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in constitutional conventions and popular conferences. Although I have by no means reviewed all the literature or explored specific legislative developments, in ongoing constitutional debates ideas of “freedom to” and “protection from” were steadily refined and expanded. It is simply wrong, or a wrongful simplification, to represent this as a polarization between traditionalists and modernists or Islamic versus Western values, for we have seen a range of political perspectives weigh in on human rights issues. Moreover, there is nothing traditional about the neo-Islamist rejection of “human rights;” many Yemenis searched their own intellectual heritage for legal, moral, and logical support for international conceptions of human rights. If rights are not respected, it is not because traditions and values stand in the way but because actual practices do not stand up to stated, widely held ideals.

Chapter 10 Got Rights? Public Interest Litigation and the Egyptian Human Rights Movement

Tamir Moustafa

When human rights activist Saad Eddin Ibrahim and his twenty-seven colleagues were ushered into an Egyptian Emergency State Security Court on February 26, 2001, it was effectively the entire Egyptian human rights movement that stood trial. Despite a campaign by international human rights groups, a vigorous legal defense, and testimony from some of Egypt’s most respected figures, Ibrahim was found guilty and sentenced to seven years in prison for “propagating false information and vicious rumors abroad . . . which would weaken the state’s prestige and integrity.”¹ Although Ibrahim and his colleagues were eventually acquitted by the Court of Cassation and released in March 2003, there was little to celebrate. The two-year ordeal was the final assault on a movement that had endured years of government harassment, crippling new legislation regulating NGO activity, and financial strangulation through the closing of foreign funding sources. By the time of Ibrahim’s release, little remained of a human rights movement that just a few years earlier had promised to be the most effective force for political reform in the Arab world.

Why did the Egyptian government act so forcefully to shut down the country’s fledgling human rights organizations? One clear motive was to derail a movement that had brought international attention to the regime’s unsavory methods of political control. But more importantly, political retrenchment was the reaction to a productive synergy that had emerged among Egyptian human rights organizations, opposition parties, and progressive judicial activists in the state’s own court system.

In this chapter, I examine how opposition and human rights activists

mobilized through Egypt's relatively independent judicial institutions to challenge the regime in ways that were never possible in other formal political arenas.² I explore how the Egyptian Supreme Constitutional Court, in particular, enabled political activists to credibly challenge the regime for the first time since the 1952 military coup by simply initiating constitutional litigation, a process that required few financial resources and allowed activists to circumvent the state's highly restrictive, corporatist political framework. I find that constitutional litigation provided institutional openings for political activists to challenge the state in ways that fundamentally transformed patterns of interaction between the state and society by enabling activists to challenge the regime without having to initiate a broad social movement, a task that is all but impossible in Egypt's highly restrictive political environment.³ Ironically, however, I also find that the advantages of legal mobilization eventually impaired the ability of human rights organizations to effectively defend themselves against increasingly aggressive legal and extralegal assaults without broad-based societal support.

The Judicialization of Egyptian Politics

Egyptian judicial institutions and the Egyptian legal profession have a long and rich history of progressive political activism.⁴ Although independent judicial power was impaired through much of the Nasser and Sadat eras, courts reemerged as prominent political institutions with the establishment of the independent Supreme Constitutional Court (SCC) in 1979, and with judicial reforms to the civil and administrative courts in 1984.⁵ Almost immediately, opposition activists mobilized through the courts to achieve important victories.⁶ In one of its earliest rulings, the SCC enabled hundreds of prominent opposition activists, such as Wafd Party leader Fuad Serag Eddin, to return to political life.⁷ Another ruling in 1988 forced the legalization of the Nasserist Party against government objections.⁸ The SCC even ruled national election laws unconstitutional in 1987 and 1990, forcing the dissolution of the People's Assembly, a new electoral system, and early elections.⁹ Similar rulings forced comparable reforms to the system of elections for both the Upper House (Maglis al-Shura) and local council elections nationwide.¹⁰ Although rulings on election laws hardly undermined the regime's grip on power, they did significantly undermine the regime's corporatist system of opposition control.¹¹

Even when the regime reversed course and initiated a campaign of political retrenchment throughout the 1990s, judicial institutions became the main avenue of political resistance.¹² Opposition activists continued to score victories in the SCC throughout the decade, most

