

Autocracy in Denial: The Legal Obstacles to Political Opposition in Egypt

Alexander Blewett, *University of Montana School of Law, USA*

Abstract

In recent years, Egyptian President Hosni Mubarak and his ruling National Democratic Party (NDP) have endured increasing domestic and international criticism for failing to achieve political liberalization. In response, the Egyptian Government has recently enacted a number of political reforms ostensibly geared toward democratizing its political system. Although Egypt's feigned efforts at political reform have won ovation from close allies, such as the Bush administration, democracy in Egypt remains a distant illusion. This is largely because of the structure of Egypt's Constitution, which heavily consolidates power in the hands of the executive. The executive's constitutional powers are so encompassing that it retains exclusive control over nearly all facets of civic life. Through these legal powers, Egypt's Government has successfully quashed any organized challenge to its hegemonic control. Even though Egypt has modestly amended its election laws and Constitution for the stated purpose of relieving participatory constraints in Egyptian politics, these superficial reforms fail to address the fundamental shortcomings inherent in the Egyptian political system. As a result, political opposition subsists in a weakened condition, incapable of wresting power from the ruling party.

Constitutional Analysis Rights Articulated

At first glance, the Egyptian Constitution appears to be a progressive document which ensures a rule of law and protects a wide range of liberties indispensable to political opposition. Among these delineated rights are the freedom of speech; freedom of opinion; freedom of assembly; freedom of movement; freedom from detention; and the right to a fair trial. However, most of these assurances are vaguely worded and accompanied by repressive language which enables the executive to trample these constitutional rights.¹ As a result, the liberal rights and guarantees enshrined in the Egyptian Constitution are constantly challenged, if not undermined, by the executive branch.² This paper will assess in detail the legal framework that authorizes the executive branch to abrogate constitutional rights.

Role of Sharia Law

Like many Muslim nations, Egypt has chosen to constitutionalize Sharia law. In 1980, Article 2 of the Egyptian Constitution was amended to designate Islamic law as "the principle source of Egyptian legislation." Egypt's highest constitutional court, the Supreme Constitutional Court (SCC), has devised a jurisprudential doctrine to interpret Article 2 which essentially permits judges to determine the validity of laws based on their own subjective interpretations of Sharia law. The SCC's defini-

tion of Sharia law is "so broad and vague that judges can plausibly declare almost any law to be in conformity with the sharia or in violation of the sharia."³ Because of the relatively liberal ideology of its justices, Egypt's Supreme Constitutional Court has generally interpreted this provision in a progressive manner. The Court has also avoided relying on Article 2 as the sole basis for overturning laws on judicial review. However, nothing in the current jurisprudence of Article 2 ensures its continued progressive interpretation.⁴ Recent judicial activism in the field of apostasy highlights the potential for the judiciary to interpret Article 2 in a regressive manner. In the absence of statutory law, Egypt's three highest courts, the Court of Cassation, the SCC, and the Supreme Administrative Court have invoked Article 2 to create a legal definition for apostasy. Although limited primarily to personal status law, charges of apostasy have been successfully prosecuted against individuals through a judicially created process known as *hisba*. Initially third parties, primarily Egypt's powerful religious institutions, initiated these court proceedings against individuals accused of making blasphemous statements or writings. However, Law 3 of 1996, which codified the procedure of *hisba*, transferred the power to initiate apostasy proceedings from third parties to the prosecutor's office.⁵ The judicial creation of apostasy proceedings in the realm of personal status law demonstrates the breadth of this constitutional provision. It also highlights how the Court's current subjective jurisprudence could be expanded and used for oppressive purposes.

As Islamic activists increasingly infiltrate the judiciary and tilt the SCC in a more conservative direction, Article 2 poses a substantial threat to Egypt's secular political opposition. If this trend persists and Islamists achieve a dominant presence in the judiciary, nothing prevents courts from strictly construing Article 2 to strike down progressive legislation or to stigmatize, punish, and silence political dissidents who criticize religious institutions and governmental policies.⁶ Islamists could also potentially interpret Article 2 to exclude non-Muslims, namely Egypt's Coptic Christians, from serving in public office on the grounds that Sharia law prohibits Muslims from subordinating themselves to Christians.⁷ Article 2 has yet to reach this extreme, but it poses a latent threat to the vitality of Egypt's secular political opposition.

Even though the inherent ambiguity of Article 2 potentially empowers Islamists to persecute secular political activists, it also can be viewed as emboldening Egypt's Islamist political opposition forces. Litigation over Article 2 has provided embattled religious activists, such as the Muslim Brotherhood, with a prominent stage from which to express their political views, mobilize their political activities and criticize the Government. Islamists have aggressively confronted the ruling party and promoted their conservative religious agenda by filing law suits alleging that various laws and regulations violate Sharia law. Additionally, Islamists have used Article 2 to mobilize support by publicly attacking secular values through lawsuits against prominent secular figures whom they accuse of insulting Islam

through their writings, expressions and behavior.⁸ Even though Article 2 undoubtedly strengthens Egypt's political opposition in the short-term, the Islamists' campaign method of exploiting religion to intimidate and attack opponents is an unhealthy form of political activism which threatens the openness of future political discourse and long-term political liberalization in Egypt. The Islamist political movement may threaten Egypt's future political development because it appears more committed to accumulating power, discrediting opponents, and promoting religious fundamentalism than to expanding the political sphere in which all opposition forces operate.

International Law

Egypt ratified the 1966 International Covenant on Civil and Political Rights (ICCPR) in 1982. This treaty binds Egypt to a comprehensive human rights framework, which includes protections of individual freedoms and liberties necessary to sustain a genuine political opposition. Article 151 of the Egyptian Constitution gives the provisions of the ICCPR, and other international treaties, the force of domestic law after the agreement is signed by the President of the Republic, ratified by Parliament, and published in the official law gazette.⁹ Although the Constitution guarantees that international treaties will have the force of law, the language of the provision fails to articulate where Egypt's international treaties exist within Egypt's domestic legal hierarchy. This presents the possibility that subsequent legislation could override the provisions of the ICCPR and other international agreements. To prevent this scenario, Egypt's Supreme Constitutional Court (SSC) has granted human rights treaties, such as the ICCPR, special constitutional status which transcends mere statutory authority. The Court accomplished this by invoking the principles of international legal instruments to interpret the vague language prescribing individual rights in Egypt's Constitution. Through this jurisprudence, the SCC has devised a mechanism for exercising judicial review to invalidate legislation

which fails to conform with human rights treaties.¹⁰

Since ratifying the ICCPR, the Government of Egypt has repeatedly professed its commitment to enforcing its provisions. In its periodic report to the UN on its enforcement of legal rights articulated in the ICCPR, the Egyptian Government stated that Article 151 of the Constitution binds Egypt to enforce the provisions of the ICCPR:

“...given the direct bearing which they have on the principles laid down in the Constitution, these instruments enjoy the protection prescribed constitutional rules such that they are binding on the legislative authority. Any law enacted in contravention of the provisions of the Constitution shall therefore be regarded as defective and may be declared unconstitutional by a ruling of the Supreme Constitutional Court handed down in accordance with the prescribed procedure. Such ruling shall be binding on all the authorities of the State.”¹¹

Despite its official declarations, Egypt has inconsistently enforced the ICCPR and other international legal obligations under Article 151 of the Constitution. This is largely because Egypt's executive-dominated legal system undermines the Court's ability to uphold the rights enumerated in these treaties.¹² The United Nations Human Rights Committee, in its 2002 report on Egypt's compliance with the provisions of the ICCPR, documented numerous failures of Egypt to honor the provisions of the ICCPR. The Committee expressed concern that Egypt's domestic legislation, particularly legislation enabling Egypt's “semi-permanent state of emergency,” its use of military courts and state security courts to try civilians, along with its control and restrictions on the formation of political parties and non-governmental organizations, violate various ICCPR Articles.¹³ Egypt's questionable commitment to the ICCPR has hampered the public's ability to mobilize and demand a responsive and representative government. To understand why the ICCPR and other constitutionally-protected liberties are not enforced, it is necessary to assess the institutional checks and balances created by Egypt's Constitution.

Separation of Powers

Executive

Although formally proclaimed to be a parliamentary republic based on democratic principles, Egypt's Constitution empowers the executive to dominate all branches of

government with few checks to its power. The disproportionate power allocated to the executive is evidenced by the Constitution's preoccupation with executive power relative to the legislative and judiciary branches. Out of the Constitution's 55 Articles, 35 Articles address presidential power, whereas only four Articles recognize the judiciary and only 14 Articles recognize the legislative branch.¹⁴ As head of the executive branch, the President commands authority over nearly all political matters, including many legislative powers. The President serves as the commander-in-chief of the armed forces and the chief of police. He also appoints the cabinet, vice-president, prime minister, military personnel, ambassadors, judges and civilian employees.¹⁵ Statutory authority has further permitted the President to appoint governors, newspaper editors, university presidents and deans, major religious officials and public sector managers.¹⁶ Egypt's Constitution has further entrenched the power of the executive by permitting the President to run for an unlimited number of six-year terms. This provision has enabled Hosni Mubarak to occupy the position of President since 1981.¹⁷

The Egyptian Constitution creates a unitary state that authorizes the executive to control local government. Without constitutional status, Egypt's legal subdivisions, including its governorates, districts, towns and villages have no guaranteed residual powers or protections against executive encroachment.¹⁸ As a result, the executive has exercised dominion over local government through political appointments. For instance, the President appoints the governors of all 26 governorates and executive councils to rule over the 4496 village municipalities and 199 town municipalities. Other municipal elections are held, but these elected officials, 97 percent of whom belong to the ruling NDP party, have significantly less power than the executive councils appointed by the President.¹⁹ Until 1994 mayoral candidates were elected, but in an effort to maintain control over local political activity, the executive eliminated these elections in favor of mayoral appointments.²⁰ Further subordinating local political authority is executive power to postpone scheduled elections, as it did in November 2006,²¹ and the national government's control over the budgets of local governorates and municipalities.²² Executive control over local government permits

the President to pack local government with NDP-loyalists, while preventing political opposition from developing at a grass roots level. This in turn dooms the efforts of Egypt's political opposition to mobilize a challenge to the Government. Without political supporters in place at the local political level, political opposition parties in Egypt lack the machinery necessary to sustain a nation-wide campaign and effectively challenge the ruling party.

Undoubtedly the most potent source of executive power is derived from the constitutional authority to declare a state of emergency. Even though declarations of emergency law require approval by the People's Assembly,²³ once given, little stands in the way of executive authority. Historically, the People's Assembly has unquestioningly authorized the executive's declarations of emergency law. The emergency law eliminates Egypt's already weak institutional checks and balances by enabling the executive branch to trump all other branches of government with impunity. For example, the executive frequently ignores court decisions prohibiting it from arbitrarily arresting and detaining political dissidents. Using the pretext of the emergency law, the executive can legally justify thwarting "the rule of law, the courts, judicial review, and other areas where it would have to subject itself to monitoring by the two other branches of government."²⁴

The President's overarching legal powers enable him to regulate the degrees of freedom and democracy in Egypt. Egypt has a vibrant civil society that could potentially blossom into strong democratic institutions, but the President has prevented these democratic forces from taking root. Given the structure of Egypt's legal system, future political liberalization in Egypt ultimately depends upon the acquiescence of the executive – a prospect unlikely to materialize given that a mobilized opposition threatens the status quo.²⁵

Emergency Laws

Article 148 of the Constitution empowers the executive to declare a state of emergency, subject to the approval of the People's Assembly. The Constitution does not define "emergency" or delineate the circumstances in which it

can be declared. Instead, the Constitution leaves the term "emergency" to be defined "in the manner prescribed by the law" without regard to other sections of the constitution. This provision essentially gives the President and People's Assembly free reign to statutorily restrict the rights enshrined in the constitution.

The executive and legislative branches have fully exploited this constitutional loophole by passing legislation which broadly defines "emergency." Emergency Law 162 of 1958 enables the President to declare a state of emergency "whenever security or public order are jeopardized" by "national unrest."²⁶ The broad language of the statute, along with the People's Assembly's faithful renewal of the law every third year, has enabled the executive to maintain a perpetual state of emergency since 1981. The law was last renewed in April 2006, after the President unexpectedly introduced the bill and the People's Assembly hastily passed it without serious debate.²⁷

Emergency Law 162 grants the President exceptional powers to derogate nearly all constitutionally protected rights. For instance, Article 3 of the emergency law authorizes the executive to "restrict freedom of assembly, movement and residence, arrest and detain suspects or those dangerous to security and public order, permit the search of persons and places unrestricted by the provisions of the Code of Criminal Procedures."²⁸ This Article permits the Government to detain any citizen suspected of threatening "public order" for up to 30 days without charges.²⁹ At the end of the 30 day period, and each subsequent month, the detainee may challenge the legality of the detention in a court proceeding. If the judge continues to uphold the legality of the detention, however, the detainee may be detained indefinitely without ever being charged or convicted of a crime.³⁰ By using such nebulous standards to criminalize conduct, the language of the emergency law gives the executive-controlled police "virtual carte blanche to arrest and detain suspected political activists" for extended periods³¹ and prevents courts from adjudicating the legality of the detainee's detention.³²

The police powers authorized under the state of emergency authorize the Government to utilize any means available, regardless of whether these actions violate existing criminal laws and constitutional protections.³³ For instance, the Government can place wiretaps on phones; perform searches

of homes and persons without warrants; censor the media; prohibit or restrict public meetings and demonstrations; and monitor the activities of civic institutions.³⁴ In addition, police have the power to circumvent the judiciary to obtain arrest warrants from the Ministry of Interior.³⁵ Finally, the emergency law enables the Government to try the accused in exceptional courts established under the emergency law, the structure of which is discussed in greater detail below.³⁶

Although Egypt's emergency law does not formally suspend the Constitution,³⁷ it grants the executive such broad authority to trample constitutional protections that the State of Emergency essentially acts "as a second constitution for the country."³⁸ This extraordinary executive power has further eroded presidential accountability, undermined the separation of powers and enabled the executive to violate the constitutional rights of political opponents with impunity.³⁹ Numerous constitutional rights have been subjugated by the emergency law. These include, but are not limited to, the inviolability of the home; personal liberty; freedom of opinion; freedom of expression and the press; confidentiality of correspondence; rights of movement and assembly; and protections against arbitrary arrest and detention.⁴⁰

Egypt's ongoing State of Emergency raises significant questions about its compliance with the political rights standards embodied in the ICCPR. Although Article 4 of the ICCPR permits nations to derogate political and human rights when "the life of a nation" is at stake,⁴¹ Egypt has maintained its State of Emergency in the absence of any credible or identifiable threat to its existence. The UN Human Rights Committee, which evaluates Egypt's compliance with the provisions of the ICCPR, stated it was "disturbed" by Egypt's "semi-permanent state of emergency" and called for Egypt to "consider reviewing the need to maintain state of emergency."⁴² Other observers, such as Amnesty International, have levied sharper criticisms, flatly accusing Egypt of violating multiple ICCPR provisions.⁴³

Impact on Political Opposition

The emergency law has adversely affected democratization in Egypt by empowering the President to exercise dominion over nearly all political activity. The executive has exploited the emergency law's vague language about guarding "national security" to ensure its political survival. President

Mubarak has staved off political opponents and remained in power by using his emergency powers to inhibit the development of Egypt's political parties and deter public participation in the political process. For instance, the application of the emergency law has "made it difficult if not impossible for political parties to function and interact outside of their own offices."⁴⁴ Without the ability to interact freely with the public, stage demonstrations, and mobilize supporters, political parties cannot establish broad constituencies and continue to lose representation in the People's Assembly.⁴⁵ The Government has used the emergency law to disrupt legal political opposition activity, such as parliamentary and syndicate elections. For instance, the emergency law is often used during parliamentary elections to prevent the legal opposition and independent candidates from staging campaign rallies.⁴⁶ Prior to both the 1995 and 2000 parliamentary elections, the executive used the emergency law provisions to arrest scores of prominent Muslim Brotherhood leaders and prohibit them from running in parliamentary elections. The Government justified these arrests on the grounds that these individuals were "working to revive the outlawed Muslim Brotherhood."⁴⁷ Although the regime has selectively employed its powers under the emergency law, invoking them most frequently against Islamist political activists,⁴⁸ this is because Islamists constitute the strongest political opposition force in Egypt. President Mubarak's use of the emergency law to crack down on all forms of political opposition following the death of President Sadat demonstrates that the President is legally permitted to retaliate against any political challenger regardless of their ideology.

