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Congressional Human Rights Caucus
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Human Rights First thanks the Congressional Human Rights Caucus for convening this important briefing on human rights conditions in Egypt. This briefing comes at a time when there is some optimism that democracy and human rights may be moving forward in Egypt after long years of repression and disregard of basic rights and freedoms. We welcome the opportunity to share our views on the role of human rights defenders in promoting and protecting human rights in Egypt and thereby contributing to the broader process of democratization.

Human Rights First's mission to protect and promote human rights is rooted in the premise that global security and stability depend on long-term efforts to advance justice, human dignity, and respect for the rule of law in every part of the world. Since our inception in 1978, Human Rights First (formerly the Lawyers Committee for Human Rights) has worked in the United States and abroad to support human rights activists who, at great risk to their own liberty and security, fight for basic freedoms and peaceful change in their countries.

After decades of toiling largely at the margins of Egyptian society human rights activists are at the front and center of the growing popular movement for political change that is coalescing around demands for a free and fair election to choose a replacement for President Mubarak, who has been in office for the past 24 years. Presidential elections are scheduled for early September 2005, and although there is every indication that President Mubarak will be the candidate of the ruling National Democratic Party to serve his fifth six year term in office, his formal candidacy is yet to be announced. This uncertainty is in itself a sign that the ruling establishment in Egypt has, to some degree, been taken by surprise by the new vitality of the political opposition, and other groups calling for change. The slogan "Kifaya" (enough) indicates that for a visible and energetic section of the reform movement President Mubarak's departure from office is a central objective. The concessions so far offered by the government, to permit the holding of a contested election but only among approved candidates, have not satisfied the demands of the reform movement, which continues to grow.

There is something paradoxical about the new dynamism of civil society organizations and human rights activists in Egypt because objectively little has changed with respect to their legal status and the powers of state authorities to interfere with and obstruct the activities of independent non-governmental organizations.

Under the Law of Association, Law 84 of 2002, which came in to force in June 2003, it is still impossible to be both a legal and an independent non-governmental organization (NGO) in Egypt. In order to register under the law, which is now a much more stringently enforced requirement for NGOs to operate, organizations must cede to the state powers to interfere with the composition of boards of directors and with program activities as well as submitting to burdensome, and sometimes arbitrary, registration processes and controls over the receipt of funding. Faced with the stark choice

of compromising their formal independence or ceasing to operate on pain of prosecution, the overwhelming majority of organizations has complied with the new law and is now operating under its terms.

Moreover, the heavy hand of the state security intelligence services continues to press on leaders and activists in human rights organizations. These constant reminders that the state is paying attention to and may be displeased with their activities, in the form of frequent telephone calls and meetings which may also include threats and insinuations, are not legally sanctioned, but they are burdensome and sometimes menacing.

In the struggle for a free and fair presidential election Egyptian human rights organizations have found a cause which resonates beyond their own rather limited constituency of supporters. Naturally, the previously fractured and moribund political opposition, which has the most to gain from any opening up of the political system, has become part of the movement for change, but it is the activism of new political formations, like Ayman Nour's *Al Ghad* (Tomorrow) Party, and of a myriad of new organizations and coalitions: Youth for Change, Journalists for Change, Lawyers for Change and the Kifaya movement, which have emerged at the forefront of the protests.

Human rights activists, seasoned from their years of campaigning in organizations like the Egyptian Organization for Human Rights or the Hisham Mubarak Law Center, and many others, have been catalysts of these new popular organizations. Several prominent figures in the human rights movement, like Hisham Kassem or Amir Salem, are now prominent figures in the movement for political change.

There is no contradiction in this. The agenda championed by the movement for change is rooted in human rights, in implementing the basic freedoms of expression, assembly and association and more broadly in restoring the rule of law. A long standing demand of the human rights movement has been for the lifting of Egypt's near permanent State of Emergency, which for the last 24 years has given President Mubarak and the executive branch of government powers to disregard constitutional rights safeguards and to restrict basic rights and freedoms. The movement for political change aims to replace a super-empowered presidency with an elected president who would rule in accordance with constitutional limits on the power of the office.