TABLE 10.1. EGYPTIAN POLITICAL PARTIES IN 1995

Party	Date of establishment	Avenue for attaining legal status
NDP (ruling party)	1976	presidential decree
Tagemmu Party	1976	presidential decree
Liberal Party (Ahrar)	1976	presidential decree
Socialist Labor Party	1977	approved by Political Parties Committee
Wafd Party	1978	administrative court ruling
Umma Party	1983	administrative court ruling
Green Party	1990	administrative court ruling
Misr al-Fatah Party	1990	administrative court ruling
Union Democratic Party	1990	administrative court ruling
Nasserist Party	1992	SCC ruling
Populist Democratic Party	1992	administrative court ruling
Egypt Arab Socialist Party	1992	administrative court ruling
Social Justice Party	1993	administrative court ruling
Al-Takaful	1995	administrative court ruling

notably in the area of press liberties. In February 1993, the SCC struck down a provision in the code of criminal procedures that required defendants in libel cases to present proof validating their published statements within a five-day period of notification by the prosecutor.¹³ On the heels of this legal victory, the Labor Party successfully challenged a provision of Law 40/1977 concerning the opposition press and various criminal liability in front of the SCC.¹⁴ The court initially took a cautious approach in its 1995 decision by limiting the ruling of unconstitutionality to the president of political parties. However, just two years later, the SCC extended its ruling to ban the application of vicarious criminal liability to libel cases involving the editors in chief of newspapers.¹⁵

Judicial activism in the administrative courts and the SCC also enabled opposition activists to successfully challenge decisions of the regime-dominated Political Parties Committee and to gain formal opposition party status. By 1995, ten of Egypt's thirteen opposition parties owed their very existence to court rulings (see Table 10.1).

Opposition parties and human rights organizations, once at odds with one another, also began to understand that they were fighting the same struggle for political reform. In the mid-1990s they started to work with one another, and cooperative efforts began to bear fruit almost immediately. This is perhaps best exemplified by their effort to monitor the 1995 People's Assembly elections. Six months prior to the elections, leading human rights organizations in conjunction with the major opposition parties announced their plans to establish the Egyptian National

Commission for Monitoring Parliamentary Elections. The idea of a citizen-based electoral monitoring commission was a historic first for Egypt, but the campaign picked up considerable momentum in a short period of time. In just a few months, the commission had grown to involve over 100 academics, over 600 human rights activists, many prominent journalists, and the five most important opposition parties.¹⁶ Dr. Saad Eddin Ibrahim, professor at the American University in Cairo and head of the Ibn Khaldun Center for Development Studies, was appointed secretary-general.¹⁷ The goal of the commission was to monitor the election from start to finish and to systematically document electoral corruption in Egypt for the first time in order to induce pressure for political reform and to generate documentation that would facilitate litigation in the courts.

The findings of the commission were startling. In the months leading up to the elections, the commission documented hundreds of irregularities in voting lists and harassment by government officials.¹⁸ Human rights groups also recorded the regime's crackdown on opposition candidates. Two months before the election, the unofficial headquarters of the Muslim Brotherhood was closed by the government, and eighty-five leading Islamists, including four former members of the People's Assembly, were tried before a military court. In the month leading up to the election, 1,392 more Islamists and opposition party members were detained so that opposition candidates would be unable to place representatives at the polling stations to prevent government-orchestrated election fraud.¹⁹ Additionally, election campaign materials for opposition figures were seized, dozens of election workshops were derailed, and opposition marches were prevented or suppressed. Human rights organizations documented thousands more irregularities during the election itself including physical assaults on voters and candidates, ballot box stuffing, vote buying, and other forms of electoral fraud, as well as the extensive use of state resources for regime-friendly candidates.²⁰ By all accounts, the 1995 People's Assembly elections were the most corrupt and violent on record, with 60 people killed and up to 820 seriously injured.

The cooperation between opposition parties and human rights groups through the national commission produced immediate results. In the months following the elections, 914 petitions challenging election results across the country proceeded on to the Court of Cassation. The detailed reports and extensive documentation provided by human rights organizations were the most important pieces of evidence in these cases. Judges concluded that electoral fraud was rampant, ruling that 226 seats in the People's Assembly (over half of the total 444 seats)

should be disqualified. Opposition parties lauded the Egyptian judiciary for its role in exposing the corruption of the regime with headline banners such as, "Judges Confirm the Collapse of Governmental Legitimacy."²¹ Opposition newspapers continued to publicize the irregularities and gave a prominent voice to the findings of human rights groups. *Al-Sha'b* described the elections as "a massacre," *Al-Wafd* described them as "the worst elections in Egypt's history," and even articles printed in the government-run newspaper, *Al-Akhabar*, could not deny that "The names of living persons disappeared and those of the dead reappeared."²²