The executive's unfettered power to use the security apparatus to arrest, detain, and monitor political activists arbitrarily has also instilled a "culture of alienation" and fear in the political sphere that discourages public political participation.⁴⁹ The "estimated 12-15,000 political prisoners," many of whom belong to peaceful Islamist groups, who remain incarcerated attest to the frequency with which the regime has utilized its powers against political

opponents.⁵⁰ In addition to detaining political opponents, the Government has also "frequently placed political activists...under surveillance, screened their correspondence (especially international mail), searched them and their homes, and confiscated personal property."⁵¹ This has predictably reduced public involvement in political affairs and served to further weaken political parties. The emergency censorship powers over newspapers have stifled public political discourse and reduced the ability of political parties to effectively operate in the political sphere.⁵² The oppressive political climate created by the emergency law has profoundly limited the ability of Egypt's political opposition to mount a serious challenge to the ruling party and will continue to impede political liberalization so long as it remains in place.

Prospects of Reform

Even though Egypt's emergency laws remain firmly intact, the Egyptian Government has repeatedly promised to institute legal reforms. For instance, President Mubarak has publicly pledged to eliminate the emergency law and replace it with less draconian anti-terror legislation.⁵³ Although these promises have yet to materialize, the government's acknowledgement of the need to reform the emergency law marks a fundamental shift from the government's two decade-long stance justifying the imposition of emergency law.

In addition, the People's Assembly passed a law in June 2003 which abolished state security courts. These courts, frequently criticized for their limitations on the right of appeal and their exceptionally heavy sentences, had been used to deliver swift justice against many political opponents of the regime, such as prominent sociologist Saad Eddin Ibrahim. Although abolishing the state security courts helped restore jurisdiction back to regular criminal courts, it failed to curb executive power under the emergency law. Under the existing system, the President may still prosecute political opponents in state security emergency courts and military courts. Because these courts have procedural flaws similar to those existing in the former security courts, the elimination of the state security courts fails to meaningfully advance democratic reform.⁵⁴

In 2003, Mubarak also announced the "[a]nnulment of all military decrees ordered by the [prime minister] under the emergency law, unless they are necessary for maintaining law and order." However, because the

power to define "law" and "order" remains the province of the executive, this proclamation has failed to limit the repressive application of the emergency law.⁵⁵ Even though President Mubarak and his ruling NDP continue to promise grand reforms, their pledges have largely rung hollow.

Parliament

Egypt's legislative branch is a bicameral body comprising the People's Assembly, which has 444 elected members and 10 appointed members, and the Shura Council. Although the Shura Council merely maintains advisory power, the People's Assembly has legislative powers.⁵⁶ However, the People's Assembly lacks the strong legislative prerogative that most democratic systems typically reserve for the legislative branch because of the broad constitutional powers conferred upon the executive. For instance, the Constitution permits the President to promulgate laws⁵⁷ by issuing decrees that have the force of law when the People's Assembly is not in session,⁵⁸ draft the state budget,⁵⁹ and formulate the state's general policy.⁶⁰ The President and People's Assembly are constitutionally bound to share legislative power, but nearly all legislation originates from the executive branch⁶¹ and is issued by the executive with little, if any, parliamentary scrutiny.⁶² Legislative initiatives proposed by the legislative branch are seldom codified into law.⁶³ Further reducing the legislative power of the People's Assembly is the executive's strong budgetary power. Although most democratic systems grant the legislature power to draft the budget and oversee governmental expenditures, in Egypt the executive drafts the budget and the legislature may not amend it.⁶⁴ Constitutionally allocating substantial legislative duties to the executive branch empowers the President to dominate the legislative branch and undermines the separation of powers.

Although Egypt's legislative branch lacks many traditional parliamentary powers, it does retain some independent power to challenge presidential authority.⁶⁵ For instance, the People's Assembly must approve the budget in its entirety⁶⁶ and must approve the extension of Egypt's emergency law.⁶⁷ It may also remove ministers with a vote of no confidence. However, like most powers assigned to the legislative branch, this power is largely nullified by the President's constitutional powers.⁶⁸ If the

People's Assembly attempts to assert its authority and challenge presidential authority, the President, through public referendum, may circumvent the decisions of the People's Assembly or dissolve the People's Assembly and call for new elections.⁶⁹ This essentially subordinates the legislative branch as an extension of executive power.⁷⁰

Egypt's other house, the Shura Council, also fails to strengthen the legislative branch. The Shura Council is constitutionally structured to ensure executive dominance. With one-third of the 264 members of the Shura Council appointed by the President for six-year terms, the political opposition would have to win a supermajority of the elected seats to ever gain control from the executive. Assuming the political opposition managed to assume power, it would have limited ability to influence public policy because the Shura Council functions strictly in an advisory role in the drafting of laws. The Government must seek the advice of the Shura Council prior to implementing constitutional amendments and other domestic and foreign policy issues, but the Shura Council has no binding authority on the Government.⁷¹ Given the constitutional design of the Shura Council, the executive has predictably dominated its membership and used the Shura Council primarily for the purposes of legitimizing its public policy decisions.⁷²

The incomplete constitutional checks and balances delegated to the legislative branch effectively reduce executive accountability⁷³ and promote the infringement of constitutionally-protected political rights. Without an independent legislative branch to challenge the actions and policies of the executive, political rights remain vulnerable and subject to the whim of the executive.

Judiciary

The Egyptian Constitution aspires to create an independent judicial system based on Islamic, French, Dutch, and English law.⁷⁴ Egypt has a civil law system with codes adapted primarily from French civil law.⁷⁵ The civilian court system is comprised of civil courts, criminal courts, administrative courts, and a constitutional court

headed by the Supreme Constitutional Court.⁷⁶ The Egyptian Constitution guarantees the independence of the judiciary and forbids other governmental actors from interfering with judicial powers.⁷⁷ This constitutional ideal of judicial independence has been somewhat realized through statutory Law 35 of 1984, the Law on the Independence of the Judiciary, which establishes the Supreme Judicial Council (SJC) to administer judicial affairs.⁷⁸ The SJC handles promotions and transfers of judges to various positions among the courts. Additionally, the SJC controls the judicial appointment process by selecting and forwarding judicial nominations, which are then appointed by the President.⁷⁹ Finally, the SJC maintains control over disciplining judges.⁸⁰

Even though the SJC has been endowed with sufficient powers to establish a strong independent judiciary independent, the process by which members of the SJC are selected undermines its ability to promote this end. For instance, of the 15 judges and judicial personnel selected to serve on the SJC, eight are appointed directly by the Ministry of Justice and three of the remaining seven judges are direct executive appointees including the Prosecutor-General, Minister of Justice, and head of the Court of Cassation.⁸¹ This selection process "poses a real threat to the independence of the judiciary" because it enables the executive branch to exercise significant influence over the composition and decisions of the SJC.⁸² The SJC demonstrated its partiality to the executive when it retaliated against two high ranking reform-minded judges who publicly accused members of the SJC of facilitating election fraud in the 2005 elections. Rather than investigating the judges accused of vote rigging, the SJC lifted the judicial immunity of the whistle-blowing judges exposing them to a highly publicized disciplinary proceeding instigated by the Ministry of Justice. Although the SJC ultimately opted against dismissing the judges, the SJC's complicity with the Ministry of Justice to deface and intimidate these reformist judges was patently obvious.⁸³ Prominent commentators, such as former Vice-President of the Court of Cassation Yehia El-Refai, have lamented this development and derided the SJC as being "subordinate to the will of the executive branch."⁸⁴

In response to growing public outcry against executive meddling in the judiciary, the People's Assembly amended the Law on the Judiciary in June 2006. This law, which

ostensibly strengthened the independence of the judiciary, failed to address the composition of the SJC. Despite the Judges Club's repeated demands to select members of the SJC through elections within the judiciary, the law retained the SJC's executive-dominated appointment process.⁸⁵ Additionally, the legislation failed to prohibit the Ministry of Justice from continuing to use influence-buying tactics such as promising judges highly-paid consulting jobs or foreign postings in exchange for political loyalty.⁸⁶ Rather than addressing the central problems undermining Egypt's judicial independence, the Government addressed peripheral issues such as the judiciary's source of funding. Although the law did manage to transfer control of the judiciary's budget from the Ministry of Justice to the SJC, without an independent SJC, this reform does little to strengthen judicial independence.⁸⁷

Even though the institutional foundation of Egypt's judiciary fails to insulate it completely from executive influence, Egypt's civil, criminal and administrative courts have still managed to emerge as independent actors which have challenged the policies of the executive. For example, judges in administrative courts have applied the oppressive legislation that often binds their decisions in the most liberal manner to ensure the protection of political liberties. Although the civil law system severely restricts judicial discretion, administrative courts have used their limited autonomy to "check state institutions."⁸⁸ Other civil courts have also limited governmental power by thwarting the executive's political priorities. For instance, courts have been sympathetic to political parties which have been denied legal status by the Government. Court decisions have overturned the Government's rejections and granted the majority of Egypt's opposition parties their legal status⁸⁹ and they have also freed political extremists against the will of the executive.⁹⁰

SCC

Established in 1979 by constitutional amendment, the Supreme Constitutional Court assumed exclusive jurisdiction over questions involving the constitutionality of laws, rules, and regulations.⁹¹ As with other civilian courts, the President appoints the members of the Supreme Constitutional Court (SCC). Although the President may directly appoint the Chief Justice, Law 48 of 1979 requires the President to appoint the

other justices on the SCC from two candidates, one forwarded by the General Assembly of the SCC and one forwarded by the Chief Justice of the SCC. In practice both nominations have always been the same person. The President has the power to directly nominate whomever he wishes to fill the Chief Justice position and for the past two decades he has traditionally selected the SCC's most senior justice. This in turn enabled the SCC to operate as a "self-contained and a self-renewing institution."⁹²

However, Mubarak recently parted with this established tradition of ratifying the SCC's self-contained appointment process when he reached outside the judiciary to appoint Fathi Naguib, a government loyalist and former Assistant Minister of Justice who authored numerous repressive laws, as Chief Justice of the SCC.⁹³ This decision "dealt a crippling blow to the SCC's autonomy"⁹⁴ and attests to the executive's unwillingness to relinquish control over the judiciary.⁹⁵ The President has continued to thwart the SCC's tradition of self-selection, to the detriment of the SCC, by appointing Mamdouh Marei, former head of the Cairo Court of Appeals, as the Chief Justice of the SCC in 2003.⁹⁶ Marei's pro-government viewpoints were clearly manifested by his support of executive policies that prejudiced opposition candidates during the presidential and parliamentary elections in 2005.⁹⁷ More distressing is Mubarak's recent appointment of Marei's successor, Maher Abdel Wahed, in July 2006. As Egypt's prosecutor-general, Abdel Wahed initiated the controversial prosecutions of political activists Saad Eddin Ibrahim, former parliamentarian and presidential runner-up Ayman Nour of the Al-Ghad party, and prominent reformist judges Mahmoud Mekki and Hisham Bastawisi. Wahed's prosecution of these outspoken government-critics drew heavy domestic and international criticism.⁹⁸ The presence of such a staunchly partisan government-loyalist on the SCC poses a serious threat to the SCC's ability to operate independent of the executive.

Aside from the politicized appointment process of the Chief Justice, the SCC is fairly insulated from govern-

mental influence. Law 48 of 1979 prevents the Minister of Justice from meddling with the affairs of the Court, including the disciplining of its judges.⁹⁹ Unlike ordinary Egyptian courts, the SCC maintains complete budgetary and administrative control of its operations.¹⁰⁰ The SCC also retains the power to discipline its own judges,¹⁰¹ a privilege exercised by no other Egyptian court. A prohibition on judges from accepting government-funded consulting jobs also enhances the neutrality and objectivity of the Court.¹⁰² Neither the Constitution nor legislation prescribes the number of judges who sit on the Court, but Law 48 of 1979 requires a quorum of seven judges to enter judgment.¹⁰³ Presently nine justices sit on the bench.¹⁰⁴ The uncertainty surrounding the number of justices poses a threat to the Court's independence. The court's vulnerability was demonstrated when newly appointed Chief Justice Fathi Naguib tried to expand the number of judges who serve on the SCC. Although his efforts were blocked by other members of SCC, critics characterized the Chief Justice's maneuver as an overt attempt to pack the Court with judges who would be loyal to the executive. Without legal mechanisms firmly in place to safeguard the Court from future efforts to pack the Court, the SCC remains susceptible to executive interference.¹⁰⁵

Despite its structural shortcomings, Egypt is probably the "Arab country that has come closest to establishing the strong and autonomous legal institutions necessary for the rule of law."¹⁰⁶ Commentators have lauded the SCC's "remarkable independence"¹⁰⁷ and its efforts to strengthen Egypt's democratic institutions.¹⁰⁸ Although the exact degree to which the judiciary exercises institutional independence is debatable, there is little question that the SCC has at times marshaled its power to protect its independence from the other branches of governments.

Judicial Review

As the only judicial body empowered to interpret the constitutionality of legislative statutes, decrees, and regulations, the SCC functions as Egypt's highest constitutional power.¹⁰⁹ Unlike Egypt's other courts, which are bound by rigid rules of civil law, the SCC has the flexibility to interpret Egypt's vaguely-worded Constitution and strike down legislation based on its own interpretation.¹¹⁰ Even though the procedural rules and scope governing the SCC's power of judicial review are legislatively

defined, and have been threatened by proposed legislation,¹¹¹ the Constitution bars the People's Assembly from eliminating the SCC's authority to exercise judicial review.¹¹² Law 49 of 1979 states that SCC decisions pertaining to the constitutionality of statutes are "final, unreviewable and binding on all individuals and public authorities."¹¹³ Thus, when the SCC strikes down a statute for violating an Article of the Constitution it becomes void.¹¹⁴

The SCC power of judicial review is somewhat restricted by the current civil procedural rules. Petitioners may not appeal constitutional challenges directly to the Court. Instead, Law 48 of 1979 grants the SCC permission to hear cases only after a lower court, upon the motion of the parties or the court itself, refers the issue to the SCC. It is solely within the discretion of the lower court to determine if the statute appears *prima facie* to violate the Constitution. Regardless of how blatant the unconstitutionality of a statute may be, if the lower court refuses to refer a constitutional issue, it will never reach the SCC.¹¹⁵ The limitations imposed on individual claimants from filing petitions directly with the SCC have drawn criticism from commentators¹¹⁶ and potentially mitigate the power of the SCC to enforce constitutional rights.

