitable activities without being discouraged by the obligation to go through registration procedures. Charities can also be “exempted” from registration permanently or temporarily by virtue of an order of the Commission or by regulations made by the Minister. However, they must have an annual income of less than £100,000.³⁸³⁹ Those fall under certain categories such as churches and chapels of some Christian denominations, scout and guide groups and charitable funds of armed forces.⁴⁰ Charitable Companies and CIOs, on the other hand, must register and enjoy separate legal entity and limited liability.

The Charity Commission clearly states that the purpose of registration is to make sure that the organization meets the legal test for charitable status. Furthermore, it clearly defines the conditions that constitute the legal test of granting and rejecting registration and the steps the commission takes when making registration decisions, which are:

- Decide if the organization is based in England and Wales
- Decide if the organization is required to register
- Decide what the organization’s purposes are
- Decide if each purpose falls within the descriptions of purposes
- Decide if each purpose is for the public benefit

³⁷ Article 30 (2)d of the English Charities Act of 2011

³⁸ Article 30(2)b of the English Charities Act of 2011

³⁹ Article 20(2)c of the English Charities Act of 2011

⁴⁰ See “Excepted Charities” <http://forms.charitycommission.gov.uk/detailed-guidance/registering-a-charity/exempt-charities-cc23/changes-to-the-regulation-of-exempt-and-excepted-charities/>

- Assess if each purpose will be carried out for the public benefit
- Decide whether to register⁴¹

The main ground for denial of registration is the absence of charitable purpose. For example, on 17th November 1999 the commission made a decision to reject a registration application from the Church of Scientology as the organization was not established for charitable purposes for the public benefit.⁴²

If the Commission rejects registration, it is obligated to explain in writing the reasons for this rejection, and then the applicant has the option to either reapply, providing they have addressed the commission's reasons for rejection, ask the commission to review its decision if they think it's wrong or take it to the Charity Tribunal.

While the law lays a duty upon the charity's trustees to register their charity if it is required to register, it does not provide for any penalties for failure to register. However, the Charities Act makes holding out a body as a CIO an offence punishable with a fine not exceeding £1,000.⁴³

The law provides that the commission must refuse to register a CIO if it is not satisfied that the CIO would be a charity at the time it would be registered, or if the CIO's proposed constitution does not comply with one or more of the statutory requirements for the constitution⁴⁴. The Commission may also reject an application for registration if the proposed name of the CIO is the same as or, in the opinion of the commission too similar to the name of another charity.⁴⁵ Some charities are

⁴¹ See "The steps that commissions takes when making registration decisions"
<https://www.gov.uk/government/publications/how-charity-registration-decisions-are-made-charity-commission/how-the-charity-commission-makes-charity-registration-decisions--2#the-steps-the-commission-takes-when-making-registration-decisions>

⁴² See "Charity Commission: "significant decisions"
<https://www.gov.uk/government/collections/charity-commission-key-decisions>

⁴³ Article 215 of the English Charities Act, read with "Standard Scale of Fine"
<http://www.legislation.gov.uk/ukpga/1982/48/part/III/crossheading/introduction-of-standard-scale-of-fines>

⁴⁴ Article 208 (1) of the Charities Act 2011

⁴⁵ Article 208(2) of the Charities Act 2011

not subject to regulation by or registration with the Charity Commission, because they are already regulated by another body, and are known as exempt charities. Most exempt charities are listed in Schedule 3 to the Charities Act 2011, but some charities are made exempt by other acts. However, exempt charities must still comply with charity law and may approach the Charity Commission for advice. Some charities are 'exempted' from charity registration. This just means they don't have to register or submit annual returns, but are in all other respects subject to regulation by the Charity Commission. A charity is exempted if its income is £100,000 or less and it is in one of the following groups: churches and chapels belonging to certain Christian denominations; charities that provide premises for some types of schools; Scout and Guide groups; and charitable service funds of the armed forces.

In addition, if a charity's income is below the normal threshold for registration (£5,000), then it is not required to be registered with the Charity Commission. Nevertheless it remains subject to regulation by the Charity Commission in all other respects.