Despite impressive success in the courts, however, not a single seat was turned over to opposition candidates and no new elections were held for seats ruled invalid by the administrative courts. As in previous elections, the regime-dominated People's Assembly invoked Article 93 of the constitution, which explicitly states that "the People's Assembly shall be competent to decide upon the validity of the membership of its members. . . . Membership shall not be deemed invalid except by a decision taken by a majority of two-thirds of the Assembly members." Fathi Sarour used this article to justify the refusal of court rulings and instead claimed that the People's Assembly would initiate its own hearings into allegations of election fraud.²³ Moreover, the High Administrative Court issued a ruling on November 17, 1996, that gave the People's Assembly, rather than the administrative courts, the final word on election challenges. The ruling dismayed opposition activists, and judges were disturbed by their inability to have rulings implemented. However, in this circumstance, the explicit wording of the constitution itself prevented the judiciary from playing a more assertive role.²⁴

Following the 1995 People's Assembly elections, Egyptian opposition parties again turned to the SCC in an attempt to break the regime's control of elections. Lawyers representing the main Egyptian opposition parties worked together to challenge the constitutionality of the election law, and their focus turned to Article 88 of the Egyptian Constitution, which states that "the law shall determine the conditions which members of the Assembly must fulfill as well as the rules of election and referendum, while the ballot shall be conducted under the supervision of the members of a judicial organ" (emphasis added). Using this article, opposition activists filed court cases challenging the legal framework governing elections, which allowed for state employees to supervise election substations where the majority of electoral forgery occurred. As we will see, these efforts paid off handsomely five years later when the SCC ruled in favor of full judicial supervision of elections.

Got Rights? The New Battleground of Public Interest Litigation

The 1990s also saw a new breed of Egyptian human rights organizations that went beyond simply documenting human rights abuses to confronting the government in the courts. The most aggressive group engaged in public interest litigation was the Center for Human Rights Legal Aid (CHRLA), established by the young and forceful human rights activist Hisham Mubarak in 1994. CHRLA quickly became the most dynamic human rights organization, initiating 500 cases in its first full year of operation, 1,323 cases in 1996, and 1,616 by 1997.²⁵ CHRLA's central mission was to provide free legal representation to those who had experienced human rights violations at the hands of the government. Additionally, CHRLA documented human rights abuses and used the cases that it sponsored to publicize the human rights situation. As with every other human rights group in Egypt, CHRLA depended almost completely on foreign funding, but throughout the mid-1990s foreign funding sources proved plentiful and CHRLA quickly expanded its operations, opening two regional offices in Alexandria and Aswan.

In hopes of emulating the model provided by CHRLA, human rights activists launched additional legal aid organizations with different missions. The Center for Women's Legal Aid was established in 1995 to provide free legal aid to women dealing with a range of issues including divorce, child custody, and various forms of discrimination. The center initiated 71 cases in its first year, 142 in 1996, and 146 in 1997 in addition to providing legal advice to 1,400 women in its first three years of activity. The Land Center for Human Rights joined the ranks of legal aid organizations in 1996 and dedicated its energies to providing free legal aid to peasants. With the land reform law (Law 96 of 1992) coming into full effect in October 1997, hundreds of thousands of peasants faced potential eviction in the late 1990s and lawsuits between landlords and tenants began to enter into the courts by the thousands. Between 1996 and 2000 the Land Center for Human Rights represented peasants in over 4,000 cases and provided legal advice to thousands more.²⁶ The Human Rights Center for the Assistance of Prisoners (HRCAP) similarly provided legal aid to prisoners and their families by investigating allegations of torture, monitoring prison conditions, and fighting the phenomenon of recurrent detention and other abuses through litigation. In its first five years of operation, HRCAP launched over 200 court cases per year and gave free assistance (legal and otherwise) to 7,000–8,000 victims per year.²⁷ Opposition parties began to offer free legal aid as well, with the Wafd Party's Committee for Legal Aid providing free legal representation in over 400 cases per year beginning in 1997.²⁸ Similarly, the

Lawyers Syndicate was active in providing legal aid, and it greatly expanded its legal aid department until the regime froze its functions in 1996.

By 1997, legal mobilization had unquestionably become the dominant strategy for human rights defenders because of the difficulty of creating a broad social movement under the Egyptian regime. Gasser Abdel Razeq, director of the Center for Human Rights Legal Aid and later the Hisham Mubarak Center for Legal Aid, firmly contended that "in Egypt, where you have a relatively independent judiciary, the only way to promote reform is to have legal battles all the time. It's the only way that we can act as a force for change." A strong and independent judiciary was so central to the strategy of the human rights movement that activists went beyond simply facing threats to the judiciary and the legal profession on an ad hoc basis; in 1997 activists institutionalized their support for judicial independence by founding the Arab Center for the Independence of the Judiciary and the Legal Profession (ACIJLP).