The strongest testament to judicial independence in Egypt is the SCC's liberal invocation of judicial review to limit executive power.¹¹⁷ Its independent power of judicial review has made the SCC the "boldest judicial actor in the country."¹¹⁸ Even though the executive is seldom held accountable by the legislative branch, the judiciary, particularly the SCC, has frequently exercised its power of judicial review to make politically divisive rulings which limit executive power.¹¹⁹ By progressively interpreting the vague provisions of the Egyptian Constitution to protect political rights, human rights and civil liberties, the SCC has blossomed into a "strong and effective supporter of liberal legality in Egypt."¹²⁰

The SCC power of judicial review has enabled the Court to liberalize Egypt's political climate.¹²¹ Generally speaking, the SCC has interpreted the Constitution to strike down legislative statutes which restrict civil and political rights.¹²² The frequency with which the SCC has exercised its constitutional guardianship is demonstrated by its rulings that Egyptian legislation has violated nearly 53 of the Constitu-

tion's 211 Articles.¹²³ The court's jurisprudence in turn has transformed some of "the vague assurances of the 1971 constitution into concrete realities and revers[ed] the executive domination of the judiciary."¹²⁴

The SCC has provided "the single most important avenue for opposition parties, human rights groups, and political activists of every stripe to credibly challenge the Egyptian regime."¹²⁵ A variety of different political actors which comprise Egypt's political opposition have successfully filed constitutional litigation to publicly criticize the Government and challenge governmental interference with civil liberties and the political process. For instance, Islamists have disputed the constitutionality of secular laws, leftists have litigated against governmental privatization, opposition parties have challenged electoral laws, and human rights groups have contested restrictions on their activities.¹²⁶ The SCC has responded to politically-charged constitutional litigation by issuing a multitude of progressive rulings which has prompted electoral reform, bolstered freedom of speech, and upheld political rights. The SCC's rulings, which has been characterized as "political jurisprudence,"¹²⁷ have limited executive and legislative power while strengthening Egypt's civil society and protecting the political sphere from which political activists operate. With greater recourse against governmental abuse, political activists have more aggressively investigated and litigated their constitutional rights in court. This increase in constitutional litigation has, in turn, expanded the SCC's political influence by affording the SCC more opportunities to exercise its power of judicial review over controversial political disputes.¹²⁸

The SCC has handed down a number of landmark decisions which demonstrate its willingness to challenge executive political policies. For instance, the SCC has strengthened the freedom of association by invalidating legislative restrictions imposed on non-governmental organizations¹²⁹ and professional syndicates.¹³⁰ Additionally, the SCC has fundamentally broadened the composition of Egypt's political opposition by reinstating banned political parties¹³¹ and invalidating legislation

which excluded candidates from running as independents.¹³² In two separate cases, the SCC not only invalidated legislation that restricted the rights of independent candidates from running for office, but also dissolved the People's Assembly on two occasions and required new elections with revised electoral rules. Although the SCC tempered the impact of these two rulings by honoring the laws passed by the illegitimate People's Assembly,¹³³ these monumental decisions marked a significant achievement in judicial independence which served to strengthen the rights of Egypt's political opposition.

One of the SCC's strongest demonstrations of judicial independence occurred in July 2000, when it ruled that the upcoming parliamentary elections must have complete judiciary supervision.¹³⁴ The Court invalidated Article 24 of Law 73 of 1956 which allowed government employees to supervise polling stations on the grounds that it violated the judiciary's constitutional right to supervise elections.¹³⁵ This ruling prompted President Mubarak to issue a decree establishing full judiciary supervision of all future parliamentary elections.¹³⁶ This decision is not only an example of the SCC asserting its independence, but also demonstrates how political opposition forces have used constitutional litigation to successfully implement political reform after failing to achieve results in the People's Assembly.¹³⁷

The SCC has also used its institutional power to protect free speech. The Court has ameliorated the silencing impact of Egypt's harsh slander laws by dismissing libel suits filed by government ministers against opposition newspapers.¹³⁸ The SCC has also bolstered press freedoms by narrowly interpreting libel law suits to limit the Government's ability to harass newspapers who criticize the regime. In 1995, the SCC ruled that the Government could prosecute only the author of a slanderous article, not the editor or newspaper manager. In addition to protecting press freedoms, the Court has also struck down legislation that infringes on individual political expression. In 1988, the SCC supported the freedom of expression by striking down a law which prohibited political groups who had criticized the Camp David Treaties from obtaining legal party status.¹³⁹

Although the SCC's numerous landmark rulings both demonstrate a significant degree of institutional independence and have altered Egypt's legal environment in pro-

found ways,¹⁴⁰ the impact of these rulings has failed to create the type of open political environment necessary to effectuate a peaceful transfer of power. This is partly because of the plethora of regressive legislation that remains on the books. At last count, the Egyptian Cabinet determined there were 53,237 laws in effect in Egypt. Given the Court's limited jurisdiction to hear cases and the large number of laws in force, the SCC is institutionally restricted from invalidating the bulk of Egypt's vaguely-worded and conflicting legislation. Hence, Egypt's colossal statutory scheme mitigates the SCC's ability to uphold constitutional rights and establish a decipherable rule of law.¹⁴¹

Executive Encroachment

The civilian judiciary's willingness to challenge the executive and uphold constitutional rights has prompted the Government to use a variety of tactics to undermine the autonomy of the judiciary. One tactic employed by the executive has been to weaken the elements of civil society actors, such as syndicates, NGOs and human rights organizations, which mobilize support for judicial independence and fuel the SCC's power of judicial review.¹⁴² The executive has also undermined judicial power by refusing to enforce or follow its judicial rulings.¹⁴³ Most damaging to judicial independence, however, is the executive's invocation of emergency law to create exceptional courts which circumvent the civilian judiciary altogether. The emergency law undermines the separation of powers by creating a "parallel legal system" which maintains weak procedural safeguards for defendants, and is under the complete dominion of the executive.¹⁴⁴ Although Egypt's judiciary has been "fairly independent,"¹⁴⁵ and has achieved "a deep impact upon state policy," the executive retains ultimate authority through the emergency law to hand-pick cases in which it may try its political opponents in executive-controlled exceptional courts.¹⁴⁶ Without jurisdiction over the most politically important cases, Egypt's judiciary has merely accomplished "insulated liberalism"¹⁴⁷ which has never amounted to anything "worse than annoying to the country's political leadership."¹⁴⁸ This limitation on the Court's power of judicial review undermines Egypt's constitutionally protected rights and "further contributes in the [executive's] consolidation of authoritarian power."¹⁴⁹

Emergency Courts

Emergency Law 162 of 1958 established Emergency State Security Courts (Emergency Courts) which have jurisdiction over cases arising under the emergency law. The President also has power to transfer any criminal case to the Emergency Courts. Unlike the civilian judiciary, the executive maintains tight control over the proceedings of the Emergency Courts and denies the constitutional protections afforded to defendants by civilian courts.¹⁵⁰ Not only does the President appoint the judges based solely on the recommendations of the Minister of Justice, but the Court's judgments are only reviewable by the President.¹⁵¹ This strips the SCC of its jurisdiction regardless of how gross the violation of a defendant's constitutional rights. Except in unique cases,¹⁵² the Emergency Courts have almost always complied with executive efforts to prosecute non-violent political opponents.¹⁵³

Military Courts

The episodic resistance of the Emergency Courts to executive prerogatives prompted the executive to create an alternative "airtight venue in which the regime could try its opponents."¹⁵⁴ It accomplished this end through the use of military courts.¹⁵⁵ Exploiting the vague constitutional authority to establish military courts,¹⁵⁶ the Government passed Law 25 of 1966. This law enables the President, during states of emergency, to refer civilian offenses in the Penal Code to be tried in military courts.¹⁵⁷ Although the executive initially invoked this power to prosecute civilian terrorists in 1992, it quickly expanded its application to try non-violent political opponents of the regime for crimes such as belonging to the Muslim Brotherhood¹⁵⁸ and "undermining the political order and subverting the constitution."¹⁵⁹ Essentially the law has granted the President "carte blanche to detain and prosecute civilians in military courts regardless of whether their activity endangers fundamental interests."¹⁶⁰ Since 1992, the regime has used military courts to prosecute over one thousand civilian defendants.¹⁶¹

The executive's heavy control over Egypt's military courts virtually guarantees outcomes favorable to the Gov-

ernment. Like Emergency Court judges, military judges are strictly appointed by the executive. Because military judges serve only two-year renewable terms and are selected from within the military, they are far less independent than civilian judges who serve life terms.¹⁶² In addition, all military rulings, including acquittals and convictions are subject to presidential approval. Not only does this expose defendants to double jeopardy, but it also prevents the civilian judiciary from hearing the appeals of defendants. In addition to preventing civilian defendants from appealing their conviction to civil courts, military courts have "almost no procedural safeguards;" are "held in secret;"¹⁶³ grant defendants "inadequate and delayed access to counsel;"¹⁶⁴ and fail to provide "due process before an independent tribunal."¹⁶⁵ The structure of the executive's heavy-handed control over military courts clearly prejudices political defendants and almost guarantees their conviction or prolonged detention.

Complicity of the Judiciary in Undermining Egypt's Separation of Powers

In stark contrast to its usual practice of protecting constitutional rights from executive prerogatives, the civilian judiciary seriously undermined its own independence and Egypt's separation of powers by sanctioning the legality of Egypt's exceptional courts. Despite the fact the executive-dominated emergency and military courts appear to violate multiple constitutional rights and international legal rights embodied in the ICCPR,¹⁶⁶ the SCC has refused to invalidate the authority of exceptional courts. In uncharacteristic fashion, the SCC has issued self-restricting rulings which expand executive power and weaken the institutional independence of the judiciary.¹⁶⁷ For instance, in 1993 when lower courts and opponents of the regime challenged the scope of the executive's authority to refer individual crimes to military courts, the SCC broadly interpreted Law 25 of 1966 to permit the executive to refer individual cases retroactively, rather than pre-designated classes of crimes, to military tribunals.¹⁶⁸ Further contradicting its record of protecting individual rights, the SCC affirmed the constitutionality of the Emergency Courts and their procedural rules which prevent defendants from appealing to the judiciary. It has also delayed issuing judgment on cases challenging the constitutionality of the executive's power to transfer civilians to military courts.¹⁶⁹ Some observers have

attributed the SCC's deferential rulings to motives other than legal reasoning, such as its fear that challenging the fundamental interests of the executive would have prompted excessive executive retaliation against existing judicial autonomy. Regardless of the Court's rationale for its decisions, these rulings limit judicial independence in Egypt¹⁷⁰ and demonstrate how the separation of powers inherent in Egypt's legal system fails to protect political activists from executive retribution.

Electoral Law

With multiple legally registered parties, universal suffrage, and a long history of staging elections, Egypt might appear to have developed many of the electoral prerequisites necessary to sustain democratic elections.¹⁷¹ However, Egypt's electoral laws are structured in a manner which restricts opposition candidates' ability to effectively campaign, undermines the fairness and transparency of elections, and effectively prevents political opposition forces from challenging the ruling party's authority.¹⁷²

Presidential Elections

Prior to 2005, the President of Egypt was not freely elected. Instead, the NDP-controlled People's Assembly nominated one presidential candidate and submitted this choice for public approval in a national referendum. This exclusive selection process prevented opposition candidates from ever reaching the ballot, let alone winning office.¹⁷³ As a result, Mubarak successfully won office in the last four presidential referenda with over 90 percent "yes" votes. This process endured heavy criticism,¹⁷⁴ which prompted the passage of a constitutional amendment revamping the presidential election process. Amended Article 76, which was announced six months prior to the 2005 presidential elections, called for direct popular presidential elections. The amendment and its enabling legislation, Presidential Election Law 174 of 2005, created a legal framework that "looks as though it opens the presidential elections to multiple candidates, [but] its actual goal and effect thus far is to perpetuate the rule of the NDP."¹⁷⁵

Although all licensed political parties were entitled to forward one presidential candidate to run in Egypt's first-ever multi-party presidential election,¹⁷⁶ future multi-candidate presidential elections are far from guaranteed because of the amendment's stringent candidate requirements. For in-

stance, parties will only be able to nominate a candidate to run for President if they have been licensed for five years and hold five percent of the seats in both the People's Assembly and Shura Council. Legal opposition parties have not held five percent of the seats in the People's Assembly since 1990. The amendment further requires that the prospective candidate must have occupied a leadership position in the party's executive committee party for one year. This prevents popular figures, who remain outside the exclusive inner circle of political parties, from emerging as candidates.¹⁷⁷ Independent candidates and members of illegal political organizations, such as the Muslim Brotherhood (MB), face even more insurmountable requirements to run for President.¹⁷⁸ Independents who wish to run for President must obtain endorsement from 250 elected officials, including 14 percent of the members of the upper and lower houses of Parliament and 10 local council members from at least 14 governorates.¹⁷⁹ Currently NDP dominates the upper house and municipal councils with majorities in excess of 90 percent¹⁸⁰ and 73 percent of the People's Assembly.¹⁸¹ With 88 seats in the People's Assembly, the MB controls sufficient seats in the lower house, but lacks the number required in the upper house and local councils.¹⁸² The differential treatment of independent candidates and legal opposition parties is likely motivated by the executive's attempt to target Egypt's strongest political opposition group, the MB.¹⁸³ By imposing these requirements, the regime essentially exercises veto power over the selection of presidential candidates for future elections. Hence, the amendment purposefully imposes insurmountable obstacles which prevent competitive opposition candidates from running for President.¹⁸⁴

The new constitutional amendment and its enabling legislation also dictate the manner in which presidential elections are organized. All regulations pertaining to campaign activities, the approval of candidates, and access to state-run media are regulated by a Presidential Election Commission (PEC).¹⁸⁵ In the 2005 presidential election, the PEC approved ten candidates,

including leaders from the most prominent opposition parties to run for President.¹⁸⁶ The MB did not field a candidate because it is not a legal political party and no independent candidates were able to meet the candidacy requirements imposed by the amendment. Even those opposition candidates approved to run for President were "strongly disadvantaged" by the short campaign period allotted by the PEC.¹⁸⁷ Despite having only three weeks to campaign, the presidential candidates sparked unprecedented public debate and criticism of the ruling party. In the end, Egypt's first multi-party election resulted in Mubarak being reelected with 88.6 percent of the vote, with the runner up, Ayman Nour, only garnering 7 percent of the vote.¹⁸⁸ Although heralded by the Egyptian Government as an example of Egypt's political liberalization, Constitutional Amendment 76 fails to signify any genuine commitment to democratic reform.¹⁸⁹ By enabling the regime to maintain complete control over the level of political participation, the current law severely hampers political opposition.