Section Six

Independence of the Controlling Body

The need to regulate civil society is a point of debate. While the necessity to have a regulatory body is evident with charities in view of the amount of funds they control and the need to reassure the public that these funds are not being used to support terrorism and other criminal schemes, such a need is disputed regarding other CSOs such as those concerned with human rights. However, whenever it is important to have a regulatory body, it is equally important that it should not be used to enable the government to exercise control on NGOs. In other words it must be an independent body. In order to have an independent regulatory body, selection of its members must be through a transparent mechanism, preferably through elections.

A) Sudanese Law

The Humanitarian Aid Commission is a specialized unit for governing humanitarian and voluntary work established within the Ministry of Social Affairs. However the Act does not specify how and by whom it shall be appointed. Section 18 only says that “There shall be an established commission, to be known as the, “voluntary and humanitarian aid commission, which shall exercise the functions specified in this act.” However, its functions are only raising awareness; providing training and coordinating the work of different NGOs working in relief in times of disasters. The real regulatory functions rest with the Commissioner General for humanitarian and voluntary work and the Registrar General of voluntary humanitarian organizations. Article 20 of the act reads “The President of the Republic shall on the recommendation of the Minister (the Minister of Humanitarian Affairs) appoint a Commissioner General for humanitarian and voluntary work and determine his emoluments and privileges.”

Article 22(1) of the act reads “The Minister shall appoint a Registrar General of voluntary humanitarian organizations and shall determine his emoluments and privileges”

B) Egyptian law

NGOs are under the direct control of the Ministry of Social Solidarity and Justice. Within the ministry, there is an administrative authority responsible for NGOs. However, the Act allows the societies, if not satisfied with the administration’s decision, to refer the dispute to the competent court but only after referring it for amicable settlement to a committee to be chaired by a judge of the Court of Appeal, a representative of the administrative body nominated by the Minister of Social Affairs, and a representative of the regional Federation, nominated by the board of directors of the general federation, as members. A representative of the society in dispute nominated by its general assembly or board of directors shall be added to the committee.

The mandate of the committee is to reach an amicable solution to disputes that may arise between the society and the administrative body.

No meeting of the Committee shall be held unless attended by its president and a representative of each of the parties to the dispute. The Commission shall reach a decision by a majority of votes within sixty days from the date of referral of the dispute. In case of equality of votes the chairman shall have a casting vote. The committee's decision will be binding and enforceable only if it is accepted by the parties to the dispute. No party can resort to the competent court until the committee issues a decision, or fails to do so within the prescribed sixty-day period.⁴⁶

C) Ethiopian Law

Direct governmental control over charities in Ethiopia could be clearly seen from the method of structuring and appointing bodies in charge of charities and societies. Section two, article four of the Charities and Societies Proclamation establishes the Charities and Societies Agency, the body in control of charities and societies in Ethiopia, as an institution of the federal government and it is directly accountable to the Ministry of Justice. This agency also has a board that is nominated by the government and a Director General that is appointed by the government.

D) English Law

Article 13 of the Charities Act of 2011 establishes the charity commission- the corporate body in control of charities in England and Wales. Sub-section 4 of the Article prohibits the exercise of any control over the commission by any Minister of the Crown or any government department and thus making it entirely independent of Ministerial influence.

⁴⁶ Article 7 of the Egyptian Law no. 84/2002

Section Seven

Accountability

The Commission demonstrates accountability to **Parliament**, through:

- The Commission's annual report which is laid before Parliament by HM Treasury;
- Annual auditing of the Commission's accounts by the National Audit Office (NAO) ;
- Annual appearance before the Public Administration Select Committee (PASC) on matters related to the regulation of charities and our performance in this regard;
- Periodic reports by the NAO on the economy, efficiency and effectiveness with which the Commission uses its resources;
- Periodic examinations by the House of Commons' Public Accounts Committee (PAC). The Chief Executive acts as the Accounting Officer appointed by HM Treasury; and reviews the handling of complaints by the Parliamentary Ombudsman; **the public**, by publishing guidance, reports and key information about our activities and how we undertake them; and **the First-tier Tribunal (Charity)**, and after that the Chamber of the Upper Tribunal/High Court for the decisions made by the Commission in exercising its legal powers. The Tribunals and the High Court may overturn the Commission's decisions.