Under the direction of Nasser Amin, former legal director of the Egyptian Organization for Human Rights (EOHR), the ACIJLP set to work organizing conferences and workshops that brought together legal scholars, opposition party members, human rights activists, and important figures from the Lawyers Syndicate and Judges Association. The ACIJLP began to issue annual reports on the state of the judiciary and legal profession, extensively documenting government harassment of lawyers, critiquing state sequestration of the Lawyers Syndicate, and exposing the regime's interference in the normal functions of judicial institutions. Like other human rights groups, the ACIJLP established ties with international human rights organizations including the Lawyers Committee for Human Rights and attempted to leverage international pressure on the Egyptian government.

But the sophistication of these legal campaigns reached new heights when the leadership of CHRLA began to understand that legal challenges in the SCC were potentially the most effective avenue to challenge the regime because constitutional litigation could induce systemic changes. According to Gasser Abdel Raziq, this change in legal tactics came with the 1997 SCC ruling on Article 195 of the penal code, a major case that CHRLA lawyers had helped prepare.²⁹ CHRLA attorneys and the human rights movement in general were already following the activism of the SCC with considerable interest. Abdel Raziq recalled that

we were encouraged by [Chief Justice] Awad al-Morr's human rights language in both his formal rulings and in public statements. This encouraged us to have a dialogue with the Supreme Constitutional Court. CHRLA woke up to the idea that litigation in the SCC could allow us to actually change the laws and not just achieve justice in the immediate case at hand.³⁰

Beginning in late 1997, CHRLA initiated a campaign to systematically challenge repressive legislation in the SCC. CHRLA's first target was Law 35 of 1976, which governed trade union elections. CHRLA initiated fifty cases in the administrative and civil courts, all with petitions to challenge the constitutionality of Law 35 in the SCC. Ten of the fifty cases were successfully transferred, and within months the SCC issued its first verdict of unconstitutionality against Article 36 of the law.³¹ CHRLA also successfully advanced three cases to the SCC that challenged sections of the penal code concerning newspaper publication offenses and three additional cases dealing with the social insurance law.³² CHRLA was further encouraged by activist judges in the regular judiciary who publicly encouraged groups in civil society to challenge the constitutionality of NDP legislation. Some activist judges went so far as to publicize their opinion of laws in opposition newspapers and vowed that if particular laws were challenged in their court, they would transfer the relevant constitutional question to the SCC without delay.³³

The ruling of unconstitutionality on Law 35 and the additional fourteen pending decisions in a three-year period represented a tremendous achievement, given the slow speed of litigation in Egyptian courts and the relatively meager resources at the disposal of the human rights movement. Although the results may seem modest, the human rights community came to understand that constitutional litigation was perhaps the most effective way to challenge the regime. Until the CHRLA campaign, activists, opposition parties, and individuals initiated cases in an ad hoc fashion, but CHRLA's coordinated strategy of constitutional litigation was a first.

The SCC had drawn the interest of the Egyptian human rights community for years, but CHRLA's successful constitutional challenges prompted the rest of the human rights community to consider the possibility of constitutional litigation more seriously. A number of conferences and workshops were sponsored to examine the possibilities afforded by constitutional litigation, some of which brought together human rights associations and SCC justices.³⁴

Other human rights organizations were eager to emulate CHRLA's approach. The Land Center for Human Rights set their sights on contesting the constitutionality of the regime's land reform program as well as a variety of labor laws. By the close of 2001, the Land Center successfully transferred two cases to the SCC. The first petition challenged the constitutionality of Law 96 of 1992, liberalizing owner-tenant relations in the countryside. The other petition challenged the constitutionality of Law 177 of 1967, which governed the activities of the Principal Bank for Agricultural Development and Credits. Like other human rights activists, lawyers at the Land Center said they were encouraged by the

many bold SCC rulings on political issues. However, human rights activists attempting to safeguard the last vestiges of Nasser-era economic rights for the poor were far more pessimistic about the possibility of successfully defending these rights through the SCC, despite the many socialist-oriented provisions in the constitution, because of the free-market orientation of many of the justices on the SCC.