Parliamentary Elections

Egypt has experimented with multiparty parliamentary elections since the late 1970's when political parties were legalized. These elections quickly blossomed into hotly contested battles which strengthened pluralistic politics and opened the civic space for opposition forces to operate. The power of Egypt's legal opposition parties reached its peak in 1987 when opposition and independent candidates gained control of nearly 30 percent of the People's Assembly.¹⁹⁰ By 1995, however, widespread fraudulent electioneering and state-violence¹⁹¹ reduced the representation of Egyptian political parties to six percent.¹⁹²

Egypt's last two parliamentary elections in 2000 and 2005, while far from meeting international election standards, have featured numerous improvements which have enhanced their transparency and credibility. These reforms included removing polling stations from police stations, using semi-transparent ballot boxes to prevent tampering, and using indelible ink to prevent repeat voting.¹⁹³ Permitting judges inside polling stations has also reduced many internal irregularities such as ballot stuffing and fraudulent voting.¹⁹⁴ The Government mitigated the impact of these reforms, however, by dispatching police to obstruct voters from accessing "the polls in districts

where opposition candidates ran strongly."¹⁹⁵

The modest procedural improvements enacted prior to the 2005 parliamentary elections prompted a slight resurgence in Egypt's political opposition, but members of the banned MB, who ran as independents rather than members of the legal opposition parties, formed the core of the political opposition. The paltry 11 seats won by Egypt's legal opposition parties pales in comparison to the 88 seats won by the MB. Not only did the MB win an unprecedented number of parliamentary seats, it won nearly 60 percent of the races in which it competed.¹⁹⁶ The results of the 2005 parliamentary elections attest to the MB's organizational capabilities and demonstrate that the MB stands alone as the only effective political opposition force in Egypt. Although impressive in its own right, the MB's election success did little to diminish the NDP's grip on power. With a 73 percent super-majority, the NDP retains the power to control all legislation, constitutional amendments and the parliamentary immunity of opposition members of Parliament.¹⁹⁷

Election Monitoring

Legislation governing the supervision of parliamentary elections has undergone dramatic change in recent years, reducing manipulation and improving the fairness of elections. In 2000 the SCC handed down a landmark decision which honored the judiciary's long-ignored constitutional right to supervise elections independently. The SCC's ruling, which invalidated a law permitting state employees to supervise elections, prompted Mubarak to issue a presidential decree requiring full judicial monitoring of all polling stations and enabling judges to oversee the process.¹⁹⁸ This decree also facilitated the judges' ability to effectively oversee the election process by extending the elections over three successive stages and by consolidating polling stations. The achievements realized by this decision, however, were ameliorated by a 2003 SCC decision, rendered soon after current Minister of Justice Mamdouh Marei assumed the position of Chief Justice, which broadly interpreted the statutory term "judicial body" to include lawyers and other non-judges who are statutorily assigned the title "judge." By permitting the People's Assembly to legislatively designate government lawyers as a part of the "judicial body," the Court paved the way for

politically-appointed government lawyers loyal to the executive to serve as election monitors. This in turn has eroded the judiciary's control over election monitoring and could potentially compromise the fairness of future elections.¹⁹⁹ Further limiting the judiciary's ability to effectively supervise elections are the executive's efforts to offer enticing financial packages to encourage compliance from supervising judges.²⁰⁰ Perhaps most detrimental to the fairness of Egypt's elections is the executive's control over voter lists, vote counting, and the police who lurk outside polling stations.²⁰¹

The executive further weakened the judiciary's ability to supervise elections through the constitutional amendment of Article 76 and its enabling legislation. Although Law 174 created an independent PEC, Law 173 of 2005 created a Supreme Election Commission for parliamentary elections (SEC).²⁰² These two independent electoral commissions have assumed similar duties, which include the right to oversee election balloting; regulate the use of campaign materials; and tally final ballot results.²⁰³ Even though these commissions have been touted as enhancing constitutionally-mandated judicial supervision of the electoral process, "the commissions lack the power and independence required for more fair and transparent elections."²⁰⁴

The most significant shortcoming of these commissions is their lack of neutrality.²⁰⁵ The Presidential Election Commission is comprised of five "public figures" and five judges, including the SSC Chief Justice, all of whom are government-loyalists handpicked by the NDP-controlled People's Assembly.²⁰⁶ The composition of the SEC is subject to even more executive influence. Unlike the PEC, the eleven-member SEC includes two powerful members of the executive branch, the Minister of Interior and the Minister of Justice. The other nine members include three sitting judges, three retired judges and three other nonpartisan public figures nominated by the People's Assembly.²⁰⁷ The members of both commissions have no past history of challenging the Government and lack the political clout needed to combat executive interference in the process.²⁰⁸ The pro-

government biases of the election commissions were apparent in a number of critical decisions they made during the 2005 elections. For instance, Chairman of the PEC and Chief Justice of the SCC, Mamdouh Marei, implemented policies which "disqualified more one thousand judges (who had criticized past elections and pushed for judicial reforms) from overseeing polling stations, and devised a patently nontransparent vote-counting system."²⁰⁹ The PEC also "prevented domestic election monitors from playing any meaningful role"²¹⁰ in the election by granting the request of nonpartisan domestic observers to monitor the elections and balloting only a few hours before the polls opened. The last-minute ruling undermined the monitors' ability to mobilize for the election and prompted election officials, who were unaware of the ruling, to deny observers access to polling stations and ballot-counting facilities.²¹¹

The new election monitoring law has enabled the Ministry of Interior to resume a more dominant role in the election process. Because the commissions lack sufficient funding and organizational support to control the entire election process, they delegate the actual implementation of the elections to the Ministry of Interior. The commissions passively function in an advisory role as they oversee the executive agencies which implement the actual preparations for the elections. This enables the Ministry of Interior's pro-regime bureaucracy to meddle with the election process,²¹² including preparing Egypt's deeply flawed voting registration lists which contain millions of fraudulent entries.²¹³

The constitutionally created election commissions have subverted the judiciary's control over the election process by preventing the SCC from reviewing the constitutionality of elections. The SCC dealt a blow to its own independence by upholding the constitutionality of Article 76 on the grounds the Court's "mandate does not include the review of the constitutionality of provisions of the constitution."²¹⁴ As a result of this ruling, the decisions of the constitutionally-created election commissions are immune from judicial review. Hence, executive-dominated commissions, rather than the judiciary, now serve as the final arbiter of election disputes. By stripping the judiciary of its power to invalidate elections on constitutional grounds as it has done in the past,²¹⁵ and by preventing opposition parties from challenging the constitu-

tionality of election irregularities in a neutral court of law, the new amendment profoundly undermines the legal protections ensuring fair elections in Egypt.²¹⁶ Without judicial control over the elections, no independent legal institution exists to prevent the executive from manipulating election results.

Campaign Finance

Unlimited campaign spending and disparate access to public resources severely disadvantage the political opposition in Egypt. Until recently, statutory law imposed no restrictions on campaign finance. As a result NDP could raise limitless sums of money to spend on campaigns.²¹⁷ The NDP, with its monopoly over governmental power, has also used state resources to aid its political machine. Although the Government claims to have recently banned the practice, the NDP has used public resources, including during the 2005 presidential election, to transport state government employees and NDP supporters to polling stations.²¹⁸ The NDP has also used the state-run media to provide its candidates disproportionate coverage.²¹⁹

The recent constitutional amendments sought to impose campaign finance reform. For instance, the presidential election Law 174 of 2005 capped spending limitations to LE 10 million and provided LE 500,000 in government funding to each presidential candidate. The law also stipulates that all candidates should receive equal radio and television airtime.²²⁰ Law 173 of 2005 caps spending limits, prohibits vote buying, and criminalizes these offenses with fines and imprisonment. However, given the executive's discretion to prosecute these offenses, the law is seldom enforced. As a result vote buying, bribery, and unlimited financial contributions pervade the Egyptian politic scene.²²¹

Restrictions on Freedom of Association

The ICCPR requires Egypt to honor the "the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."²²² According to a prominent human rights treatise, "[r]eligious societies, political parties, commercial undertakings and trade unions are as protected by Art. 22 as cultural or human rights organizations."²²³ In essence, the ICCPR prohibits virtually any restriction on the form of an association.²²⁴ Furthermore, Egypt's Constitution grants citizens "the right to form societies as de-

fined by law.”²²⁵ Despite these legal obligations, the Egyptian Government has imposed heavy restrictions preventing its political opponents from organizing. Although Egyptians continue to exercise their right to assembly through their membership in NGOs, religious organizations, syndicates, and political parties, the law has hampered their ability to mount an effective challenge to the ruling party.²²⁶

Political Party Law

After over two decades of struggle, Egypt’s multiparty arena “remains a fragile and weak entity.” This is because of the legislative restrictions imposed by Political Parties Law 177 of 2005 and its predecessor, Law 40 of 1977, which control the licensing of political parties. These laws establish a Political Party Committee (PPC), which is dominated by government loyalists including the head of the Shura Council, the Minister of Interior, and the Minister of Parliamentary Affairs, as well as three neutral figures and three former judges appointed by the President.²²⁷ This executive-controlled committee has free reign to deny party licenses to political organizations that are based on religion or that fail to “represent an addition to political life.”²²⁸ It also has the power to shut down existing parties it deems to “espouse principles diverging from the approved platform: or that threaten the undefined “national interest.”²²⁹ These vague conditions enable the PPC to deny or revoke the legal license of any political party deemed to have a broad constituency and popular ideology that might enable it to compete for power.²³⁰

The PPC’s selective approval of religious parties demonstrates how it has used its power to retaliate against the regime’s powerful political opponents. For instance, the PPC approved the Islamic Nation party (Umma), a frail political force which blatantly promotes an Islamist agenda, while rejecting the powerful and organized MB numerous times on the grounds that it was based on religion.²³¹ Furthermore, those parties that do manage to obtain licensing and gain popularity are subject to closure at any time by the PPC.²³² The PPC has used this power to freeze the activities of seven of Egypt’s 17 li-

censed political parties.²³³ Although the PPC’s power to control the licensing of political parties is partially checked by the aspiring party’s right to appeal the PPC’s decisions to an administrative court, the PPC has still managed to deny licensing to 63 political parties over the last 27 years including Egypt’s most popular political force, the MB.²³⁴ These legal restrictions have drawn international criticism²³⁵ and severely impede Egypt’s political activists from developing legitimate political party structures.

The heavy legal party system created by Egypt’s political party laws has essentially defanged Egypt’s political opposition parties and co-opted them into the control of the executive. The ruling party grants a limited number of unthreatening opposition parties legal status with the implied expectation that the party leaders will control their party members and minimize their opposition to the regime. In return, the parties are granted relative autonomy.²³⁶ As a result, Egypt’s political opposition parties operate in the political sphere and “exist on paper” but lack the resources, political agenda, constituency, or presence in society to ever challenge the regime.²³⁷ Predictably, many of these political parties are so powerless they are incapable of functioning in any oppositional capacity.²³⁸ In 2005 for instance, only three legal political opposition parties secured parliamentary representation.²³⁹ Given the important function political parties serve in a democracy, Egypt’s oppressive political party laws impose one of “the main impediments to democratization in Egypt.”²⁴⁰

The overarching power of the PPC is not the only obstacle preventing strong political parties from developing in Egypt. Other factors, such as the costly requirements imposed by Law 177 of 2005, which requires 1000 signatures to be obtained from ten different governorates and be published in two national dailies at an expense of LE 200,000, deter financially-troubled parties from pursuing legal party status.²⁴¹ As mentioned above, the emergency law also significantly inhibits the development of political parties by restricting their efforts to mobilize public support.²⁴²

As a result of SCC decisions in 1987 and 1990, independent candidates have long served as an alternative to Egypt’s weak political opposition parties.²⁴³ Although some commentators believe the presence of independents in Egypt’s political system has

fragmented political parties and undermined the solidarity of Egypt’s political opposition,²⁴⁴ it has also strengthened Egypt’s political opposition by enabling the banned MB, Egypt’s strongest political force, to participate in electoral politics.²⁴⁵ Members of the MB, who have run as independents, have experienced resounding electoral success and have injected a new voice of dissent in elected bodies such as the People’s Assembly.²⁴⁶ For instance, the MB claimed 88 seats in the People’s Assembly and won over half the seats for which it competed in the 2005 parliamentary election. Relying on its right to run independent candidates, the MB has promoted its public profile and emerged as Egypt’s largest and most organized political opposition force.²⁴⁷

In response to being shut out from the legal political sphere, Islamist parties, such as the MB, have also resorted to informal political activism by infiltrating legal political parties, apolitical religious establishments, state bureaucracies, and non-state institutions.²⁴⁸ With control over a large network of mosques,²⁴⁹ at least 3,000 Islamic associations, and most of Egypt’s professional syndicates and student unions, the MB has amassed an “impressive presence in society.”²⁵⁰ This political strategy has enabled the MB to operate as a “pressure group” which furtively pushes Egypt’s political discourse in a religiously conservative direction.²⁵¹ The fact that “all parties have adopted the Islamic vocabulary and slogans, and seek to outbid each other in calling for the implementation of Sharia” attests to the success the MB has had in Islamizing Egyptian politics.²⁵² By legally forcing the MB out of the formal legal sphere, the Government has martyred the MB and unwittingly enabled this radical political group to garner public sympathy and unnecessarily gain popularity without revealing its ultra-conservative political agenda.

In an effort to reduce the MB’s political power, the ruling party has not only restricted the MB’s formal political machine by denying it a party license, but also attacked the MB’s informal political network by invoking anti-terror law to prosecute individuals who belong to the Muslim Brotherhood. For instance, Anti-Terror Law 97 of 1992, enacted in response to increasing political violence committed by Islamic terrorists, contains loosely-worded prohibitions on “disrupting the social or-

der.” Using its broad discretion to determine what constitutes terrorism,²⁵³ the Government has aggressively invoked this law to prosecute hundreds of individuals for merely belonging to the outlawed MB.²⁵⁴ Despite its impressive organizational capabilities and achievements, “the regime’s persistent and ruthless pursuit of the Brotherhood indicates that the possibility of the group being left unhindered to sufficiently organize and present itself as a realistic alternative to the political status quo is currently as unfeasible as it is for the secular, legalized opposition.”²⁵⁵

Non-governmental Organizations

Despite being hampered by decades of “government restrictions, control, harassment, and even political and legal campaigns against them,”²⁵⁶ Egypt’s non-governmental organizations (NGOs) have served as an important source of political opposition in Egypt.²⁵⁷ Egypt’s NGOs, which include between 14,000 and 17,000 legally registered organizations,²⁵⁸ “have played key oppositional roles using their relative independence from the control of the state as a platform for constructive—but still restricted—debate and criticism of government political and economic policy.”²⁵⁹ Despite their persistent efforts to promote legal reform and increased governmental transparency, Egypt’s NGOs fail to pose a substantial political threat to the ruling party because of the stifling restrictions imposed upon them. Most damaging to the ability of NGOs to promote political reform is Law 84 of 2002, which flatly prohibits NGOs from engaging in “any political activity” or “unionist activity.”²⁶⁰ This language essentially restricts NGOs from engaging in legitimate political opposition activities and empowers the Ministry of Social Affairs (MSA), which controls all licensing, to punish any NGO it perceives as a political threat with dissolution, heavy fines or prison time. The law further grants the Ministry of Social Affairs, rather than courts, the right to issue administrative decrees dissolving NGOs deemed to engage in illegal political activity.²⁶¹ The Government further limited political opposition by denying licenses to NGO’s which have effectively challenged the state’s political prerogatives. For instance, promi-

nent human rights organizations, such as the Egyptian Organization for Human Rights (EOHR), have had their licenses revoked and must operate in a precarious legal limbo which exposes them to government-mandated closure at any time.²⁶²

Intent on curtailing the organizational capacities of NGOs, the Government has imposed stiff regulations on the receipt of foreign funding. For example, Egypt’s human rights movement, which relies almost entirely upon foreign funding, is restricted from receiving foreign capital without the permission of the MSA.²⁶³ The ability of NGOs to raise funds necessary to support their political activities is further restricted by Military Decree 4 of 1992, which imposes a minimum sentence of seven years’ imprisonment to persons receiving funding without permission from the Government.²⁶⁴ This law has been used to prosecute prominent human rights activists such as Saad Ibrahim and Hafez Abu Sa’ada.²⁶⁵ By limiting their ability to raise funds and engage in political activities, Egypt’s laws governing civil society undermine the ability of NGOs to challenge the regime effectively.

Professional Syndicates

Professional syndicates have traditionally functioned as an independent voice of dissent in Egyptian politics. The syndicates have utilized their substantial finances and relative institutional autonomy to challenge state domination.²⁶⁶ Given the ineffectiveness of Egypt’s political parties, many opposition forces have utilized professional associations as an alternative avenue for political participation.²⁶⁷ In the early 1990’s, members of the banned Muslim Brotherhood began increasing their presence in the leadership of professional syndicates. Through these positions, members of the MB aggressively challenged the ruling party’s political policies. For instance, at a 1991 conference organized by the Engineer’s Syndicate, members of the MB condemned the Government’s emergency law and restrictions on civil liberties.²⁶⁸

By 1992 the MB gained landslide electoral victories in the leadership positions of Egypt’s five most prestigious and wealthy syndicates, namely those of the engineers, doctors, lawyers, pharmacists, and scientists.²⁶⁹ With control over the syndicates, the MB gained access to enormous financial resources²⁷⁰ which it used to engender pub-

lic goodwill and mobilize an increasingly large political base.²⁷¹ Some of its alleged tactics included using syndicate funds to reward political supporters, providing social service projects to MB sympathizers, and organizing religious conferences.²⁷²

The increasing political power of the Islamist-controlled syndicates posed a considerable political threat to the regime,²⁷³ which prompted adoption of legislation reasserting its control of syndicate activities. Law 100 of 1993 prevents professional syndicates from accumulating political power by fundraising or engaging in activities that are not prescribed in the syndicate’s mandate. This law also strips syndicates of their ability to organize and structure their elections. Under Law 100, the state selects candidate lists and imposes stringent quorum requirements for syndicate leadership elections. If 50 percent of a syndicate’s registered members fail to vote in the first round of elections and 33 percent fail to vote in the second round of elections, Law 100 authorizes the state to appoint syndicate board members through a panel of government-appointed judges. Given the number of members in syndicates and their typical 8-12 percent turnout rates, syndicate elections almost never meet the high quorum requirements.²⁷⁴ As a result, the Government is guaranteed complete dominion over the leadership positions of the syndicates.

