

Civil Society on Trial in Egypt: Revisiting the NGO Workers Case

by [Harris Setzer \(/experts/harris-setzer\)](/experts/harris-setzer)

Jan 30, 2018

Also available in

[العربية \(/ar/policy-analysis/mhakmt-almjtm-almndny-fy-msr-aadt-alnzzr-fy-qdyt-alnashtyn-fy-almnzmat-ghyr-alhkwmtyt\)](/ar/policy-analysis/mhakmt-almjtm-almndny-fy-msr-aadt-alnzzr-fy-qdyt-alnashtyn-fy-almnzmat-ghyr-alhkwmtyt)

ABOUT THE AUTHORS

[Harris Setzer \(/experts/harris-setzer\)](/experts/harris-setzer)

Harris Setzer, a researcher who focuses on Middle East politics, completed his PhD at Cornell in 2017 with a dissertation titled "Judicial Power in Transitional Regimes: Tunisia and Egypt since the Arab Spring."



Brief Analysis

Exoneration of the convicted U.S. citizens, while a show of goodwill, would still not bridge the larger gap in U.S.-Egypt ties.

More than four years after the conviction of forty-three Egyptian and foreign NGO workers, the affair remains an irritant for U.S.-Egypt relations. For many in Washington, the felony convictions of all seventeen Americans tried—including the son of an Obama administration sitting cabinet secretary—were emblematic of Egypt's increasingly repressive approach to civil society and justified ending U.S. funding to Cairo. Yet others, in both Congress and the administration, are hoping the crisis can be resolved in a way that both ends the Americans' legal jeopardy and enables the bilateral relationship to move forward. Given this context, where does the NGO case stand today and what are the prospects for a resolution?

Background

In December 2011, Egyptian police raided the offices of more than a dozen prominent NGOs, including the International Republican Institute (IRI), National Democratic Institute (NDI), Freedom House, the Konrad Adenauer Foundation, and the International Center for Journalists. The next year, Egyptian courts charged dozens of workers with receiving foreign funds, operating without permits, and fomenting unrest in Egypt. By the time the trials occurred in June 2013, all the Americans—excepting NDI staffer Robert Becker, who remained of his own volition for the hearings—and many of the Egyptian defendants had left the country. Indeed, the U.S. government paid a bond of \$330,000 per citizen to allow the Americans to depart. The defendants, many tried in absentia, were all found guilty and sentenced to five years in prison, to be implemented upon their return to Egypt. Although Cairo has not chosen to do so, it could likewise submit the names of these "fugitives" to Interpol, to request their extradition should they be flagged while visiting Europe.

The Egyptian Judiciary

In the aftermath of the verdicts, Obama administration National Security Council spokesperson Caitlin Hayden issued a statement expressing concerns about what she described as "a politically motivated trial" that "undermine[d] the protection of universal human rights." Notwithstanding Washington's critique, the trial was carried out with at least some respect for legal procedure. To wit, the defendants were charged according to an existing law, and the trial was held in public. However, this adherence to procedure belied a hostility toward civil society that is deeply embedded in the Egyptian state. While the laws were in fact enforced, the legislation itself is problematic.

The Egyptian judiciary is a strong institution with a deep history. Judges carry a sense of belonging to a special institution with a special mission. Indeed, following the 2011 revolution, many Egyptians looked to the courts to guide the transition. Nor do judges act on the whims of the president, military, or any other entity. As the political scientist Nathan Brown points out, repressive decisions by the Egyptian judiciary are not often the result of "telephone justice"—that is, direct interference by the president, military, or other agency; instead, judges act according to the interests of the judiciary and their own interpretation of the law. Yet given the position of Egyptian judges as incumbents—officeholders who derive their status from the existing regime—they are often inclined to make repressive decisions. Moreover, because Egyptian law has been shaped over decades by authoritarian rule, faithfully applying the law can mean issuing decisions that violate the rights of civil society.

Given the authoritarian context in which they have long operated, judges would have as much to lose as anyone from regime change. This explains why the brief era of rule by Islamist president Mohamed Morsi unsettled the judiciary so profoundly. Hostility toward the Morsi government was high amid widespread fears of a purge. Even if individual judges might continue to hold their positions under a new regime, the source of the judiciary's strength—its long institutional history—would be broken. For judges who see themselves foremost as representatives of this larger institution, such a dismantling would be unacceptable.

Civil Society Politics

The NGO case exemplifies the underlying consistency in the Egyptian regime's policy toward civil society, even across different political contexts. With civil society having flowered, relatively speaking, during the Mubarak era, the 2011 revolution raised the possibility that civil society might effect real change in Egypt. Yet during the Morsi era, as well as under the current government, led by Abdul Fattah al-Sisi, a crackdown has occurred on civil society. In all these eras, civil society remained a field to be managed by the state through legislation and judicial decisions. Temporary liberalization, such as during the Mubarak era, did not change this fundamental principle.