Ironically, as human rights groups used litigation as their primary tool for challenging the regime, they themselves were without solid legal footing due to the restrictions of Law 32/1964 governing civil associations and periodic interference from the Ministry of Social Affairs.³⁵ Constitutional litigation therefore became the dominant strategy not only for challenging government legislation but also for challenging the Law on Associations to expand the legal foundation of civil society itself. At an NGO workshop convened by the Cairo Institute for Human Rights Studies in December 1996, leading human rights activists began to consider constitutional litigation as the most effective avenue for challenging Law 32 and for liberalizing the legal framework that constrained NGO activities. Discussions revolved around the previous rulings of the SCC, the legal basis for challenging the constitutionality of Law 32/1964, and a strategy for initiating litigation and transferring cases to the SCC. The final position paper of the workshop stated that

The freedom of forming associations is documented in the Egyptian Constitution. The Supreme Constitutional Court has asserted in its rulings that if the constitution authorizes the legislator to organize a constitutional right (like the right to form associations by groups or individuals), this entails that the right is not taken away, undermined or complicated. . . . the participants thus have called for proceeding with legal appeals that cast doubt over the constitutionality of the law.³⁶

More than ever, it was apparent that the "constitutional consciousness" of civil society had reached a new plateau. Moreover, the discussion of the legal basis for challenging the constitutionality of the law took on increasing sophistication. In addition to discussing how specific articles of Law 32 violated the constitution, participants in the workshop considered how the law violated the International Covenant on Civil and Political Rights, which had been ratified by the Egyptian government. The discussion of how the law violated Egypt's international treaty commitments was no longer a strictly academic debate because under the leadership of Justice Awad al-Morr, the SCC had demonstrated that international laws signed into force would be used to support the court's interpretations of constitutional provisions. The legal tactics of human rights activists engaged in constitutional litigation began to mirror the

language of the court to take advantage of the opportunity that the SCC was providing.

Constitutional litigation was also combined with other tactics. Throughout 1997, a network of sixteen human rights organizations, three leading opposition parties, and a number of prominent academics drafted a new bill on associations. The draft law sought to remove legal restrictions on the establishment of civil associations and to restrict the regime's ability to interfere in the activities of NGOs. By February 1998, the draft law was presented to the People's Assembly by Ali Fateh Bab of the Labor Party, Ayman Nour and Fouad Badrawi of the Wafd Party, and Mohammed Abdel Aziz Shabban of the Tagammu Party. Opposition parties never expected the legislation to pass through the People's Assembly. Rather, they used the draft law as an opportunity to expose the shortcomings of Law 92 in opposition newspapers and to draw attention to the campaign to challenge the constitutionality of the law in front of the SCC.

Political Retrenchment and the Human Rights Movement

By the mid-1990s, the regime's discomfort with the human rights movement reached new levels. In just over a decade, the movement had grown to over a dozen organizations, many of which had established strong links with the international human rights community and had achieved observer status in a number of international human rights regimes, such as the United Nations Economic and Social Council. The human rights movement increasingly leveraged international pressure on the Egyptian regime through these channels. Domestically, moreover, human rights organizations had begun to cooperate closely with opposition parties and professional syndicates, as demonstrated most effectively in their resistance to Law 95/1995 (a press law) and their campaign in monitoring the 1995 People's Assembly elections. Moreover, the most dynamic human rights organizations increasingly used public interest litigation in the courts as an effective avenue to challenge the regime.

In response, the regime began to turn the screws on the human rights movement as early as 1995 through intimidation, smear campaigns in the state press, and discouraging donor organizations from contributing to local human rights NGOs. Beginning in 1998, however, the regime engaged in a full-fledged campaign to undermine the human rights movement after the EOHR published an extensive report on a particularly shocking episode of sectarian violence in the village of Al-Kosheh in August 1998. The EOHR report uncovered not only the details of one of Egypt's worst bouts of sectarian violence, a politically taboo subject in

itself, but also that hundreds of citizens were tortured at the hands of state security forces for weeks following the incident. In response to the report, Hafez Abu Sa'ada, secretary-general of the EOHR, was charged by state security prosecutors with "receiving money from a foreign country in order to damage the national interest, spreading rumors which affect the country's interests, and violating the decree against collecting donations without obtaining permission from the appropriate authorities."³⁷ Abu Sa'ada was detained for six days of questioning and then released on bail. The trial was postponed indefinitely but the charges remained on the books.³⁸ Abu Sa'ada's interrogation was a warning to the human rights community that strong dissent and foreign funding would no longer be tolerated by the regime. In the aftermath of Abu Sa'ada's interrogation, the EOHR acquiesced to government pressure and stopped accepting foreign funding.