Law 100 must be understood as a legal strategy to prevent a potent opposition political force from emerging in Egyptian politics, rather than merely an ideological attack on Islamist political activity.²⁷⁵ The exceedingly high voter requirements imposed on syndicate elections are not required for any other Egyptian election, including parliamentary, presidential or local elections. Since the enactment of Law 100 at least 12 syndicates, including the Lawyers’ and Engineer’s Syndicates, have been placed under government custodianship.²⁷⁶ Government restrictions imposed by Law 100 have usurped the autonomy of syndicates and virtually eliminated this form of political opposition.

Judges Club

The judiciary has not only promoted political liberalization in Egypt through its court decisions, but it has also attempted to do so through informal organizational activism. The Judges Club, a self-organized

and elected social organization which consists of nearly 8,000 judges, has emerged as an “unofficial professional association” which provides a forum for judges to advocate greater institutional independence and stronger rule of law.²⁷⁷ As the only independent and elected body representing Egypt’s judiciary,²⁷⁸ this organization has functioned as an additional source of political opposition in Egypt that has resisted the executive’s attempts to exploit its credibility.²⁷⁹ It has done so by calling for the elimination of all exceptional emergency courts,²⁸⁰ and demanding increased transparency in elections.²⁸¹ The Judges Club publicly threatened to refuse to monitor the 2005 elections unless the Government granted it greater independent power over the election supervision process.²⁸² Its demands included the authority to control the perimeter of the polling stations and to supervise all phases of the election process, including the preparation of voter lists and control of ballot boxes.²⁸³ The Judges Club has also criticized the independence of the SJC and repeatedly demanded that SJC members be selected by elections within the judiciary.²⁸⁴

Despite its long history of operating in the Egyptian political sphere, the Judges Club lacks any formal legal status. Although the club has vigorously lobbied the People’s Assembly to legalize its organization statutorily, the new law on the judiciary failed to accommodate this request. As a result, the Judges Club remains in legal limbo. The Government refuses to legalize the Judges Club as a representative of the judiciary and the Judges Club, which views itself as a representative of state authority, refuses to apply for registration as an NGO. Because of its precarious legal status, the Judges Club remains vulnerable to future governmental regulation of its activities.²⁸⁵

Religious Organizations

With an estimated 150,000 mosques in Egypt, religious institutions serve as a potentially significant source of political opposition in Egypt.²⁸⁶ In the mid 1990’s nearly half of Egypt’s mosques were unlicensed and outside direct control of government-run reli-

gious institutions. This independence enabled mosques to mobilize significant political opposition to the regime.²⁸⁷ In an effort to curb this independent political voice, the Government, using the pretext of combating terrorism, issued an executive order in 1992 nationalizing tens of thousands of private mosques.²⁸⁸ As a result of this decree, all mosques must be licensed and all imams who coordinate prayer sessions must be appointed and paid by the state. Although the Minister of Awqaf has gained control of 82,000 mosques and annexes approximately 6,000 additional unregistered mosques every year, some mosques continue to operate independently from the state.²⁸⁹

The Government has manipulated its control over Egypt’s religious institutions to retaliate against its opponents and curtail their influence. By relying on Law 103 of 1961, which empowers the Government to appoint the heads of Egypt’s three main Islamic institutions and control their funding, the Government has maintained firm control over Egypt’s most prominent religious establishments.²⁹⁰ Al Azhar, Dar el Ifta, and the Ministry of Religious Endowments maintain exclusive control over Egypt’s religious sphere including managing Islamic education, research, dissemination, and the issuing of fatwas.²⁹¹ Of these three institutions, Al-Azhar, head of one of the largest bastions of Sunni Islam, is a very influential religious institution in Egypt and the Middle East.²⁹²

President Mubarak has used his legal powers to appoint pro-government religious scholar Sheikh Mohammed Sayed Al Tantawi to serve as Grand Sheikh of Al-Azhar.²⁹³ Soon after his appointment in 1996, Sheikh Tantawi dismissed voices of opposition within Al-Azhar and enforced the Government’s decision to take control of the mosques and license every imam.²⁹⁴ Many prominent religious figures who sympathized with the MB were replaced with government loyalists.²⁹⁵ Although Al-Azhar has crossed the Government on secondary issues such as religious censorship, population control and female genital mutilation,²⁹⁶ the government-appointed religious leadership has generally supported the regime. For instance, in the 2006 presidential election, Sheikh Tantawi publicly endorsed President Mubarak’s reelection bid.²⁹⁷

Fearful that legal control over appointments, licensing and financing were insuf-

ficient to quell dissent from the religious sphere, the Egyptian Government has also attempted to restrict the content of sermons. In 1998, the Government signed a protocol which imposed authority over the issuing of fatwas. This law forbids imams from challenging the fatwas issued by the government-appointed Sheikh of Al-Azhar.²⁹⁸ By consolidating Al-Azhar’s power to issue fatwas, the executive can control religious discourse and obtain unchallenged religious approval for its policies through religious declarations on a point of Islamic Law known as fatwas.²⁹⁹ For instance, Sheikh Tantawi issued a fatwa declaring that an important government-sponsored economic program featuring interest-paying bonds conformed with Islam.³⁰⁰ Although rogue preachers at all levels of Egypt’s religious hierarchy continue to issue conflicting fatwas illegally, the Government’s legal efforts to regulate religious expression demonstrate the lengths to which the Government will go to impose legal restrictions to punish political dissenters.³⁰¹ These government regulations have virtually transformed Al-Azhar from an institution with a high degree of autonomy and potential for political opposition to one dominated by the central government.³⁰²

The Government’s legal manipulation of the religious sphere has not only hampered the political efforts Muslim Brotherhood, but has also empowered Egypt’s state-sponsored religious establishment to the detriment of Egypt’s secular opposition. In return for supporting the political prerogatives of the Government, Al-Azhar and other participants in Egypt’s increasingly conservative religious establishment have gained significant autonomy to promote their conservative religious agendas.³⁰³ Even though Al-Azhar refrains from challenging Government political policies, it has vigorously promoted conservative Islamic values. Through a sustained decade-long propaganda campaign, Al-Azhar has attacked secular ideas and spurred a religiously conservative cultural backlash throughout Egyptian society. Because of its divine inspiration, Al-Azhar has emerged as a hegemonic religious force that controls the social order and is virtually immune to criticism. This, in turn, has further contributed to the erosion of political and religious discourse in Egyptian politics.³⁰⁴

Restrictions on Freedom of Expression

As a party to the ICCPR, the Egyptian Government is bound to respect and guarantee the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media.”³⁰⁵ International legal jurisprudence and common law legal traditions prevent governments from restricting these rights except in narrow sets of circumstances which threaten national security, public order, public health and morals.³⁰⁶ Egypt’s Constitution attempts to enforce these international standards by guaranteeing the “freedom of opinion”³⁰⁷ and the “liberty of the press.”³⁰⁸ These constitutional guarantees, however, are accompanied by oppressive language which permits legislative restrictions on the freedom of expression. For instance, Article 48 permits “limited censorship” during a “state of emergency.” This permissive language has enabled the regime to pass legislation, such as strict libel and censorship laws, which undermines the legal protections afforded by the ICCPR.³⁰⁹ The Government has further used its ownership over the media to control political discourse and retaliate against those who criticize the regime. As a result of these stringent legal restrictions, Egypt ranks 127 out of 167 countries on the Worldwide Press Freedom Index issued by Reporters without Borders.³¹⁰

Government Owned Media

Because of the existing legal regime, few of Egypt’s many newspapers are independent.³¹¹ The NDP-dominated Shura Council, through its Supreme Press Council, retains the power to regulate licenses for newspapers, newsprint, prices, advertising, and licenses for journalists to work for foreign media outlets. Furthermore, the Shura Council owns a majority stock in and appoints the editors of Egypt’s most prominent newspapers.³¹² Given that its editors are appointed by members of the NDP, and are often replaced for criticizing the

regime, these government-controlled publications tend to support the regime.³¹³ In the 2005 presidential and parliamentary elections, state newspapers overwhelmingly supported NDP candidates and condemned the MB.³¹⁴ The Government also maintains other incidental powers which enable it to control the content and agenda of Egypt’s private media.³¹⁵ For instance, in an effort to prevent the MB from using other legal political parties’ licenses to publish newspapers, the Government recently passed legislation restricting the number of licenses allotted to each political party.³¹⁶ In addition, the Government’s virtual monopoly over Egypt’s print shops enables it to deter opposition voices in the private media³¹⁷ and limit the output of publications from political opponents of the regime. These restrictions have forced opposition newspapers to publish weekly, rather than daily, newspapers, hence limiting their circulations.³¹⁸ The Government’s ownership of prominent newspapers, as well its virtual monopoly over printing shops and Egypt’s entire audiovisual media,³¹⁹ grant the ruling party unrivaled power to restrict Egypt’s political discourse and deface opponents of the regime.³²⁰

Libel Laws

Egyptian law deters the free expression of ideas by imposing stiff criminal punishments, including imprisonment, for those convicted of libel.³²¹ Although legislation passed in July 2006 abolished prison sentences for journalists from four Articles of the Penal Code, the law failed to improve Egypt’s harsh libel laws substantively. For instance, the new press law failed to repeal a slew of vaguely-worded libel laws which impose criminal punishment, including imprisonment, of journalists who challenge the ruling party. According to Negad El-Boraai, Secretary-General of the Society to Promote Democracy, a local NGO, “there are still some 19 articles in the penal code that makes journalists liable to terms in prison for publishing materials that ‘threaten the stability’ of the country or ‘stir up chaos,’ among other offenses.”³²² Journalists continue to face sentences up to five years for “vilify[ing]...the king or president of a foreign country”³²³ and sentences up to 15 years if convicted of publishing news or opinion columns that “weaken the nation in a time of war.”³²⁴

More disturbing are the five year prison sentences available under Egypt’s Article 98b of the Penal Code for “anyone in Egypt who advocates in any way, the changing of basic principles of the constitution.”³²⁵ This law essentially criminalizes the single most political opposition activity in Egypt – the battle to reform the heavy-handed constitutional powers invested in Egypt’s President. Additionally, Article 179 quells public criticism of the ruling party by punishing “whoever affronts the President of the Republic.”³²⁶ Given the vagueness of these libel laws, the Government reserves the right to criminally sanction virtually all legitimate journalistic activity.³²⁷ This in turn curtails press freedom, encourages self-censorship and restricts the free exchange of political ideas needed to sustain democracy.

Even the amendments made to the Penal Code fail to keep journalists out of jail. Although the regime did eliminate prison sentences from four Articles of the Penal Code, it also increased the fines available under these libel laws. Because of the meager salaries of Egyptian journalists and because the criminal code imposes prison time for those unable to pay court-ordered fines, these inflated fines subject indigent journalists to prison sentences for acts of libel.³²⁸ By maintaining broad definitions of libel punishable by prison sentences and steep fines, Egypt’s libel laws continue to deter journalists from publicly criticizing the ruling party.

Government Censorship of Written Publications

Literature in Egypt is subject to four levels of censorship: the Ministry of Information censors imported books and periodicals; the Ministry of Interior invokes the emergency law to confiscate political publications unfavorable to the regime; the Ministry of Culture has the power to censor theatrical performances and plays; and Al-Azhar censors publications dealing with religion.³²⁹ Exploiting the “emergency law” exception to the constitutional freedom of the press, the Ministry of Interior has derived power to “[censor] letters, newspapers, pamphlets, publications, edited materials including all propaganda and advertising materials before their diffusion.” The Ministry of Interior also retains the power to confiscate materials and shut down printing locations without a court order.³³⁰

Law 20 of 1936 authorizes the Ministry of Information to censor all imported books and periodicals.³³¹ Any foreign literature or domestically-created reprints may be banned prior to distribution, if deemed necessary “to maintain the public order.” The vagueness of this law enables the Ministry of Information to block the distribution of nearly any publication discussing politics or religion. These laws have been invoked to ban numerous books from being imported to the American University in Cairo.³³² Banning books before they are imported is an act of prior censorship prohibited under international law.³³³ The broad censorship laws imposed by Egypt’s statutory laws violate the ICCPR and enable the ruling party to censor virtually any publication critical of its policies.

Religious Censorship

Religious censorship poses a significant obstacle to democratic reform in Egypt. Over the past two decades religious censorship, most of which targets contentious intellectual works, has increased dramatically. This is directly attributable to the increasing legal authority allocated to Al-Azhar. Egypt’s religious establishment first gained censorship powers from Law 102 of 1985. This law initially permitted the Islamic Research Council (IRC), a part of Al-Azhar, to recommend the banning or censorship of publications of the Quran to governmental authorities. The IRC’s role soon expanded to include censoring plays, written publications and television productions that it deemed to be blasphemous.³³⁴ In February 1994, an administrative court, known as the Council of State, issued ruling 58/163 which legitimized Al-Azhar’s legal role in censoring audio and audiovisual productions to determine their conformity with the principles of Islamic Sharia. This legal ruling stipulated that Al-Azhar’s censorship recommendations are legally binding on the Ministry of Culture.³³⁵ Although the ruling limited the application to Islamic issues, it also made clear that it was up to Al-Azhar to define such limits.³³⁶ From this legal ruling, Al-Azhar’s censorial role has experienced alarming

growth and has exercised increasing control over public discourse. For instance, in June 2003, the Ministry of Justice authorized Al-Azhar to confiscate publications, tapes, speeches, and artistic materials deemed inconsistent with Islamic law. From this power, religious “inspectors” have obtained quasi-legal authority to scour Egypt’s bookstores and cultural centers and ban any publication they find objectionable without seeking a court order.³³⁷ The EOHR has criticized this legal development as violating “the freedom of speech, belief and expression, all guaranteed in the Egyptian Constitution.”³³⁸

Because of the inseparability of political and religious issues, the legalization of religious censorship derivatively empowers Al-Azhar to censor political matters. The inexact censorship standard used by Al-Azhar in deciding whether a particular item violates Sharia law lends itself to manipulation that could be used against political activists. Most vulnerable to this political censorship are those who advocate for a secular government. Al-Azhar, in an attempt to defend its accumulation of power, could conceivably construe the concept of separation of religion and state as offending Islam and restrict the propagation of secular ideas.³³⁹ In any event, the legal reforms necessary to liberalize Egypt’s political system will struggle to materialize in a political environment controlled by religious discourse rather than by policy discussions.³⁴⁰

Academic Censorship

Chief Justice Brennan once poetically stated, “[a]cademic Freedom ... is of transcendent value to all of us and not merely to the teachers concerned.”³⁴¹ Given the large number of highly educated and politically aware individuals who attend universities, academic communities occupy a prominent position in society from which they can critique state policies and demand governmental accountability. In Egypt’s educational system, however, the state has hampered the academic community’s ability to perform such functions by restricting students’ right to free speech and assembly.³⁴² The international community, through the International Covenant on Economic, Social, and Cultural Rights of 1966 (ICESCR), has sought to protect against such infringements on academic freedom by recognizing an international right to education. Although the plain language of the interna-

tional right to education does not explicitly mention “academic freedom,” the right to education would be meaningless without academic freedom. The United Nations Committee on Economic, Social, and Cultural Rights (CESCR), has endorsed this interpretation by declaring that the ICESCR’s “right to education can only be enjoyed if accompanied by the academic freedom of staff and students.”³⁴³ As a state party to the ICESCR, Egypt is bound by international law to respect the rights enshrined in this legal instrument. Additionally, Egypt’s own Constitution also protects these internationally recognized legal protections. For instance, Article 18 guarantees “the independence of universities and scientific research centres” and Article 47 guarantees that “[e]very individual has the right to express his opinion and to publicize it verbally or in writing...or by other means within the limits of the law. Article 49 specifically guarantees “the freedom of scientific research and literary, artistic and cultural invention and provide the necessary means for its realisation.” Despite these international and domestic legal protections, the Egyptian Government has failed to uphold academic freedom.³⁴⁴