In addition, the Commission demonstrates its accountability by:

- Publishing our performance against targets;
- Consulting before introducing major new policies or operational practices;
- Publishing information regarding the operation of the Board, and where appropriate minutes of meetings and reports;
- Holding an annual public meeting to review performance;
- Publishing Inquiry Reports and key decisions;
- Having an internal review process that allows the Commission's Decisions to be challenged without having to go to Tribunal or to the High Court and gives reasons for decisions to people or charities affected by them, unless there are compelling reasons of financial or personal confidentiality for not doing so;
- Having a robust and accessible complaints process

Board members, including the Chair, are appointed by the relevant Minister, following fair and open competition. Each appointment is regulated and overseen by the Office of the Commissioner for Public Appointments and the Chair's appointment is subject to a pre-appointment hearing before the Public Administration Select Committee. -

The Minister for Civil Society is the person statutorily tasked with appointing the Chair and Board Members.⁴⁷

Analysis

While the Egyptian and the Ethiopian laws put the CSOs directly under the administration, the Sudanese law opted to appoint a regulator outside the civil service but soon it becomes evident that this does not in fact provide a real safeguard for NGOs. However, the Egyptian law provides for settlement of the disputes with the administration through a committee that is representing both parties and chaired by a judge, which is a serious safeguard against arbitrary decisions by the administration.

Section Eight

Dissolution of Organizations

Dissolution of organizations and the denial of registration are outright deprivations of the right to association. Thus, any grounds for dissolution and denial of registration must meet the standards for revoking or limiting the right to association that a State is under an obligation to comply to.

A) Sudanese Law

⁴⁷ From "Charity Commission: governance framework"
<http://forms.charitycommission.gov.uk/about-the-commission/our-status/governance-framework/>

The Act gives the registrar the power to Strike off the registration of the national , foreign or charitable organization , or civil society organization , registered under the provisions of this act , if convinced after conducting the necessary inquires, that:-

(a) The registration has been obtained by resort to forgery, or fraud, or upon providing false information;

(b) The non-governmental, or charitable organization, or civil society organization has contravened the provisions of this Act, the regulations or any other law in force;

(c) The organization concerned has failed, without acceptable justification, in practicing its activities for a period of a full year;

(d) The organization used the humanitarian aid for obtaining unlawful gains.

Any voluntary organization, whose registration has been struck off, may appeal against the decision of the Registrar, to the Commissioner, within thirty days, of the date of its issue.

If the commissioner fails to give their decision on the appeal, within one month, or they reject the same, then the applicant may appeal against the decision, to the minister, within fourteen days.

Though the Act does not expressly say so, the Minister's decision is appealable before the Administrative court.

B) Egyptian Law

The Egyptian law differs from the Sudanese law in that it puts the authority to dissolve a society exclusively in the hands of the Minister of Social Affairs. He can only do so after consulting with General Union and hearing the concerned society. His decision must show his reasons for ordering the society dissolution. Article 42 of the Egyptian NGO Law 84/2002 enumerates the grounds for dissolution as follows:

1. Disposal of its funds or allocating them for purposes other than those designated by the law or its constitution.

2. Obtaining funds or transferring funds to a foreign party, in contravention to provision of the Law.

3. Committing a gross violation of law or the public order or morality.
4. Joining, or subscribing to, or acquiring membership to a club or association or body or organization based outside Egypt in violation of the provisions of Article 16 of the Act.
5. If it is proved that its real purpose activities prohibited by Article 11 of the Law (to form military or Para-military formations. Threatens national unity or violate public order or morality. To practice any political activity or trade union activity exclusively restricted to political parties or trade unions, and seek profit or practice any profit oriented activity)
7. To collect donations in violation of the rule of the first paragraph of Article 17 of this Law.

However, the Minister of Social Affairs may decide to remove the objectionable act, remove the cause of violation, dismiss the Board of Directors or suspend the activities of the Society instead of dissolving the society.

In case of failure of a society to convene its General Assembly for two consecutive years, or failure to convene in response to a proper invitation under the rule of the second paragraph of Article 40 of the Law, or in case of failure to amend its constitution or readjust its status to make it in conformity with the law, The Minister of Social Affairs can resort to those same measures.

Every person having a standing can challenge the decision of the Minister of Social Affairs before the administrative court in accordance with the procedures and the timeframe set for it, without being bound by the provisions of Article (7) of the Act, and the court shall rule on the appeal expeditiously and no court fees shall be charged. Any of the members of the concerned society, is considered to have a standing in relation to the appeal against that decision.