The following year, the regime issued a new law governing NGO activity that tightened the already severe constraints imposed by Law 32/1964. Law 153/1999 first eliminated the loophole that had allowed NGOs to operate as civil companies and forced human rights organizations to submit to Ministry of Social Affairs (MOSA) supervision or face immediate closure. The new law additionally forbade civil associations from engaging in "any political or unionist activity, the exercise of which is restricted to political parties and syndicates." Moreover, MOSA maintained the right to dissolve any association "threatening national unity or violating public order or morals."³⁹ The new law also struck at the Achilles heel of the human rights movement by further constraining its ability to receive foreign funding without prior government approval.⁴⁰ Additionally, Law 153 prevented NGOs from even communicating with foreign associations without first informing the government.⁴¹ These new regulations were clear attempts by the regime to place new constraints on human rights groups that were effectively leveraging international pressure on the Egyptian regime through transnational human rights networks. The greatest asset of the human rights movement now became its greatest vulnerability. Moreover, the vulnerability of the human rights movement went beyond the material support and institutional linkages that were jeopardized by the new law; the moral authority of the human rights movement was increasingly challenged as the regime framed the movement's dependence on foreign support as nothing short of sedition. Law 153 was accompanied by a smear campaign in the state-run press in which human rights groups were portrayed as a treasonous fifth column, supported by foreign powers that only wished to tarnish Egypt's reputation and sow internal discord.

The human rights movement mobilized considerable opposition to

the new associations law in a short period of time. Within a week, human rights groups organized a press conference at which they contended that Law 153 violated the constitution and they vowed to fight it in the SCC if it was not repealed. At the same time, human rights groups met with major opposition parties and professional syndicates and secured their support. Days later, a national NGO coalition was convened, bringing together over one hundred associations from across the country. NGOs committed to mobilize domestic and international pressure on the regime through a demonstration in front of the People's Assembly, a weeklong hunger strike, and litigation in the courts. International pressure came quickly with statements from Human Rights Watch, Amnesty International, the International Federation of Human Rights, the Lawyers Committee for Human Rights, and others.

But the regime proved its resolve to rein in human rights NGOs when the state security prosecutor announced in February 2000 that the case against human rights defender Hafez Abu Sa'ada would be reopened and that he would be tried before the Emergency State Security Court under Military Decree 4/1992 for accepting money from foreign donors without governmental approval.⁴² The charges carried a maximum sentence of seven years in prison. The announcement came when Abu Sa'ada was in France and for two weeks following the announcement, Abu Sa'ada remained in Paris, allegedly considering political asylum. Zakaria Azmi, chief of the presidential staff, and Kamal el-Shazli, minister of parliamentary affairs, were dispatched to France to negotiate with Abu Sa'ada and defuse the embarrassing political incident. Abu Sa'ada returned to Egypt in March but the trial was not held, possibly because of a deal cut with the authorities. However, just as charges were not dropped following Abu Sa'ada's 1998 interrogation, the new charges against him were not formally withdrawn, once again allowing the authorities to resume the case at any time in the following ten years. The charges cast a shadow not only over Abu Sa'ada and the EOHHR but over the entire human rights movement, which depended almost entirely on foreign funding.

The new NGO law, government intimidation, and restrictions on foreign funding threatened to shut down the entire human rights movement. Worse still, rifts within the human rights community emerged over how to deal with the regime's new assault. Some human rights groups, such as the EOHHR, declared their intention to fight the new associations law through official avenues but to comply with its requirements by formally registering. Alternately, the Group for Democratic Development decided to suspend its activities in March 2000 to protest the new law, the renewal of emergency law, and the Abu Sa'ada interrogation. The Center for Human Rights Legal Aid (CHRLA), the single

most important human rights organization engaged in litigation, faced internal splits when hardliners and softliners disagreed on whether to acquiesce to the new law or to fight it. As a result, CHRLA split into two organizations, with the softliners acquiescing and registering their new Association for Human Rights Legal Aid and the hardliners, forming the majority of CHRLA lawyers, establishing the new Hisham Mubarak Center for Legal Aid under the leadership of Gasser Abdel Razeq.⁴³ The lack of coordination between human rights organizations and discord within the organizations themselves interfered with their ability to present a united front against the regime.