The Egyptian judiciary has likewise pursued the NGO workers case through three leaderships of seemingly different persuasions. The case was opened in December 2011, when Egypt was ruled by the Supreme Council of the Armed Forces, the transitional military authority that took power in the immediate aftermath of Mubarak's ouster. The sentences were passed down at the very end of the Muslim Brotherhood presidency, led by Morsi. And these sentences remain in effect today under Sisi. Even as Egypt has undergone numerous political changes, then, the punitive approach to civil society has shown no sign of abating.

A principal reason for this approach involves the fear that uprisings like those that shook Egypt from 2011 to 2013 will return. Each government appears to see regulation of civil society as a means to mitigate such a prospect. Whereas the government's link between civil society and popular unrest may strike some as irrational or paranoid, the significant role played by soccer clubs in the 2011 protests offers at least some evidence to the contrary. Indeed, state regulation of civil society is intended to prevent collective action of any kind. In May 2017, legislation seeking to regulate civil society accordingly cast a wide net, including even organizations without foreign ties or any direct connection to politics.

Conclusion

Far from being an isolated event or simply a product of the turmoil following the 2011 revolution, the NGO case reflects the Egyptian government's long-held wariness of civil society and the Egyptian courts' willingness to enforce repressive laws. Moreover, the case and subsequent legislation show that Cairo views control of civil society as essential to its survival. To be sure, Egyptian government treatment of civil society is a test of its overall willingness to respect its citizens' fundamental rights, and therefore an important consideration for U.S. policy. While human rights appear to be a secondary concern in the Trump administration's Egypt policy, many members of Congress clearly consider human rights a priority, and the divergence has made bilateral relations rocky.

In the short term, the NGO case appears unlikely to be resolved through a shift in Egyptian policy or through pressure from the United States. Here, a deep commitment by the Egyptian judiciary to the authoritarian system, despite occasional shows of independence, sets the backdrop, as does the government's view that control of NGOs is fundamental to its survival. Over the past year or so, Washington has been engaged in quiet discussions with the Sisi administration regarding a mechanism that would allow the president to pardon the convicted Americans—a process that would involve those convicted testifying remotely in appeals hearings, a necessary first step en route to acquittal.

With Egyptian elections set for late March, a near-term acquittal may prove a political bridge too far for Sisi. More likely, in the coming weeks, the Egyptian judiciary may order a retrial for the forty-three convicted individuals based on a claim of procedural problems in the initial one. In a best-case scenario, the accused may face lesser charges in such a retrial.

Ultimately, while even a creative exoneration of the U.S. citizens would demonstrate Egyptian goodwill, it would not remedy the conviction of the former Egyptian employees of the now-shuttered U.S. organizations in Egypt or other NGOs. Nor would it address the endemic problem of human rights in the state. In this sense, even if it is partially resolved, the NGO affair will remain a symptom of the authoritarianism in Egypt, the real impediment to closer U.S.-Egypt relations.

Harris Setzer, a researcher who focuses on Middle East politics, recently completed his PhD at Cornell with a dissertation titled "Judicial Power in Transitional Regimes: Tunisia and Egypt since the Arab Spring." ❖

RECOMMENDED



BRIEF ANALYSIS

[Iran Takes Next Steps on Rocket Technology](#)

Feb 11, 2022

◆
Farzin Nadimi

(/policy-analysis/iran-takes-next-steps-rocket-technology)



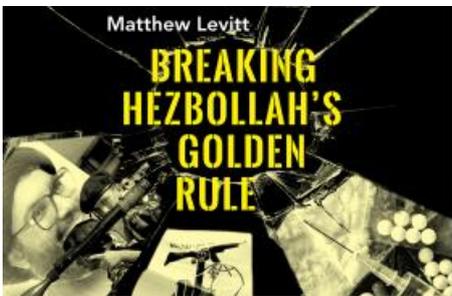
BRIEF ANALYSIS

[Saudi Arabia Adjusts Its History, Diminishing the Role of Wahhabism](#)

Feb 11, 2022

Simon Henderson

(/policy-analysis/saudi-arabia-adjusts-its-history-diminishing-role-wahhabism)



ARTICLES & TESTIMONY

[Podcast: Breaking Hezbollah's Golden Rule](#)

Feb 9, 2022

Matthew Levitt

(/policy-analysis/podcast-breaking-hezbollahs-golden-rule)

TOPICS

[Democracy & Reform \(/policy-analysis/democracy-reform\)](#)

[U.S. Policy \(/policy-analysis/us-policy\)](#)

REGIONS & COUNTRIES

[Egypt \(/policy-analysis/egypt\)](#)

[North Africa \(/policy-analysis/north-africa\)](#)