Those grounds have been immensely criticized by the Egyptian civil society and international organizations for their subjectivity and arbitrariness.

C) English Law

Unlike the wide grounds for dissolution provided for in the Egyptian and Sudanese law, The English Charities Act 2011 restricts involuntary dissolution of charities by the commission to two cases only: a) where an institution is no longer considered a charity by the commission; or b) where a charity has ceased to exist or does not operate.⁴⁸

An example of this could be seen in the de-registration of Meltons Arts and Crafts trust based on the results of the charity's investigation into the activities of the organization. The commission found no evidence of charitable activities and removed it on the grounds that it does not operate.⁴⁹

Analysis

Both Sudanese and Egyptian laws put the power to dissolve a CSO in the hands of the Minister, who is a member of the executive. This is an undemocratic solution as it allows the Government to control CSOs such as democratic reform groups, human rights groups, social movements, minority representatives, professional societies and community groups, watchdog associations and other organizations which are supposed to check on Government and reform its policies. However, the Egyptian law is slightly better in as much as it makes it mandatory for the minister to give his reasons for dissolving the organization. On the face of it, the Sudanese law looks better as it entrusts the decision to a person from outside the administration who is supposed to be independent but in practice this proves to be more apparent than real. However, the fact that the decision of the Registrar could be overturned by the Minister makes the process to resort to court unnecessarily long.

As discussed above, Article 40 of the Sudanese INC guarantees the right to freedom of association. In addition, the ICCPR in Article 19 prohibits limiting the freedom of association, except when the limitations are prescribed by law and "are necessary in

⁴⁸ Article 34 of The English Charities Act of 2011

⁴⁹ See Meltons Arts and Crafts case,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403484/ocr_melton_arts__crafts_trust.pdf

a democratic society in the interests of national security or public safety, public order, the protection of public health, morals or the protection of the rights and freedoms of others”

To get a clearer idea on the standard of review prescribed in this Article, we must look into the international jurisprudence interpreting it. The European Commission for Democracy through Law (Venice Commission) published a compilation of its opinions concerning freedom of speech, which include a detailed interpretation of this Article and the standard of review it provides.

Firstly, the report states: “The Venice Commission acknowledges that the final decision with regard to the liquidation of an association or organization having engaged in extremist activities **belongs to a court.** (...) A generally accepted method to prevent freedom of association from being abused for criminal purposes, including the violation of human rights, is to react to its real activities and to conduct proceedings which would determine whether these are prohibited by law”

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In accordance with Article 13(1)b the Registrar may cancel registration of the organization if he/she is convinced that it violated the provisions of this Act or the regulations or any other law in force. The main issue with this Article is that it confers judicial powers upon the Registrar by allowing him/her to decide whether an organization violated an applicable law. Moreover, it is an arbitrary power as any other law comprises all different legislations which includes civil laws and revenue attracting laws and that would give the Registrar the power to cancel the registration of an NGO for allegation of failing to pay rent or prejudicially terminating an employee’s service.

Secondly, the commission mentions: “The Venice Commission cannot but recall that a decision that serves as the basis for a court’s decision to dissolve an association

⁵⁰Compilation of Venice Commission opinions concerning freedom of association. Available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2014\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2014)004-e)

must meet the requirements of being prescribed by law and pursue a legitimate aim and be necessary in a democratic society. A warning preceding dissolution based on a broad interpretation of vague legal provisions does in itself constitute a violation”

The principles governing humanitarian work in Sudan mentioned in Article 5 of the Act are often broadly interpreted (and misinterpreted) and utilized to provide wide grounds for dissolution since compliance with those principles is required by the Act. Those principles include: non-discrimination on the ground of race, gender, ethnicity, political affiliation and religious creed, non-interference by foreign organization in the internal affairs of Sudan in a way that may infringe on the sovereignty of the country, impartiality in the selection and designation of project areas with special consideration to the areas in greater need for humanitarian aid, etc. We have already seen the mass expulsion of foreign NGOs on unproved suspicions. Article 7 of the Act, requires funding for organizations programs, to be through a project instrument approved by the commission. Furthermore, funds, or grants from abroad, a foreign entity or from any other body, requires the approval of the minister thereof.