With the future of the human rights movement looking more bleak each day, a ray of hope emerged in April 2000 when the commissioner's body of the SCC issued its preliminary report on a constitutional challenge to Law 153/1999. The case involved an NGO from Tanta by the name of al-gam'iyya al-shari'yya, which was fighting an order by the MOSA that barred several of the NGO members from running in elections for the group's board of directors. By June 3, 2000, the SCC issued its final ruling in the case, striking down the single most important piece of legislation governing associational life in decades.⁴⁴ The SCC crafted and delivered the ruling in a strategic way that maximized the ruling's impact without precipitating a direct confrontation with the regime. First, the SCC issued its ruling only five days before the end of the 2000 People's Assembly session, making it difficult for the regime to issue a new associations law. As a result, NGOs were effectively granted a minimum of a five-month lease on life. More important, this lease on life came at perhaps the most critical time for human rights activists and pro-democracy reformers because national elections for the next People's Assembly were just months away and activists hoped to play a prominent role in monitoring the elections as they had done for the first time in 1995.⁴⁵

The 2000 People's Assembly Elections

In the lead-up to the 2000 People's Assembly elections, the topic of electoral reform emerged once again and the convergence of interests among opposition parties, NGOs, and judicial personnel was never more clear. Khaled Mohieddin, leader of the leftist Tagemmu Party, submitted a bill to the People's Assembly for election reforms on behalf of the main opposition parties. The bill called for elections to be supervised and administered by a "Supreme Election Committee" composed of nine high-ranking judges from the Court of Appeals and Court of Cassation, rather than the Ministry of Interior. The bill also called for a number of procedural changes in the voting process, such as the reform

of existing voter lists, safeguards designed to cut electoral fraud, and full judicial supervisions of polling stations. Egyptian judges and NGOs backed opposition reform proposals in a number of public venues. In a "Justice Conference" sponsored by the Judges Association, a resolution was issued with unanimous consent urging the amendment of the law on the exercise of political rights prior to the 2000 People's Assembly elections. The Arab Center for the Independence of the Judiciary and the Legal Profession also held a forum in February 2000 on the topic of judicial supervision for the upcoming elections.⁴⁶ The forum brought together prominent judges including the former head of the Judges Association, Justice Yehya al-Rifa'i, the vice chairman of the Court of Cassation, Justice Ahmed Mekky, and a number of representatives from the various opposition parties and NGOs. Articles circulated in the opposition newspapers highlighting the possibilities for electoral reform and the efforts of the opposition parties, NGOs, and legal professionals themselves to introduce the reforms.

When it became clear that the government would not respond to opposition demands, Saad Eddin Ibrahim and other human rights activists initiated work to build a network of human rights organizations to monitor the 2000 elections, just as they had done with great success with their national commission in 1995. But the regime proved its determination to rein in the human rights movement with or without the associations law that the SCC had struck down just weeks earlier. On June 30, 2000, Ibrahim was arrested on charges of "accepting funds from a foreign party with the purpose of carrying out work harmful to Egypt's national interest and disseminating provocative propaganda that could cause damage to the public interest."⁴⁷

The Egyptian human rights community again mobilized international pressure. Within days, nine international human rights organizations including Amnesty International and Human Rights Watch issued a joint statement condemning Ibrahim's detention and calling for his immediate release. Pressure also came from the U.S. embassy when it reportedly raised concerns at "the highest levels" with the Egyptian government. The international pressure proved effective and Ibrahim was released after two months of detention. As with the detention of Hafiz Abu Sa'ada, however, the charges against Ibrahim were not dismissed. Instead, they were simply suspended and a trial could be initiated at any time.

Just days after Ibrahim and his colleagues were taken into detention, the SCC retaliated once again with another bombshell ruling, this time demanding full judicial supervision of elections for the first time in Egyptian history. The SCC ruling stated unequivocally that Article 24 of Law 73/1956 was unconstitutional because it allowed for public sector

employees to supervise polling stations despite the fact that Article 88 of the constitution guaranteed that "the ballot shall be conducted under the supervision of members of the judiciary organ."⁴⁸ Once again, what the opposition was unable to achieve through the People's Assembly over the previous three decades they were eventually able to bring about through constitutional litigation. Although opposition activists had been critical of the SCC for stalling on issuing a decision, they celebrated the ruling as a great step forward for democracy in Egypt. The Wafd Party's Ayman Nour went so far as to admit that the SCC had virtually replaced the role of opposition parties in driving the reform agenda when he stated that "this ruling and the previous others will unquestionably affect the future of domestic politics. . . . the judiciary has nearly taken over the role of the political parties in forcing the government to take action in the direction of greater democracy."⁴⁹