The human rights movement made several advances in the early part of this decade, the importance of which should not be discounted in the excitement of the current turbulent political moment. These may be seen as the cumulative fruits of decades of effort by courageous activists in the 1980s and 1990s whose activities were ignored or repressed, sometimes brutally through torture and imprisonment. Steps like the recognition of the office of the Arab Organization for Human Rights in 2002; the formation of the National Council for Human Rights in 2003 with the inclusion of representatives from human rights organizations; and even the registration of human rights organizations under the flawed terms of Law 84 are all indicative of a positive shift in the official attitude towards non-governmental human rights organizations. Regardless of the outcome of the current frenetic activity over the presidential election, and barring unforeseen setbacks, these positive developments are likely to provide the human rights movement in Egypt with a firmer foundation, and greater political space within Egyptian society, to pursue its cause. After years of indifference and hostility the government has granted a degree of legitimacy and recognition to the

human rights movement, which it previously lacked. Despite the government's efforts to maintain control over the activities of human rights activists, such efforts are ultimately futile because human rights standards – the concrete objectives that Egyptian activists are striving to implement – exist beyond the scope of control of any single government.

The government had turned to the law to limit the activities of human rights organizations in the mid-nineties. In January 1995, the Legislative Department of the Ministry of Justice issued a ruling declaring that not for profit civil companies, the legal form favored by almost all human rights NGOs that had emerged in the early nineties, were illegal. “In as much as these companies have failed to comply with the provisions of Law 32 of 1964 (the law on associations) then they are committing a criminal offense and are liable to punishment...,” it declared. The ruling demanded that they should seek registration under the law on associations, or face prosecution. NGOs had adopted this novel legal form precisely to avoid having to register under Law 32 of 1964, the restrictive law on associations which gave the government intrusive powers to control the work of NGOs. The organization from which the movement had sprung, the Egyptian Organization for Human Rights, had tried to register under the law in 1985, but after protracted legal proceedings, its application had been turned down.

Government officials began to refer to unregistered NGOs as “illegal organizations,” and to condemn these organizations in the government controlled press. The attacks on human rights NGOs in the press focused on three main areas. First, human rights groups were accused of acting against the national interest, and of being in the pay of foreign powers—a direct reference to the movement's dependence on foreign funding. The government chose to ignore the hypocrisy of criticizing NGOs for accepting foreign funding when it is, itself, a major beneficiary of foreign assistance. Secondly, human rights groups were accused of giving aid and comfort to terrorists because of their reporting on government violations during its crackdown on violent Islamic extremists. Thirdly, their lack of legal registration was emphasized to show their illegitimacy. For example, amid a series of scathing statements about human rights organizations from Minister of Interior, Hassan al Alfi, he declared in September 1995 that the EOHR's report on prison conditions were “sheer lies and fabrications... and are simply aimed at tarnishing Egypt's image.” Human rights activists were variously described by the minister as “criminals,” “weirdos,” and “people with an axe to grind,” in an interview in Al Ahram newspaper on August 26, 1995.

The campaign against human rights activists was intensified when, on December 1, 1998, Hafez Abu Sa'ada, Secretary General of the Egyptian Organization for Human Rights was taken into detention and accused of taking money from foreign sources to defame the reputation of Egypt abroad. The accusations related to an EOHR report about human rights violations in the predominantly Christian village of al-Kushh, in Upper Egypt. The government alleged that the EOHR had taken a £25,000 (\$40,000) grant from the British Parliamentary Human Rights Association as payment for producing defamatory material about Egypt. The grant was actually received to support a women's education project, which had no connection with EOHR's reporting on Upper Egypt.

Hafez Abu Sa'ada was released on bail after six days in detention, but the charges against him, and the investigation into EOHR's reporting on sensitive issues involving Egypt's Christian minority, were not dropped. On February 13, 2000, the public prosecutor announced that Hafez Abu Sa'ada

and the EOHR lawyer who had conducted the fieldwork in al- Kushh, Mustafa Zeidan were to be brought to trial before an Emergency State Security Court in Cairo. Among the charges against them was an alleged violation of Emergency Decree 4 of 1992, which prohibits the receipt of foreign funding without official permission. The charges were announced while Hafez Abu Sa'ada was traveling abroad. After weeks of negotiations, he received assurances from a senior presidential advisor that the prosecution against him would not be pursued, so he returned home. No further steps have been taken to pursue the prosecution, but the charges have never been dismissed.