The HAC has used this article selectively targeting governance and human rights organizations that are truly seeking to fulfill their purposes. For example, in December 31st, 2013 the HAC shut down the ARRY Organization for Human Rights and Development and the Khatim Adlan Centre for Enlightenment and Human Development and announced the cancelation of their registration for being in contravention of the infamous Article 7. The closure of Khartoum Centre for Human Rights and Environmental Development in 2009 was recently found by the African Commission for human rights to be violating the right to freedom of association.

Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan before the African Commission for Human Rights. It was alleged that the closure of Khartoum Centre for Human Rights and Environmental Development (KCHRED) by the Sudanese authorities in February 2009 violated the rights of Mr. Amir Suliman and the KCHRED of which he was a Director, enshrined in Article 10 of the Charter. The Commission ruled that “Article 10 of the Charter provides that” every individual shall have the right to free association provided that he abides by

the law...". The Commission notes that the right to freedom of association is both an individual and collective right which allows individuals to join together to pursue and further collective interests in groups, such as NGOs, political parties and trade unions. This right comprises the right to form and join associations freely; any interference with this right must be prescribed by law and meet the conditions prescribed under Article 27 of the Charter, namely the protection of the rights and freedoms of others, collective security, morality and collective interests. The Commission considers, recalling its decisions in **Huri Laws v Nigeria** and **Amnesty International v Zambia**, that any interference with this right that is not proportionate and cannot be justified under Article 27 of the Charter will be considered to be arbitrary. In the present communication it appears that the only reason that KCHRED and its Director were targeted was on account of their perceived links with the ICC. The Respondent State has not provided any information showing that the activities of the organization endangered national security, morality, or the rights of other people in Sudan. In the circumstances, the Commission considers that the State' interference with the activities of the organization and its staff was unjustifiable, arbitrary and in violation of Article 10 of the Charter."⁵¹

The Venice Commission also stated: "There must be convincing and compelling reasons justifying the dissolution and/or temporary forfeiture of the right to freedom of association. Such interference must meet a pressing social need and be "proportionate to the aims pursued" and that "A dissolution that does not pursue a pressing social need cannot be deemed necessary in a democratic society"

Contrary to this, we find the VHWA in Article 13(1) C giving the Registrar the power to cancel the registration of any organization that "without any acceptable justifications, failed to carry out its activities for a period of one year". This ground for dissolution clearly does not meet the said standard. There is absolutely no

⁵¹Communication 379/09, Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, the African Commission for Human Rights. Available at [http://www.achpr.org/files/sessions/14th-
eo/comunications/379.09/achpr14eos_decis_379_09_sudan_eng.pdf](http://www.achpr.org/files/sessions/14th-
eo/comunications/379.09/achpr14eos_decis_379_09_sudan_eng.pdf)

“pressing social need” or “convincing and compelling reasons” that justify the dissolution of organizations that failed to carry on their activities for a period of one year.

Section Nine

Funding

A) Sudanese Law

The first Paragraph of Article 7 of the Act stipulates “Grants and fund raising for programs of organizations shall be done through a project document approved by the Commission in accordance with the regulations”. This extends arbitrary authority to the commission to issue and reject funding and lacks a clearly- defined criteria for review of project documents.

Moreover, the second Paragraph of the Article prohibits civil society organizations registered under this Act from receiving funds or grants from abroad or from a foreign person within the country or from any other entity without the approval of the Minister.

In addition, A HAC policy issued in 2013 obliges civil society organizations to obtain HAC’s approval on any foreign funding but restricts its approval to projects that aim at providing humanitarian aid only.

This is perhaps the most criticized Article of the Act. Since most organizations in Sudan rely almost entirely on funding, lack of such funding might be a barrier to the establishment and activity of an organization, which makes the right to obtain funding an inherent part of the freedom of association.

The UN Declaration on Human Right Defenders provides that States must guarantee “the right, individually and in association with others, to solicit, receive, and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms.”⁵² The United Nations special rapporteur on the situation of

⁵² Article 13, the UN Declaration on Human Right Defenders

human rights defenders established that “Governments should allow access by human rights defenders, in particular non-governmental organizations, to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments.”