Universities have traditionally served as a potent source of political resistance in Egypt. Throughout modern Egyptian political history, academic institutions have fueled dissent through their faculties and student-run demonstrations. Like all other sources of political opposition in Egypt, universities are also subject to restrictive and arbitrary laws contrary to the spirit of the Constitution and international legal obligations, which are designed to thwart political dissent. The Government controls the national university system and appoints the president of each public university to oversee the “scientific, educational, administrative and financial affairs” of the public institutions which form the backbone of Egypt’s higher education.³⁴⁵ As part of a campaign to remove members of the MB from the governing councils of universities and prevent them from utilizing university resources to publicly promote their political ideology, the Government passed Law 142 of 1994, known as the Egyptian Universities Act. This legislation reversed the 22 year policy of permitting each faculty to elect its deans independently. In its place, the 1994 law authorized government-appointed university presidents to appoint faculty deans loyal to the regime. This ef-

fectively reduced the MB's influence on campuses across the country and brought the governing councils under the control of the executive branch. As a result, the once-autonomous university councils have been transformed into entities loyal to the central government which have little incentive to challenge governmental policies.³⁴⁶

These government-appointed deans frequently use their far-ranging powers to manipulate internal university matters for political ends. For instance, state-appointed deans regulate research trips and guest speakers; monitor classroom discussions; cut off exchanges on controversial subjects; deny politically active professors contact with students; and block political opponents from running for student government groups. The deans also closely scrutinize student clubs and other forms of association on campus, and stifle expression that depicts the NDP in an unfavorable light.³⁴⁷ Relying on vague legal language requiring nominees for student government to "enjoy good and straight conduct and good reputation,"³⁴⁸ government-appointed university administrators have disqualified Islamic candidates, and other students who criticize the ruling party, from running in student government elections.³⁴⁹ This ensures that those who rise to prominence in student government and clubs are loyal to the Government.³⁵⁰ The University Law of 1979 also combats political opposition at universities by prohibiting students from forming political and religious clubs.³⁵¹ The state's heavy-handed regulation of university life offends the constitutional and international legal guarantees to which Egypt is bound and creates a repressive learning environment which deters students from freely exchanging ideas or participating in university affairs.³⁵²

Public Protests

Egypt's Constitution guarantees the "right to peaceable and unarmed private assembly, without the need for private notice"³⁵³ and the "the right to form societies."³⁵⁴ However, like most rights articulated in Egypt's Constitution these rights are both subject to legislative restrictions. The ICCPR, to

which Egypt is a party, also recognizes "the right of peaceful assembly."³⁵⁵ Despite these guarantees, the Egyptian Government has trampled this constitutionally and internationally protected right to assembly through three oppressive pieces of legislation: Law 10 of 1914, Law 14 of 1923, and Emergency Law 162 of 1958.³⁵⁶ Law 10 of 1914 criminalizes gatherings of five or more people that may endanger public peace,³⁵⁷ while Law 14 of 1923 requires all citizens, including legal political parties, to obtain approval from the Ministry of Interior prior to staging public meetings, rallies, and protests. The Government has used these powers to deny permission, relocate public rallies in inaccessible areas, and harass those who attempt to publicly assemble for purposes of critiquing the ruling party.³⁵⁸ Finally, as previously discussed, Egypt's emergency laws grant the Government broad power to restrict the right of assembly, including the rights of political opposition parties, for virtually any reason.

Despite this minefield of legal restrictions, political forces have mobilized unprecedented public protests in the last two years. Responsible for this resurgence in political activism is a diffuse group of young activists, largely dissociated with party politics, known as "*Kifaya*" or "Enough." This eclectic and well-organized group of demonstrators has organized numerous mass demonstrations demanding political reform in Egypt, without regard for government-imposed permit requirements, and has bluntly criticized President Mubarak.³⁵⁹ Although hailed as a signal of Egypt's commitment to legal reform and democracy, these protests fail to reflect any substantive change in Egypt's legal system. Like all political opposition activities in Egypt, these hamlets of opposition are dependent upon the acquiescence of the ruling party. The regime, at any time, may invoke its authority under the extant legal regime to quash public demonstrations.

Conclusion

This paper demonstrates how far Egypt's legal system remains from accomplishing a peaceful transfer through democratic elections. In recent years Egypt has enacted numerous legislative changes, including a constitutional amendment, cloaked in the guise of legal reform. Yet these so-called reforms have demonstrated nothing less than the ruling party's unwavering commit-

ment to perpetuating authoritarian rule. At first glance one may attribute the weakness of Egypt's legal political opposition to organizational deficiencies; however, a closer examination reveals a gauntlet of suffocating legal barriers which bar opposition forces at all levels of society from uniting to mount an organized challenge to the ruling party. Primarily responsible for perpetuating Egypt's one-party system is the Constitution's failure to create strong institutional checks and balances. With seemingly unlimited constitutionally-granted emergency powers, the executive remains "unchallenged at the apex of the governance structure."³⁶⁰ As demonstrated throughout this paper, the executive has used its monopoly on power to undermine the independence of the judiciary and curb virtually every source of political opposition in Egypt. Even though political opposition in Egypt exists in countless forms, these actors are only permitted to participate to the extent permitted by the executive. Given the inequities inherent in the current legal system and the entrenched power clusters it has created, substantive legal reform in Egypt cannot be accomplished through the courts or outside of the NDP party structure. Only one institution, the President of the Republic, can accomplish the comprehensive constitutional and statutory reforms necessary to liberalize Egypt's political environment.³⁶¹ If the recently passed Amendment 76 proved anything, it demonstrated that President Mubarak unilaterally controls the levers of power needed to overhaul Egypt's Constitution. Whether Mubarak will use this power to promote the institutional separation of powers, abrogate the emergency law, and restore the rule of law needed to protect the development of Egypt's political opposition, remains highly improbable, but perhaps the only prospect for substantive democratic reform in Egypt.

Notes:

¹ Nathan Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* 119 (Cambridge University Press 1997).

² Yustina Saleh, *Law, The Rule of Law, and Religious Minorities in Egypt*, 8 Middle E. Rev. Intl. Affairs 74, 81 (Dec. 2004) (available at <http://meria.idc.ac.il/journal/2004/issue4/saleh.pdf>).

³ Clark B. Lombardi, *Islamic Law as a Source of Constitutional Law in Egypt: The Constitutionalization of the Sharia in a Modern Arab State*, 37 Colum. J. Transnatl. L. 81, 97, 122 (1998). ("Islamic law is any law which conforms to certain divinely revealed principles that func-

tion to advance social goals favored by a compassionate God. These are "universals," or... "fundamental principles" of the sharia. According to the Court, these fundamental principles are laid down in the Qur'an and have been accepted, at least implicitly, by all schools of Islamic law over the years, although they have been applied differently in different places to come up with Islamic laws appropriate for their particular time and place. According to the SCC, the various schools of sharia have proposed many competing rules of sharia over the years. Nonetheless, despite their many differences, none of the competing rules ever conflicts with the fundamental principles. Thus, the various schools are bound only by common respect for these fundamental principles. For all practical purposes, respect for these principles defines "Islamic law." Therefore, laws of the Egyptian government will conform to the sharia so long as they too respect these fundamental principles.")

⁴ *Id.* at 118, 119, 121, 122.

⁵ Maurits S. Berger, *Apostasy and Public Policy in Contemporary Egypt: An Evaluation of Recent Cases from Egypt's Highest Courts*, 25 Human Rights Q. 720, 729, 729 n.36, 738-740 (2003).

⁶ Lombardi, *supra* n. 5, at 118, 119, 121, 122.

⁷ Scott K. Brown II, *The Coptic Church in Egypt: A Comment on Protecting Religious Minorities from Non-state Discrimination*, 2000 B.Y.U. L. Rev. 1049, 1082.

⁸ Ahmad S. Al-Islam & Karim El-Gawhary, *Shari'a or Civil Code? Egypt's Parallel Legal Systems: An Interview with Ahmad Sayf al-Islam*, Middle E. Rep. 25 (Nov.- Dec. 1995).

⁹ Amnesty Intl., *Muzzling Civil Society* 7 (Amnesty Intl. 2000) (available at [http://web.amnesty.org/library/pdf/MDE120212000ENGLISH/\\$File/MDE1202100.pdf](http://web.amnesty.org/library/pdf/MDE120212000ENGLISH/$File/MDE1202100.pdf))

¹⁰ Kevin Boyle, *Human Rights in Egypt: International Commitments, in Human Rights and Democracy: The Role of the Supreme Constitutional Court of Egypt* 87, 89-90 (Kevin Boyle & Adel O. Sherif eds., Kluwer Law Intl. 1996).

¹¹ Sana S. Khalil, *The Combined Third and Fourth Periodic Reports of Egypt Submitted to the Human Rights Committee* ¶ 256 (U.N. Doc. CCPR/C/EGY/2001/3, April 15, 2002) (available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CPR.CO.76.EGY.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CPR.CO.76.EGY.En?OpenDocument)).

¹² Mamoun Fandy & Dana Hearn, *Egypt: Human Rights and Governance*, in *Middle East and North Africa: Governance, Democratization, Human Rights* 106 (Peter J. Magnarella ed., Ashgate 1999).

¹³ U.N. Human Rights Committee, *Concluding Observations of the U.N. Human Rights Committee: Egypt* ¶¶ 6, 16b, 21, 22 (U.N. Doc. CCPR/CO/76/EGY, Nov. 28, 2002) (available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CPR.CO.76.EGY.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CPR.CO.76.EGY.En?OpenDocument)).

¹⁴ Maye Kassem, *Egyptian Politics: The Dynamics of Authoritarian Rule* 23 (Lynne Rienner Publishers, 2004).

¹⁵ Hala Mustafa et. all., *Building Democracy in Egypt: Women's Political Participation, Political Party Life and Democratic Elections* 44 (Intl. Institute for Democracy & Electoral Assistance 2005) (available at http://www.iav.nl/epublications/2005/Building_Democracy_in_Egypt.pdf).

¹⁶ Raymond A. Hinnebusch, Jr., *Government and Politics, in Egypt: A Country Study* (Helen Chapin Metz ed., 5th ed., Library of Congress 1991) (available at <http://countrystudies.us/egypt/105.htm>).

¹⁷ Egyptian Constitution (amended 2005), art. 77.

¹⁸ *Id.* at arts. 161- 163.

¹⁹ U.N. Dev. Programme, *Decentralization: Egypt, Programme on Governance in the Arab Region (POGAR)*, <http://www.pogar.org/countries/decentralization.asp?cid=5> (last visited September 10, 2006).

²⁰ Bassma Kodmani, *The Dangers of Political Exclusion: Egypt's Islamist Problem* 14 (Carnegie Paper No. 63, 2005) (available at <http://www.carnegieendowment.org/files/CP63.Kodmani.FINAL.pdf>).

²¹ Kristen Stilt, *Constitutional Authority and Subversion: Egypt's New Presidential Election System*, 16 Ind. Intl & Comp. L. Rev. 335, 355 (2006). ("Commentators persuasively speculated that the postponement was due to the success of the independent candidates in the PA elections in December 2005 and the regime's fear that if they did as well at the regional level, an independent presidential candidate in 2011 might become a possibility. The Muslim Brotherhood opposed the postponement, and they were the ones who would presumably have done well in the regional elections given their success in the PA elections.")

²² U.N. Dev. Programme, *supra* n. 21.

²³ Egyptian Constitution, *supra* n. 19, at art. 148.

²⁴ Denis J. Sullivan, *Egypt*, in *Countries at the Crossroads: A Survey of Democratic Governance* 224 (Sarah Repucci & Christopher Walker eds., Rowman & Littlefield 2005).

²⁵ *Id.* at 212.

²⁶ Charles R. Davidson, *Reform and Repression in Mubarak's Egypt*, 24 Fletcher Forum World Aff. 75, 90 (2000).

²⁷ Daniel Williams, *Egypt Extends 25-Year-Old Emergency Law*, Wash. Post. A13 (May 1, 2006).

²⁸ Davidson, *supra* n. 28, at 90.

²⁹ Tamir Moustafa, *Law Versus the State: The Judicialization of Politics in Egypt*, 28 Law & Soc. Inquiry 883, 907 (2003).

³⁰ U.S. Dept. of State, *Egypt: Country Reports on Human Rights Practices - 2003* (Feb. 25, 2004) (available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27926.htm>).

³¹ Kassem, *supra* n. 16, at 39.

³² Davidson, *supra* n. 28, at 91.

³³ Sohail Mered, *It's not a Cultural Thing: Disparate Domestic Enforcement of International Criminal Procedure Standards - A Comparison of the United States and Egypt*, 28 Case W. Res. J. Intl. L. 141, 161 (1996).

³⁴ Michele Dunne, *Evaluating Egyptian Reform* 15 (Carnegie Paper No. 66, 2006); Mustafa, *supra* n. 17, at 45.

³⁵ U.S. Dept. of State, *supra* n. 32.

³⁶ Mered, *supra* n. 35, at 161.

³⁷ Kassem, *supra* n. 16, at 37.

³⁸ Fandy & Hearn, *supra* n. 14, at 106, 107.

³⁹ Sullivan, *supra* n. 26, at 218.

⁴⁰ U.N. Dev. Program, *Arab Human Development Report: 2004* 21 (UNDP, 2005).

⁴¹ Davidson, *supra* n. 28, at 90; *International Covenant on Civil and Political Rights* pt. II, art. 4 (Jan. 14, 1982), http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

⁴² U.N. Human Rights Committee, *supra* n. 15, at ¶ 21.

⁴³ Davidson, *supra* n. 28, at 90; Intl. Commission of Jurists, *Egypt: Attacks on Justice* 128 (11th ed., 2002) (available at <http://www.icj.org/IMG/pdf/egypt.pdf>); Amnesty Intl., *supra* n. 11, at 3.

⁴⁴ Kassem, *supra* n. 16, at 37, 38.

⁴⁵ Intl. Republican Inst., *2005 Parliamentary Election Assessment in Egypt, November 15-21, 2005* 6 (Dec. 2005)

(available at www.iri.org/pdfs/12-19-05-EgyptParliamentaryElectionsAssessmentReport.pdf).

⁴⁶ Kassem, *supra* n. 16, at 56.

⁴⁷ *Id.* at 38, 39.

⁴⁸ Dunne, *supra* n. 36, at 15.

⁴⁹ Intl. Republican Inst., *supra* n. 47, at 6.

⁵⁰ Kassem, *supra* n. 16, at 40. Sullivan, *supra* n. 26, at 221.

⁵¹ U.S. Dept. of State, *supra* n. 32.

⁵² Intl. Republican Inst., *supra* n. 47, at 6.

⁵³ Sharp, *supra* n. 1, at 4.

⁵⁴ Dunne, *supra* n. 36, at 11.

⁵⁵ Saleh, *supra* n. 4, at 81.

⁵⁶ Awad M. El-Morr & Adel O. Sherif, *Separation of Powers and Limits on Presidential Powers under the Egyptian Constitution*, in *Human Rights and Democracy: The Role of the Supreme Constitutional Court of Egypt* 63, 67 (Kevin Boyle & Adel O. Sherif eds., Kluwer Law Intl. 1996).

⁵⁷ Egyptian Constitution, *supra* n. 19, at art. 112.

⁵⁸ *Id.* at arts. 108, 147.

⁵⁹ *Id.* at art. 115.

⁶⁰ *Id.* at art. 138.

⁶¹ Kassem, *supra* n. 16, at 30, Davidson, *supra* n. 28, at 82.

⁶² Larry P. Goodson & Soha Radwan, *Democratization in Egypt in the 1990s: Stagnant, or Merely Stalled?*, 19 Arab Studies Q. 4 (Winter 1997).

⁶³ Davidson, *supra* n. 28, at 82.