The government's intention to further restrict the independent activities of human rights NGOs was clear in 1999, in the passage of a revised law on associations. The new law, Law 153 of 1999, was pushed through the parliament in May 1999, disregarding a promising consultative process with some NGO activists, which the government initiated and then reneged upon. The new law, in its Article 11, outlawed "political" activities by NGOs, a loosely defined restriction that could be used to penalize legitimate activities by human rights defenders. Under Article 75 of the law, it also banned the receipt of money from abroad or domestic fund raising without prior permission from the authorities. In June 2000 the Constitutional Court suspended the new law on procedural grounds, but the government declared its intention to apply the law without substantive changes as soon as procedural hurdles were overcome.

A devastating blow to the human rights movement came on June 30, 2000 when the government detained Saad Eddin Ibrahim, director of Ibn Khaldoun Center for Development Studies (ICDS). ICDS was a prestigious independent research center which carried out research projects for multilateral institutions, as well as for the Egyptian government. The Center was also associated with various campaigns and causes also espoused by the human rights movement. For many years Dr. Ibrahim and ICDS had championed the idea that promoting civil society was key to promoting democratization in Egypt and the region. ICDS made common cause with other non-governmental organizations in campaigning for a liberalization of the law on associations. The Center also worked in the controversial area of minority rights, and in promoting free and fair elections—the issue which was the immediate cause of Dr. Ibrahim's detention and prosecution. ICDS and an organization closely associated with it, the Huda Shirawi Center for Women Voters, had received a grant from the European Union for a voter education project, leading up to parliamentary elections held in October 2000. He was held for interrogation until August 10, 2000. He and three of his staff members were then brought to trial before an Emergency State Security Court on November 18, 2000. He was convicted on three charges: receiving foreign funding without permission, a violation of Emergency Decree 4 of 1992, dissemination of false information abroad, and misappropriation of funds, and sentenced to seven years' hard labor. The misappropriation of funds charge was rejected by the European Union, the donor whose funds were allegedly misappropriated. The EU confirmed that all accounting requirements connected to the grant in question had been satisfied by Dr. Ibrahim and the Center. The other charges were transparently politically motivated.

Saad Eddin Ibrahim is a very prominent public figure in Egypt, whose connections to powerful government leaders were believed to have insulated him from state reprisal. His imprisonment sent a clear message that the government was determined to cut off flows of foreign financial support that it did not supervise. NGO activists realized that what nearly happened to Hafez Abu Sa'ada, and what did befall Saad Eddin Ibrahim could easily happen to them.

As a result, organizations reporting on human rights conditions in Egypt, like the EOHR, were obliged to stop accepting foreign funding. Without domestic funds to replace them, they were forced to lay-off staff, close offices and radically curtail activities. Instead of domestic organizations with national membership and research structures, there remained just a few individual activists acting in the name of organizations that no longer really existed.

Dr. Ibrahim's eventual victory in the courts was an indication of the tenacious independence of at least parts of the Egyptian judiciary, and it removed a shadow from the activities of NGO activists. On December 3, 2002 the Court of Cassation threw out the State Security Court's second ruling convicting Dr. Ibrahim and his associates in the case. Dr. Ibrahim and the other defendants were released pending the outcome of a third trial, which ended on March 18, 2003. In this trial, heard by the Court of Cassation rather than the State Security Court, he and two of his co-defendants, Mohammed Hassanein and Nadia Ahmed Abd el Nour, were cleared of all charges.

Law 84 of 2002

The text of this law is strikingly similar to Law 153 of 1999, a previous attempt by the government to restrict private associations that was struck down by the High Constitutional Court in June 2000. The High Court ruled that the government had violated required procedure by failing to get the text of the law approved by the Consultative Assembly (Magles al-Shura) before its final passage by the People's Assembly (Magles al-Sha'ab). Although the High Court declined to rule on the substance of the law, it noted that several provisions were unconstitutional. While the government attempted to cure some of these defects in its new draft of the law, for example, by ensuring that disputes between the authorities and an NGO over a question of registration will be referred to existing administrative courts, the law falls far short of international standards regarding the right to freedom of association.

The law makes it legally impossible for NGOs to operate free from overbearing state interference. The major problems with the law lie in three main areas: further entrenching a policy of state domination over the non-governmental sector; use of overly broad language; and severe criminal penalties for NGO activists.