While it is often argued that the purpose of this excessive control on foreign funding is to prevent money-laundering and terrorist-financing, however, the Venice Commission believes that “these legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defense of human rights. The prevention of money laundering or terrorist financing does not require nor justify the prohibition or a system of prior authorization for foreign funding of NGOs.”

The Venice Commission suggests that it is sufficient to have a mechanism in place to assure utmost transparency in matters pertaining to foreign funding. There is already a mechanism in place under the VHWA for monitoring the sources of funds and assuring transparency through the requirement to present a certified copy of annual audit report by a certified auditor, half yearly report on its works and an annual progress report which must include budgetary summaries. As the commission recommends, a simple notification could be requested whenever an organization is to obtain foreign funding in order for the HAC to ensure the legality of source of funding.

The current rules governing the receipt of funds became a method of prohibiting the establishment of projects the government does not favor. Those rules, combined with the conditions for registering and the provisions on dissolution, clearly indicate that the primary aim of enacting the Sudanese Humanitarian and Voluntary Work Act of 2006 is to bestow upon the government tight control over organizations operating in Sudan.

B) Egyptian Law

The same prior authorization procedure is prescribed under the Egyptian Law and has been highly criticized by the Egyptian civil society.⁵³ Egyptian NGOs reported that as a result of this discretionary power, most of the organizations that succeed in obtaining the approval for foreign funding are those that are loyal to the governing political party.

Obtaining foreign funding without prior approval constitutes grounds for dissolution of the organization.⁵⁴ For example, the Egyptian Organization for Human Rights received a dissolution decree, alleging that it received foreign funding without authorization.

The prior authorization procedure is also required under the “Draft Law of Civic Work Organizations of Egypt.” The Venice Commission issued an interim opinion on the Draft and stated “Article 63 provides for a system of prior authorization for an Egyptian NGO to receive foreign funding and carry out the related activities, which as such is not in line with international standards. In addition, it fails to provide a clear legal basis for refusing the authorization to receive the funding. This system should be replaced by a system of mere notification with the possibility for the Co-ordination Committee to object on the basis of Article 59 of the Draft Law only”

C) English Law

The UK government adopts a “no intervention” policy and leaves the issue of fundraising, including foreign funding, for the charities to regulate. The sector established a voluntary scheme called the Fundraising Standard Board FRSB and charities become members of it to identify themselves as charities that follow good practices.

⁵³Article 17 of the Egyptian NGO Law 84/2002

⁵⁴Article 42 of the Egyptian NGO Law 84/2002

The law only regulates sensitive parts of fundraising such as public collections (personal solicitation of money or committed gifts in an area with free public access) for the purpose of minimizing public nuisance and ensuring equal opportunities for charities to raise funds. The House to House Collections Act of 1939 provides that charities must obtain license to fundraise from the local authority or have an exemption order. Local authorities set their own regulations for granting licenses in accordance with the national model regulations.

Other areas that are regulated by the law are gaming activities such as lotteries, raffles etc, event fundraising, broadcast and telephone fundraising, fundraising involving children, and online fundraising.

The Commission carries out general monitoring of charities as part of its regular casework. It also has powers set out in the Charities Acts to conduct statutory investigations. However, opening a full statutory inquiry into a charity has a detrimental effect on the relationship with the regulator and can frustrate the intention to achieve a positive outcome. The Commission therefore began around 2007 to carry out an intermediate form of action described as regulatory compliance investigations. In 2010 it opened over 140 of these cases, compared to just three full statutory investigations. However, the legality of these actions was debatable as they lacked a statutory basis. A high-profile example was the Commission's report into The Atlantic Bridge, after which that body was dissolved in September 2011. The Commission announced in October 2011, in the context of cost-cutting and a re-focusing of its activities, that it would no longer carry out regulatory compliance investigations.

The Charity Commission answers directly to the UK Parliament rather than to Government ministers. It is governed by a board, which is assisted by the Chief Executive (currently Paula Sussex) and an executive team.