⁶⁴ Egyptian Org. for Human Rights, *Constitutional Reform: Between Acceleration and Deferment*, <http://www.eohr.org/report/2005/re0313.htm>

(March 13, 2005). ("The power to scrutinize state spending was historically the reason for the establishment of elected representative bodies to call to account financial measurements by governing authorities whether in imposing taxes or determining public expenses.")

⁶⁵ David S. Sorenson, *The Dynamics of Political Dissent in Egypt*, 27 Fletcher Forum World Affairs 207, 216, 217 (2003).

⁶⁶ Egyptian Constitution, *supra* n. 19, at arts. 86, 115.

⁶⁷ *Id.* at art. 174.

⁶⁸ Carnegie Endowment for Intl. Peace, *Arab Political Systems: Baseline Information and Reforms - Egypt* 4, 5, http://www.carnegieendowment.org/files/Egypt_AP_S.doc (last updated Sept. 22, 2006).

⁶⁹ Kassem, *supra* n. 16, at 24; Egyptian Constitution, *supra* n. 19, at arts. 136, 152.

⁷⁰ Egyptian Org. for Human Rights, *supra* n. 66.

⁷¹ Egyptian Constitution, *supra* n. 19, at art. art. 195.

⁷² Fandy & Hearn, *supra* n. 14, at 104, 105.

⁷³ Kassem, *supra* n. 16, at 24.

⁷⁴ Fandy & Hearn, *supra* n. 14, at 105.

⁷⁵ Carnegie Endowment for Intl. Peace, *supra* n. 70, at 6.

⁷⁶ U.S. Dept. of State, *supra* n. 32.

⁷⁷ Egyptian Constitution, *supra* n. 19, at arts. 65, 66, 165, 166, 168, 174.

⁷⁸ Brown, *supra* n. 3, at 96, 97. (The government could eliminate the SJC because it was created by statute rather than by constitutional authority.)

⁷⁹ Michael Farhang, *Terrorism and Military Trials in Egypt: Presidential Decree No. 375 and the Consequences for Judicial Authority*, 35 Harv. Intl. L. J. 225, 227 (1994); U.S. Dept. of State, *supra* n. 32.

⁸⁰ U.S. Dept. of State, *supra* n. 32; Adel O. Sherif, *Separation of Powers and Judicial Independence in Constitutional Democracies: The Egyptian and American Experiences*, in *Democracy, the Rule of Law and Islam* 42 (Eugene Cotran & Adel O. Sherif eds., Kluwer Law Intl. 1999). (Although the Ministry of Justice has the power to initiate disciplinary investigations against judges, the

imposition of sanctions or dismissal is subject to approval by the SJC.)

⁸¹ Human Rights Watch, *Egypt: Investigate Election Fraud, Not Judges*,

<http://www.hrw.org/english/docs/2006/04/25/egypt13269.htm> (April 26, 2006).

⁸² Sherif, *supra* n. 82, at 36, 40, 41, 43.

⁸³ Gamal E. El-Din, *A Judicial Intifada?* 792 *Al-Ahram Wkly.* (April 27 - May 3, 2006) (available at

<http://weekly.ahram.org.eg/2006/792/eg4.htm>).

⁸⁴ Noha El-Hennawy, *Yehia El-Refai*, 26 *Egypt Today* (August 2005) (available at <http://www.egypttoday.com/article.aspx?ArticleID=5604>).

⁸⁵ Michele Dunne, *Egypt: Controversial Press and Judiciary Laws, Arrests, U.S. Aid Debate*, 4 *Arab Reform Bulletin* 8 (July 2006) (available at http://www.carnegieendowment.org/files/fulliss ue_july062.pdf).

⁸⁶ Human Rights Watch, *From Plebiscite to Contest? Egypt's Presidential Election* 8 (Human Rights Watch Briefing Paper, Sept. 2, 2005) (available at <http://hrw.org/backgrounder/mena/egypt0905/egypt0905.pdf>); Arab Center for the Independence of the Judiciary and the Legal Profession, *ACIJLP's Comment on Egypt's Draft Judiciary Authority Law*, <http://www.acijlp.org/eacijlp/ta3lik%20elmarka z%20ala%20kanon%20elsolta%20elkdaia.html> (June 25, 2006).

⁸⁷ Sullivan, *supra* n. 26, at 222; Kassem, *supra* n. 16, at 25.

⁸⁸ Moustafa, *supra* n. 31, at 906.

⁸⁹ Brown, *supra* n. 3, at 97; Moustafa, *supra* n. 31, at 896.

⁹⁰ Brown, *supra* n. 3, at 1.

⁹¹ Egyptian Constitution, *supra* n. 19, at art. 175.

⁹² Moustafa, *supra* n. 31, at 893-894. (Although its most important function is to engage in judicial review of legislation, the SCC is also empowered to resolve divergent interpretations of statutes and jurisdictional conflicts between judicial bodies.)

⁹³ Jason Brownlee, *The Decline of Pluralism in Mubarak's Egypt*, 13 *J. Democracy* 6, 9 (Oct. 2002); Moustafa, *supra* n. 31 at 924, 925.

⁹⁴ Brownlee, *supra* n. 95, at 9.

⁹⁵ Moustafa, *supra* n. 31 at 924, 925.

⁹⁶ *Changing the Gavel*, 653 *Al-Ahram Wkly.* (Aug. 28 - 3 Sept. 2003) (available at

<http://weekly.ahram.org.eg/2003/653/eg1.htm>).

⁹⁷ Amy Hawthorne, *Arab Electoral Commissions: Making the Vote Freer and Fairer?*, 3 *Arab Reform Bulletin* 1, 2 (September 2005) (available at <http://www.carnegieendowment.org/files/hawthorne1.pdf>).

⁹⁸ Noha El-Hennawy, *Reigning Supreme*, 27 *Egypt Today* (August 2006) (available at <http://www.egypttoday.com/article.aspx?ArticleID=6884>); El-Din, *supra* n. 85.

⁹⁹ Sherif, *supra* n. 82, at 40.

¹⁰⁰ Moustafa, *supra* n. 31, at 894; Ran Hirschl, *Constitutional Courts vs. Religious Fundamentalism: Three Middle Eastern Tales*, 82 *Texas L. Rev.* 1819, 1823 (2004).

¹⁰¹ Egyptian Constitution, *supra* n. 19, at art. 177.

¹⁰² Moustafa, *supra* n. 31, at 894.

¹⁰³ Awad M. El-Morr et. all, *The Supreme Constitutional Court and Its Role in the Egyptian Judicial System in Human Rights and Democracy: The Role of the Supreme Constitutional Court of Egypt* 42 (Kevin

Boyle & Adel Omar Sherif eds., Kluwer Law Intl. 1996).

¹⁰⁴ Hirschl, *supra* n. 102, at 1823.

¹⁰⁵ Moustafa, *supra* n. 31, at 924, 925.

¹⁰⁶ Brown, *supra* n. 3, at 1.

¹⁰⁷ *Id.*

¹⁰⁸ Sherif, *supra* n. 82, at 29.

¹⁰⁹ Egyptian Constitution, *supra* n. 19, at art. 175.

¹¹⁰ Moustafa, *supra* n. 31, at 906.

¹¹¹ *Id.* at 914. (In 1997 the ruling party members in the People's Assembly proposed legislation that would revoke the SCC's power of judicial review and render its decisions as merely advisory. Although this legislative effort was aborted, it reflects the ruling party's impatience with the SCC's independence.)

¹¹² El-Morr, *supra* n. 105, at 41.

¹¹³ *Id.* at 41, 42.

¹¹⁴ Brown, *supra* n. 3, at 104.

¹¹⁵ El-Morr, *supra* n. 105, at 47-51; Brown, *supra* n. 3, at 104.

¹¹⁶ U.N. Dev. Program, *supra* n. 42, at 170.

¹¹⁷ Brown, *supra* n. 3, at 97, 103.

¹¹⁸ *Id.* at 102.

¹¹⁹ Sullivan, *supra* n. 26, at 215; Brown, *supra* n. 3, at 104.

¹²⁰ Brown, *supra* n. 3, at 103, 105.

¹²¹ El-Morr, *supra* n. 105, at 46.

¹²² Brown, *supra* n. 3, at 119.

¹²³ Intl. Commission of Jurists, *supra* n. 45, at 131.

¹²⁴ Brown, *supra* n. 3, at 95.

¹²⁵ Moustafa, *supra* n. 31, at 883, 884.

¹²⁶ *Id.*

¹²⁷ Brown, *supra* n. 3, at 119.

¹²⁸ Moustafa, *supra* n. 31, at 883, 884, 886, 900, 902, 903, 914.

¹²⁹ *Id.* at 919. (Law 153 of 1999 was widely considered "the single most important piece of legislation governing associational life in decades.")

¹³⁰ Hirschl, *supra* n. 102, at 1832 n. 95. (In 1981 the SCC struck down a presidential decree that attempted to replace the elected leadership of the Bar Association with a providentially appointed board. It voided this law on the grounds that it unconstitutionally restricted the rights of professionals to choose their syndicate leaders.)

¹³¹ Farhang, *supra* n. 81, at 228 n. 17. ("[I]n Decision No. 56 of 1986, the Supreme Constitutional Court held that legislation which banned from politics persons involved in pro-government parties before the 1952 revolution was in violation of the constitutional right to free political association.") Moustafa, *supra* n. 31, at 895. ("Another ruling in 1988 forced the legalization of the opposition Nasserist Party against government objections.")

¹³² Brown, *supra* n. 3, at 104, 105. (The SSC decision handed down in 1987, which struck down electoral Law 114 of 1983 which prevented independent candidates from running for office on the grounds that it violated several constitutional provisions including Article 62 of the Constitution which grants citizens the right to select their elected representatives. Three years later the SCC struck down another electoral law, which restricted independent candidates' right to run for office, on similar constitutional grounds.)

¹³³ *Id.* at 104.

¹³⁴ Sullivan, *supra* n. 26, at 224.

¹³⁵ Moustafa, *supra* n. 31, at 920.

¹³⁶ Sullivan, *supra* n. 26, at 224.

¹³⁷ Moustafa, *supra* n. 31, at 921.

¹³⁸ Sullivan, *supra* n. 26, at 223.

¹³⁹ Hirschl, *supra* n. 102, at 1832 n. 95.

¹⁴⁰ U.N. Dev. Program, *supra* n. 42, at 170.

¹⁴¹ Saleh, *supra* n. 4, at 82.

¹⁴² Moustafa, *supra* n. 31, at 926.

¹⁴³ Kassem, *supra* n. 16, at 168; Sullivan, *supra* n. 26, at 223, 224.

¹⁴⁴ Moustafa, *supra* n. 31, at 903.

¹⁴⁵ Brown, *supra* n. 3, at 128.

¹⁴⁶ Moustafa, *supra* n. 31, at 907.

¹⁴⁷ *Id.*

¹⁴⁸ Brown, *supra* n. 3, at 128.

¹⁴⁹ Kassem, *supra* n. 16, at 38.

¹⁵⁰ Sullivan, *supra* n. 26, at 223.

¹⁵¹ Intl. Commission of Jurists, *supra* n. 45, at 131.

¹⁵² Moustafa, *supra* n. 31, at 904.

¹⁵³ Moustafa, *supra* n. 17, at 45.

¹⁵⁴ Moustafa, *supra* n. 31, at 905.

¹⁵⁵ *Id.*

¹⁵⁶ U.N. Dev. Program, *supra* n. 42, at 119. (Article 183 of the Constitution sanctions the executive's usurpation of power over the judiciary by vaguely asserting the existence of military courts without defining the scope of their jurisdiction.)

¹⁵⁷ Moustafa, *supra* n. 31, at 906 n. 45.

¹⁵⁸ *Id.* at 883, 905.

¹⁵⁹ Brown, *supra* n. 3, at 115 n. 61.

¹⁶⁰ Kassem, *supra* n. 16, at 37.

¹⁶¹ Davidson, *supra* n. 28, at 87.

¹⁶² Farhang, *supra* no. 81, at 233, 234.

¹⁶³ Moustafa, *supra* n. 31, at 905.

¹⁶⁴ Davidson, *supra* n. 28, at 87.

¹⁶⁵ Sullivan, *supra* n. 26, at 223.

¹⁶⁶ Egyptian Org. for Human Rights, *The Situation of Human Rights in Egypt: Annual Report 2003* 11 (EOHR 2005); Intl. Commission of Jurists, *supra* n. 45, at 128.

¹⁶⁷ Moustafa, *supra* n. 31, at 904, 906.

¹⁶⁸ *Id.* at 905, 906.

¹⁶⁹ *Id.* at 903, 904, 916. ("[T]he SCC has an interest in keeping highly sensitive political cases available on its dockets, because they can be used as a counterthreat against regime attacks on the court. Although it would be naive to believe that there is an institutional balance of power between the SCC and the regime, so too would it be a misrepresentation to portray the court as a powerless actor unable to provide positive and negative incentives (primarily the provision or denial of legal legitimacy) of its own to the regime.")

¹⁷⁰ *Id.* at 906.

¹⁷¹ Sullivan, *supra* n. 26, at 213.

¹⁷² Jon B. Alterman, *Egypt: Stable but for How Long?* 23 *Wash Q.* 107, 115 (Autumn 2000).

¹⁷³ Sullivan, *supra* n. 26, at 213.

¹⁷⁴ Sharp, *supra* n. 1, at 1.

¹⁷⁵ Stilt, *supra* n. 23, at 336.

¹⁷⁶ Lisa Blaydes, *Changes to Formal and Informal Political Institutions in Egypt*, *Al-Ahram Democracy Review* (Oct. 1, 2005) ("[W]ithout this exemption no opposition candidate would have been eligible since currently none of the opposition parties in parliament enjoy the minimum five percent level of representation.") Stilt, *supra* n. 23, at 349. ("The constitutional amendment contained a waiver of the minimum seat requirement for party-sponsored candidates for the first election under the new system. The amendment provided that for the first election, each political party was permitted to nominate one member of their leadership body, provided the leadership body was formed prior to May 10, 2005.")

¹⁷⁷ Dunne, *supra* n. 36, at 10; Blaydes, *supra* n. 178.

¹⁷⁸ Dunne, *supra* n. 36, at 10.

¹⁷⁹ Human Rights Watch, *supra* n. 88, at 4.

¹⁸⁰ Amr Hamzawy, *Opposition in Egypt: Performance in the Presidential Election and Prospects for the Parliamentary Elections* 2 n.3 (Policy Outlook No. 22, October 2005) (available at

http://www.carnegieendowment.org/files/PO22_hamzawy.FINAL.pdf).