State Domination of Non-Governmental Organizations

The most egregious element in the law is the power vested in the Ministry of Social Affairs, an administrative authority, to dissolve an association and seize its assets by administrative order, without first having to obtain a court ruling to permit such drastic action. In this important respect, the proposed new law is even worse than Law 153 of 1999. Although an association would have the right to appeal such an order to an administrative court, such proceedings could be protracted, leaving an association vulnerable to indefinite closure by administrative fiat.

The law retains the state's power to block nominees for the board of directors of an association by requiring that all candidates for such positions be approved weeks in advance by the Ministry of Social Affairs. Moreover, prior approval from the Ministry is required by NGOs wishing to receive financial support from foreign institutions, or wishing to affiliate with international organizations or coalitions.

Overly Broad Language

The law retains the prohibition on NGOs "practicing any political or syndicalist activities that are restricted to political parties and trade unions or professional syndicates." This broad prohibition can be interpreted to bar NGOs from a wide range of legitimate activities that may also be carried out by some trade unions or professional organizations. Such language in the law can be exploited to provide a pretext for government officials to obstruct NGOs from carrying out their proper functions. For example, the ability to publicly criticize government policy or a particular government official is an important function of NGO's in civil society. But such activity can be construed as "political" and therefore illegal.

Heavy Criminal Penalties

The law also exposes NGO activists and leaders to the threat of criminal punishment for exercising their right to freedom of association, as provided for in international human rights treaties to which Egypt is a State Party. Leaders, members and employees of NGOs not registered under the law of association are vulnerable to prosecution simply for carrying out their activities as human rights advocates. Penalties include a fine of 2,000 to 10,000 Egyptian Pounds (approximately \$400 to \$2,000), and imprisonment for between six months and one year.

The UN Human Rights Defenders Declaration states in Article 5 that to promote and protect human rights "...everyone has the right, individually and in association with others, at the national and international levels: a) To meet and assemble peacefully; b) To form, join and participate in non-governmental organizations, associations or groups; c) To communicate with non-governmental or intergovernmental organizations." Egypt's law on associations places undue obstacles in the path of those wishing to exercise this right, to the detriment of human rights conditions in Egypt, and against the best interests of the Egyptian people who have much to gain from a strong, independent non-governmental sector.

The Human Rights Committee, that authoritatively interprets and monitors the implementation of the ICCPR has thus expressed concern about onerous registration procedures and has stated that procedural formalities for recognition of associations must not be so burdensome as to amount to substantive restrictions on freedom of association. In this regard, during its examination of Egypt's third and fourth periodic reports, in 2002, the Human Rights Committee stated that Egypt "should review its legislation and practice in order to enable non-governmental organizations to discharge their functions without impediments which are inconsistent with the provisions of article 22 of the Covenant, such as prior authorization, funding controls and administrative dissolution."

The United Nations Declaration on Human Rights Defenders further upholds the right of individuals to form associations to promote and protect human rights. The Declaration emphasizes the important work performed by individuals and associations to promote and protect human rights and states that everyone has the right to form, join and participate in non-governmental organizations, associations and groups.

The way in which the government may misuse its powers under the Law on Association was clear in the problems which attended the registration process of two human rights groups, the New Women's Research Center and the Land Center for Human Rights.

The New Women's Research Center was formed in 1982. It carries out research on women's rights issues in Egypt and campaigns against violence against women. On June 8, 2003 it received a letter, signed by the deputy minister of social affairs, informing the organization that its registration application had been denied on security grounds, apparently at the direction of the Giza Security Directorate. The letter was dated June 3, 2003 and carried serial number 9668.

The Land Center for Human Rights, a research and advocacy organization that campaigns on issues relating to peasants and agricultural workers submitted an application to the ministry of social affairs on April 6, 2003 as Sons of the Land for Human Rights (*Awlad al-Ard l'il Huquq al-Insan*). It too received a letter from the ministry notifying it that its application for registration had been denied.

These two groups were finally able to register after protracted processes that interfered with their work. At least five other human rights organizations are still fighting denials of their application to register.¹ Other organizations have chosen not to register and have thus exposed themselves to the penalties described above.

Human Rights First fully recognizes the legitimate government interest to regulate the activities of non-governmental organizations. If such organizations break the law, then they should be prosecuted and, if necessary, closed down, provided that such closure orders are subject to appropriate, independent judicial review. Issuing closure orders for unspecified "security reasons," or arbitrarily delaying application procedures or blocking grants does not constitute legitimate regulation. Recipients of closure orders are now legally barred from carrying out their work unless and until they are able to win an appeal to an administrative court. Given that there is no time limit to such appeal proceedings, and also the inherent improbability of an administrative court issuing a ruling countermanding the security concerns expressed by the state security directorate, these denials of registration constitute indefinite, perhaps permanent closure orders for these organizations.