Some of the activities of the Commission have been questioned by the Public Administration Select Committee, which oversees the Commission's work. For instance on 23 October 2012, Charlie Elphicke, Conservative MP for Dover accused the Commission of "suppressing Christianity", after the Committee heard that a

religious group was refused charitable status by the Charity Commission, despite the group's attempts to demonstrate that it undertook genuine charitable works. Elphicke asked at the hearing if the Commission was "actively trying to suppress religion in the UK, particularly the Christian religion" and stated "I think they [the Commission] are committed to the suppression of religion"⁵⁵

The committee of Members of Parliament was appointed by the House of Commons and drawn from the three largest political parties. It works principally by undertaking inquiries. It chooses its own subjects of inquiry and seeks evidence from a wide range of groups and individuals with relevant interests and experience. It produces reports setting out our findings and making recommendations to the Government.

Analysis

One cannot exaggerate the importance of funding for nonprofit making organizations. The main problem with funding seems to be the third world Governments having problems with foreign funding and consequently trying to restrict it. It is almost always that the main target for restriction is NGOs working in the field of human rights and relevant activities. The problem with organizations working in that field is not only the foreign funding which, for obvious reasons they cannot do without, but also their very field of activities which cannot endear them to rulers in authoritative regimes who are not uncommon in the third world countries. Their reliance on foreign funding is used as an excuse for dissolving them for being foreign agents or when that could not be easily achieved by weakening them through drying their source of funding. Restriction on foreign funding is already having an effect on both the operation and existence of advocacy-based CSOs, in countries that particularly need them. On the other hand donors normally get unwilling or at least hesitant to engage in long-term project agreements because of the uncertainty caused by the restrictions imposed on foreign funding. Though these

⁵⁵<https://www.gov.uk/government/organisations/charity-commission>

restrictions violate the commitments of the states applying them to the international community, they do not seem to care about that. Article 13 of the UN Declaration on the Right and Responsibility of Individuals Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms states: “Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.” The restrictions on access to foreign funding are likely to have serious effect on the democratization process in the underdeveloped countries where foreign funding is the only source of funding for CSOs. Due to the poverty of the nation, there is no substantial national funding that can compensate for the loss of resources engendered by the restrictions. Consequently, the restrictions will likely create a severe financial crisis for CSOs, which might result in their being crippled. This situation might lead human rights CSOs, if they manage to survive the restrictions, to opt to abandon their activity in such areas and turn to relief provision and related non-sensitive areas of work.

Section Ten

Privileges

One of the main functions of the Charities Act is to confer the “public benefit status” on registered charities and once the charity is given that status, it becomes entitled to all privileges as a matter of law. Charitable trusts are exempt from income tax, corporation tax, capital gain tax and council tax. Their donors are also free from paying tax on their donated amount.

However, under the VHWA, the fact that in order for an organization to obtain the privileges offered to registered organizations, it must acquire the approval of the Minister of Finance and National Economy upon the recommendation of the Minister of Humanitarian Affairs, confirms the idea that the main purpose of

registration under the HVWA is to confer upon the government excessive control over NGOs in Sudan and not enabling an organization to enjoy the privileges by registering. Those privileges are: exemptions from taxes, custom duties and duties levied on imported goods, equipment, materials and apparatuses imported for implementation of its purposes.

The Egyptian law 84/2002 also uses the idea of the “public benefit status” to grant certain privileges such as tax exemption, possibility of expropriation for public benefit in the association’s favor and the inadmissibility of acquiring the association’s property and fund by prescription. However, the public benefit status can only be granted by a presidential decree upon the request of the association.

Additionally, all registered associations under the law 84/2002 are automatically entitled to other privileges such as 25% reduction on railway transport duties for equipment and machinery, 50% reduction on consumption value of water, electricity and natural gas produced by the public authorities, public sector companies and any other government bodies, exemption of real property owned by the association from the real estate tax and exemption from taxes and stamp duties currently or to be in future levied on all contracts, powers of attorney, printed material and records, etc.

By comparing the privileges offered under the Egyptian law with those offered under the Sudanese law, it becomes clear that the latter are extremely narrow in scope and restrictive in nature.

Conclusion

The Act became a tool for imposing excessive control of the activities of non-governmental organizations and civil society organizations, suppression of civil society organizations not aligned with the government and for depriving citizens from their fundamental right to associate and assemble as recognized by the Sudanese National Interim Constitution and the international covenants Sudan is a

party to. Moreover, it is accurately perceived by the public as discriminatory in favor of organizations that are loyal to the governing political party.