- ¹⁸¹ Issandr El-Amrani, *Controlled Reform in Egypt: Neither Reformist Nor Controlled*, Middle E. Rpt. Online (December 15, 2005), <http://www.merip.org/mero/mero121505.html>.
- ¹⁸² Dunne, *supra* n. 36, at 10.
- ¹⁸³ Human Rights Watch, *supra* n. 88, at 1.
- ¹⁸⁴ Blaydes, *supra* n. 178; Sharp, *supra* n. 1, at 2.
- ¹⁸⁵ Nathan J. Brown & Amy Hawthorne, *Problems of Election Administration in Egypt*, 20 *Al-Ahram Democracy Review* (Oct. 2005) (available at <http://democracy.ahram.org.eg/eng>).
- ¹⁸⁶ Sharp, *supra* n. 1, at 3.
- ¹⁸⁷ Brown & Hawthorne, *supra* n. 187.
- ¹⁸⁸ Sharp, *supra* n. 1, at 3-5.
- ¹⁸⁹ Intl. Republican Inst., *supra* n. 47, at 3.
- ¹⁹⁰ Sullivan, *supra* n. 26, at 214.
- ¹⁹¹ Dunne, *supra* n. 36, at 6.
- ¹⁹² Sullivan, *supra* n. 26, at 214.
- ¹⁹³ Dunne, *supra* n. 36, at 5; Intl. Republican Inst., *supra* n. 47, at 7, 8.
- ¹⁹⁴ Moustafa, *supra* n. 31, at 923.
- ¹⁹⁵ Williams, *supra* n. 29, at A13.
- ¹⁹⁶ Dunne, *supra* n. 36, at 8.
- ¹⁹⁷ El-Amrani, *supra* n. 183.
- ¹⁹⁸ Moustafa, *supra* n. 31, at 920, 921.
- ¹⁹⁹ Stilt, *supra* n. 23, at 366, 367.
- ²⁰⁰ Moustafa, *supra* n. 31, at 921.
- ²⁰¹ Mustafa, *supra* n. 17, at 86.
- ²⁰² Brown & Hawthorne, *supra* n. 187.
- ²⁰³ Brown & Hawthorne, *supra* n. 187; Stilt, *supra* n. 23, at 351, 364, 365.
- ²⁰⁴ Hawthorne, *supra* n. 99 at 1.
- ²⁰⁵ *Id.* at 1, 2.
- ²⁰⁶ Blaydes, *supra* n. 178.
- ²⁰⁷ Dunne, *supra* n. 36, at 11.
- ²⁰⁸ Hawthorne, *supra* n. 99 at 2.
- ²⁰⁹ *Id.*
- ²¹¹ Intl. Republican Inst., *supra* n. 47, at 9; Sharp, *supra* n. 1, at 4. ("Egypt prohibited international monitoring, calling such action an infringement on its national sovereignty.")
- ²¹² Hawthorne, *supra* n. 99 at 1, 2.
- ²¹³ Brown & Hawthorne, *supra* n. 187.
- ²¹⁴ Stilt, *supra* n. 23, at 371.
- ²¹⁵ *Id.* at 340, 368.
- ²¹⁶ Sharp, *supra* n. 1, at 2.
- ²¹⁷ Sullivan, *supra* n. 26, at 215.
- ²¹⁸ Michael Slackman, *Religion Emerges as Force in Egypt Politics*, N.Y. Times A3 (November 9, 2005).
- ²¹⁹ Intl. Republican Inst., *supra* n. 47, at 28.
- ²²⁰ Human Rights Watch, *supra* n. 88, at 6.
- ²²¹ Intl. Republican Inst., *supra* n. 47, at 14, 15; Mustafa, *supra* n. 17, at 36.
- ²²² *International Covenant on Civil and Political Rights* pt. III, art. 22.
- ²²³ Manfred Nowak, U.N. *Covenant on Civil and Political Rights: CCPR Commentary* 387 (N.P. Engel 1993).
- ²²⁴ *Id.* at 386, 387.
- ²²⁵ Egyptian Constitution, *supra* n. 19, at art. 55.
- ²²⁶ Sullivan, *supra* n. 26, at 213.
- ²²⁷ Stilt, *supra* n. 23, at 355.
- ²²⁸ Dunne, *supra* n. 36, at 11, 15.
- ²²⁹ Human Rights Watch, *supra* n. 88, at 11.
- ²³⁰ Dunne, *supra* n. 36, at 11, 15.
- ²³¹ Human Rights Watch, *supra* n. 88, at 12; Joel Campagna, *From Accommodation to Confrontation: The Muslim Brotherhood in the Mubarak Years*, 50 *J. Intl. Affairs* 278, 281 n. 4 (Summer 1996).

²³² Mustafa, *supra* n. 17, at 35.

²³³ U.N. Dev. Program, *supra* n. 42, at 134.

²³⁴ Human Rights Watch, *supra* n. 88, at 11. (The administrative courts have overturned the PPC's denial of legal party status on at least eight occasions.)

²³⁵ U.N. Human Rights Committee, *supra* n. 15, at ¶ 22. (Citing Law 40 of 1977 as an impediment to the formation and functioning of political parties, the U.N. Human Rights Committee has criticized the government-imposed constraints on political parties.)

²³⁶ Moustafa, *supra* n. 31, at 895 n. 16.

²³⁷ Mustafa, *supra* n. 17, at 11, 35.

²³⁸ *Id.* at 37.

²³⁹ Intl. Republican Inst., *supra* n. 47, at 22, 26.

²⁴⁰ Dunne, *supra* n. 36, at 11.

²⁴¹ Jano Charbel, *There's no Pleasing Some People*, Cairo Magazine (Thurs., July 14, 2005) (available at http://www.cairomagazine.com/?module=display-story&story_id=1165&format=html).

²⁴² Carnegie Endowment for Intl. Peace, *supra* n. 70, at 14.

²⁴³ Moustafa, *supra* n. 31, at 895 n. 16.

²⁴⁴ Mustafa, *supra* n. 17, at 74.

²⁴⁵ Campagna, *supra* n. 233, at 278.

²⁴⁶ Moustafa, *supra* n. 31, at 895 n. 16.

²⁴⁷ El-Amrani, *supra* n. 183.

²⁴⁸ Kodmani, *supra* n. 22, at 20.

²⁴⁹ Charles Onians, *Supply and Demand Democracy in Egypt*, 21 *World Policy J.* 78, 79 (June 22, 2004).

²⁵⁰ Mustafa, *supra* n. 17, at 56.

²⁵¹ Kodmani, *supra* n. 22, at 20.

²⁵² *Id.*

²⁵³ Lynn Welchman, *Rocks, Hard Places and Human Rights: Anti-Terrorism Law and Policy in Arab States* in *Global Anti-Terrorism Law and Policy* 592 (Victor V. Ramraj, Michael Hor, Kent Roach eds., Cambridge University Press 2005). (Anti-Terror Law 97 of 1992, which was passed in response to increasing political violence committed by Islamic terrorists, contains loose-worded language prohibiting threats "aimed at disrupting the social order.")

²⁵⁴ Amnesty Intl., *supra* n. 11, at 2, 4.

²⁵⁵ Kassem, *supra* n. 16, at 148, 188.

²⁵⁶ Sullivan, *supra* n. 26, at 216.

²⁵⁷ Davidson, *supra* n. 28, at 85.

²⁵⁸ Kassem, *supra* n. 16, at 104; Denis J. Sullivan, *Non-Governmental Organizations and Freedom of Association: Palestine and Egypt - A Comparative Analysis* 30 (PASSIA Publishers, 1995). (It should be noted that many NGO's are legally registered but inactive.)

²⁵⁹ Davidson, *supra* n. 28, at 85.

²⁶⁰ Human Rights Watch, *Egypt: Margins of Repression State Limits on Nongovernmental Organization Activism* 17 *Human Rights Watch* 9 n.18 (July 4, 2005) (available at <http://hrw.org/reports/2005/egypt0705/egypt0705.pdf>).

²⁶¹ *Id.* at 8, 38.

²⁶² Kassem, *supra* n. 16, at 126.

²⁶³ Human Rights Watch, *supra* n. 262, at 30, 31, 38. (Law 84 requires MSA to approve all financial donations received by NGOs from international sources.)

²⁶⁴ Amnesty Intl., *supra* n. 11, at 5.

²⁶⁵ Moustafa, *supra* n. 31, at 919, 922.

²⁶⁶ Kassem, *supra* n. 16, at 112.

²⁶⁷ *Id.* at 126.

²⁶⁸ Sana Abeb-Kotob, *The Accommodationists Speak: Goals and Strategies of the Muslim Brotherhood of Egypt*, 27 *Intl. J. Middle E. Studies* 321, 329 (Aug. 1995).

²⁶⁹ Kassem, *supra* n. 16, at 112.

²⁷⁰ Campagna, *supra* n. 233, at 291. (Although the lawyers' syndicate is comprised of an estimated 140,000 dues-paying members, the engineers' syndicate has 200,000 dues-paying members with assets amounting

to nearly 60 million Egyptian pounds (\$15 million dollars).)

²⁷¹ Asef Bayat, *Revolution without Movement, Movement without Revolution: Comparing Islamic Activism in Iran and Egypt*, 40 *Comp. Stud. Socy. & History* 136, 165 (1998).

²⁷² Campagna, *supra* n. 233, at 292.

²⁷³ *Id.* at 290.

²⁷⁴ Kassem, *supra* n. 16, at 114.

²⁷⁵ *Id.* at 117.

²⁷⁶ Kassem, *supra* n. 16, at 116; Campagna, *supra* n. 233, at 295; Egyptian Org. for Human Rights, *supra* n. 168, at 160.

²⁷⁷ Human Rights Watch, *supra* n. 88, at 8.

²⁷⁸ Amira Howeidy, *The Battle is Not Over*, 801 *Al-Ahram Wkly.* (June 29- July 5 2006) (available at <http://weekly.ahram.org.eg/2006/801/fr2.htm>).

²⁷⁹ Hamzawy, *supra* n. 182, at 4.

²⁸⁰ Brown, *supra* n. 3, at 100

²⁸¹ Dunne, *supra* n. 36, at 9.

²⁸² *Id.*

²⁸³ Intl. Republican Inst., *supra* n. 47, at 10, 11; Human Rights Watch, *supra* n. 88, at 9.

²⁸⁴ Dunne, *supra* n. 87, at 8.

²⁸⁵ Howeidy, *supra* n. 280.

²⁸⁶ Kodmani, *supra* n. 22, at 6.

²⁸⁷ Alterman, *supra* n. 174, at 108.

²⁸⁸ Sullivan, *supra* n. 26, at 220.

²⁸⁹ U.S. Dept. of State, *supra* n. 32.

²⁹⁰ Tamir Moustafa, *Conflict and Cooperation Between the State and Religious Institutions in Contemporary Egypt*, 32 *Intl. J. Middle E. Studies* 3, 5, 17 (2000).

²⁹¹ Kodmani, *supra* n. 22, at 7.

²⁹² Moustafa, *supra* n. 292, at 3, 5, 17.

²⁹³ *Id.*

²⁹⁴ Kodmani, *supra* n. 22, at 9.

²⁹⁵ *Id.*

²⁹⁶ Moustafa, *supra* n. 292, at 3.

²⁹⁷ Rania Al Malky, *From 'Citizens' to 'Voters'*, 26 *Egypt Today* (September 2005) (available at <http://www.egypttoday.com/article.aspx?ArticleID=5672>).

²⁹⁸ Kodmani, *supra* n. 22, at 8.

²⁹⁹ Moustafa, *supra* n. 292, at 3.

³⁰⁰ Kodmani, *supra* n. 22, at 13.

³⁰¹ *Id.* at 8.

³⁰² *Id.* at 5.

³⁰³ *Id.* at 11, 13.

³⁰⁴ *Id.* at 15.

³⁰⁵ *International Covenant on Civil and Political Rights* pt. III, art. 19.

³⁰⁶ Human Rights Watch, *supra* n. 331, at 12.

³⁰⁷ Egyptian Constitution, *supra* n. 19, at art. 48.

³⁰⁸ *Id.* at art. 49.

³⁰⁹ Egyptian Org. for Human Rights, *The 37th Cairo International Book Fair: A New Setback for Freedom of Opinion and Expression*, <http://www.eohr.org/report/2005/re0326.htm> (March 26, 2005).

³¹⁰ Carregie Endowment for Intl. Peace, *supra* n. 70, at 11.

³¹¹ Sullivan, *supra* n. 26, at 216.

³¹² Fandy & Hearn, *supra* n. 14, at 115, 116.

³¹³ *Id.* at 119, 120.

³¹⁴ Intl. Republican Inst., *supra* n. 47, at 28; Cairo Institute for Human Rights Studies, *Monitoring the Media Coverage of Egypt's Presidential Campaigns 2005: 17 August - 4 September 2005* 5, http://www.cihrs.org/Act_file/PDF/70_1672006410_1.pdf (Sept. 6, 2005).

³¹⁵ Fandy & Hearn, *supra* n. 14, at 115, 116.

³¹⁶ Charbel, *supra* n. 243.

³¹⁷ Fandy & Hearn, *supra* n. 14, at 118.

- ³¹⁸ U.S. Dept. of State, *supra* n. 32.
- ³¹⁹ *Id.* (The Ministry of Information owns all ground-based domestic television and radio stations in Egypt.)
- ³²⁰ Intl. Republican Inst., *supra* n. 47, at 29; Cairo Institute for Human Rights Studies, *supra* n. 316, at 6, 7.
- ³²¹ Amnesty Intl., *supra* n. 11, at 10.
- ³²² Noha El-Hennawy, *Pressing Charges*, 27 Egypt Today (August 2006) (available at <http://www.egypttoday.com/article.aspx?ArticleID=6885>).
- ³²³ Human Rights Watch. *Egypt: Journalists Still Risk Jail Under Press Law*, <http://hrw.org/english/docs/2006/07/11/egypt13712.htm> (July 11, 2006).
- ³²⁴ El-Hennawy, *supra* n. 324.
- ³²⁵ Kassem, *supra* n. 16, at 57; Egyptian Org. for Human Rights, *EOHR's report about press freedom in Egypt: Journalism In Egypt: Caught Between Laws And the Government*, <http://www.eohr.org/report/2006/re0821-2.shtml> (July 12, 2006).
- ³²⁶ Human Rights Watch, *supra* n. 325.
- ³²⁷ Kassem, *supra* n. 16, at 57.
- ³²⁸ El-Hennawy, *supra* n. 324.
- ³²⁹ Human Rights Watch, *Reading between the "Red Lines": The Repression of Academic Freedom in Egyptian Universities*, 17 Human Rights Watch Report 12, 13 n. 38 (June 9, 2005) (available at <http://hrw.org/reports/2005/egypt0605/egypt0605text.pdf>).
- ³³⁰ Egyptian Org. for Human Rights, *supra* n. 168, at 92.
- ³³¹ Human Rights Watch, *supra* n. 331, at 34.
- ³³² *Id.* at 35.
- ³³³ *Id.* at 41.
- ³³⁴ Trevor Mostyn, *Censorship in Islamic Societies* 145, 146, 150 (Saqi Books 2002).
- ³³⁵ U.S. Dept. of State, *supra* n. 32.
- ³³⁶ Mostyn, *supra* n. 336, at 148, 149.
- ³³⁷ U.S. Dept. of State, *Egypt: Country Reports on Human Rights Practices - 2004* (Feb. 28, 2005) (available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41720.htm>).
- ³³⁸ Human Rights Watch, *supra* n. 331, at 74.
- ³³⁹ Kodmani, *supra* n. 22, at 18.
- ³⁴⁰ *Id.* at 19.
- ³⁴¹ *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967).
- ³⁴² Human Rights Watch, *supra* n. 331, at 5.
- ³⁴³ U.N. Committee on Economic, Social and Cultural Rights, *Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 13, The Right to Education (Art. 13)* ¶¶ 38-40 (U.N. Doc. E/C.12/1999/10, Dec. 8, 1999) (available at <http://www.unhcr.ch/tbs/doc.nsf/Symbol/ae1a0b126d068e868025683c003c8b3b?Opendocument>).
- ³⁴⁴ Human Rights Watch, *supra* n. 331, at 16, 17.
- ³⁴⁵ *Id.* at 3.
- ³⁴⁶ Campagna, *supra* n. 233, at 295, 296. (In the early 1990's supporters of the MB gained majorities in the governing councils of faculty clubs at several prominent Egyptian universities.)
- ³⁴⁷ Human Rights Watch, *supra* n. 331, at 7, 31, 32.
- ³⁴⁸ *Id.* at 50.
- ³⁴⁹ *Id.* at 46.
- ³⁵⁰ *Id.* at 33.
- ³⁵¹ *Id.* at 7.
- ³⁵² *Id.* at 85.
- ³⁵³ Egyptian Constitution, *supra* n. 19, at art. 54.
- ³⁵⁴ *Id.* at art. 55.
- ³⁵⁵ *International Covenant on Civil and Political Rights* pt. III, art. 21.
- ³⁵⁶ Human Rights Watch, *supra* n. 331, at 58 n. 247.
- ³⁵⁷ U.N. Dev. Program, *supra* n. 42, at 120.
- ³⁵⁸ U.S. Dept. of State, *supra* n. 32.
- ³⁵⁹ Dunne, *supra* n. 36, at 8.
- ³⁶⁰ Kassem, *supra* n. 16, at 25.
- ³⁶¹ El-Hennawy, *supra* n. 86.