There is no doubt that the current legal framework provides the state with ample powers to stifle the activities of independent human rights activists, if it chooses to. That it has not done so suggests a degree of sensitivity to political pressures within Egypt and from Egypt's allies in the European Union and the United States, which have been encouraging the Egyptian government to implement political and human rights reform for several years.

U.S. Policy

As the administration has repeatedly stated in recent years, there has been a fundamental change in the U.S. attitude towards human rights conditions in the countries of its allies in the Arab world, including Egypt. Whereas in the past stability was thought to be more important than democracy and liberty, these values have now become the pre-eminent goals of U.S. policy towards the region.

¹ Human Rights Watch, *Egypt: Margins of Repression, State Limits on Nongovernmental Organization Activism*, New York, June 2005, p. 16.

It is hard for a human rights organization to object to a policy that gives such a prominent place to human rights, and I do not propose to do so. While it is certainly right to observe that stating a policy is not the same as implementing it and that achieving the ambitious goals of the administration to establish democratic governance throughout the region will require sustained efforts over many administrations; nevertheless, the vociferous encouragement of this administration of the Egyptian government to move forward with reform and respect for human rights is certainly one reason why there have been concessions from the Egyptian side.

Regardless of how much the Egyptian government may say that U.S. pressure on human rights issues are counterproductive, and despite the charges of hypocrisy and double standards that are thrown at the United States because of its practices at Abu Ghraib or Guantanamo, and even despite the fact that many Egyptian human rights advocates will say in public, and sometimes in private, that they do not want the support of the United States, there is no doubt in my mind that a clear consistent message on human rights and democratic reform from the U.S. government over a sustained period of time is a powerful force for positive change. The Egyptian government has shown repeatedly in recent years that it is willing to make concessions in response to this type of pressure. We may hope that there are some policy makers in the Egyptian government who share the administration's analysis that failure to advance reform is more dangerous than unleashing the uncertainty of change. If so, then a strong lead from the administration can only support them.

Therefore Human Rights First has welcomed the strong statements in support of human rights and democratic reform in Egypt made by President Bush and Secretary Rice and other senior administration officials in recent years, including the firm and specific remarks made by the Secretary in her visit to Cairo in June. For example in an interview with Al-Arabiyya television she said: "It's extremely important that civil society be heard. It is not somehow anti-government or unpatriotic to hold views that are different than one's government." Such statements can only encourage and legitimize the activities of independent activists. This type of public pressure is creating political space within which Egyptian human rights activist and other advocates of change can operate.

In the past U.S. foreign assistance programs in the field of democratization administered primarily through USAID did little to challenge the grip of authoritarianism on Egyptian society. There is much to be done at the level of bi-lateral assistance to support the administration's goals. Direct assistance to non-governmental organizations, especially of those working in the contentious area of human rights, is probably the least important and most problematic area for the U.S. government. It is uncomfortable for non-governmental advocacy organizations to be receiving substantial funding from governmental sources. There are non-governmental donors who can more easily play this role.

Instead, the U.S. should complement its pressure for human rights change with enhanced broadcasting and public information initiatives, support for training of government officials, especially in law enforcement and the judiciary and support for education. The extent of the aid relationship and of bi-lateral ties in many areas between the United States provides many channels for a concerted sustained pressure on human rights issues, and the United States should not hesitate to use them.

The restriction of open political debate in Egypt has contributed to an intellectual climate in which conspiracy theories take the place of academic inquiry, and in which non-violent political participation has been remote from citizens wishing to have a say in how they are governed, and on the issues that impact their lives. The suppression of dissent and of pluralistic political debate on human rights and other issues has led some in Egyptian society to seek an outlet for their political frustration through violent, extremist movements. Egypt suffered grievously from conflicts between violent groups and the government in the 1990s, and Egyptian extremists have become part of an international network, threatening and delivering violence and terror around the world.

We agree with the administration that promoting greater respect for human rights in Egypt is in the interest of the national security of the United States, and in the best interests of the Egyptian people. Egyptian human rights activists have played and will continue to play an essential role in this vital task.