Saad Eddin Ibrahim contended that the timing of the ruling, coming a full ten years after the case was transferred to the SCC, was almost surely related to the regime's efforts to stifle the ability of the human rights movement to monitor elections as they had done in 1995. According to Ibrahim, "The timing of the SCC ruling on judicial supervision of elections clearly had to do with this case [the detention of Ibn Khaldun Center staff]. The SCC could have made the ruling a year earlier or a year later. The decision came at this time for a reason."⁵⁰

The focus of state-society contention quickly turned to implementation of the SCC ruling. Within a week, Mubarak issued a presidential decree that amended Law 73/1956 yet again to ensure that there would be continuous judicial monitoring of all voting stations, including auxiliary stations. In order to do this, the elections would be held in three successive stages, covering different regions of the country, and auxiliary voting stations would be combined in order to reduce their number. But it soon became clear that the regime was determined to maintain whatever control it could over the electoral process to minimize the impact of the SCC ruling. Rather than give oversight control to the Judges Association, the Supreme Judicial Council, or an ad hoc committee of judges, oversight remained with the Ministry of the Interior and the Ministry of Justice, both under the direct control of the executive. Interior Minister Habib al-Adli was promptly charged with appointing judges to polling stations and Prosecutor General Abd al-Wahed was appointed to chair a judicial committee within the Ministry of Justice charged with administering judicial supervision. Additionally, many of the judicial personnel selected to cover polling stations were drawn from the prosecutor's office (*nisyaba*), an institution under the direct control of the executive branch. Moreover, the government announced that judicial personnel participating in election monitoring would receive a £E 6,600

bonus (\$1,700) at the end of the elections. This represented a tremendous sum of money for judges on state salaries, and reformers were immediately concerned that the bonus would be used as a stick and carrot to encourage "cooperation" with the regime's interests.⁵¹

In addition to subjecting judges and prosecutors to the direct management of the executive authority, it also became clear that the regime would compensate for decreased control inside the voting stations by increasing repression outside the voting stations. As in previous years, the election cycle brought about the predictable repression of the Islamist movement. The Emergency Law gave the regime the legal cover to launch a new campaign of arrests and detentions of Muslim Brotherhood members, and throughout the summer of 2000 as many as 750 suspected Brotherhood members were arrested and 250 more were detained. By the time of the People's Assembly elections, another 1,600 Islamists had been taken into custody.⁵² Not surprisingly, most of those arrested were prospective candidates or campaign organizers for the upcoming elections.⁵³

Earning his release from detention in August 2000, Ibrahim returned to the work of organizing the monitoring campaign for the People's Assembly elections. Although the government expected that the detention would silence Ibrahim, he promptly returned to the American University in Cairo to deliver a public lecture humorously titled "How I Spent My Summer: Diary of a Prisoner of Conscience." Ibrahim slammed the regime for holding back political reforms and used his speech to call for volunteers to help in monitoring elections. For the next several weeks, Ibrahim and his colleagues worked feverishly to organize the monitoring campaign. Ibrahim was already compiling initial reports focusing on the obstacles that opposition candidates faced when he was taken back into custody. The prosecutor's office announced that Ibrahim and his twenty-seven colleagues would stand trial in the Emergency State Security Court. Ibrahim was formally charged with "disseminating rumors with the purpose of undermining Egypt's reputation" and accepting unauthorized funding from a foreign source in violation of Military Decree 4 of 1992. Despite a campaign by international human rights groups, a vigorous legal defense, and testimony from some of Egypt's most respected figures, including the vice president of the World Bank, Ibrahim was found guilty and sentenced to seven years in prison.

Ibrahim's detention, trial, and sentencing sent a chill through the human rights community. As a respected professor with extensive connections in Egypt and abroad (even the wife of President Mubarak was a former student of Ibrahim) and dual Egyptian-U.S. citizenship, Ibrahim

im's detention and trial proved the regime's determination to prevent the emergence of a civil society coalition resembling the National Commission for Monitoring the 1995 Parliamentary Elections. The majority of human rights activists decided to play it safe and abandon an extensive campaign to monitor the 2000 elections.

Moreover, because of the suffocation of the human rights movement through restrictions on foreign funding, human rights groups did not have the resources to mount an adequate monitoring campaign as they did in 1995. By the eve of the 2000 elections, the Group for Democratic Development had been dissolved, the entire staff of the Ibn Khaldun Center was on trial, the EOHR was forced to close four of its regional offices and reduce its staff in Cairo by 60 percent, and the remainder of the human rights groups decided not to actively participate in election-monitoring activities for fear of being shut down by the government.⁵⁴ Only the EOHR dared to monitor the elections, but due to its precarious financial and legal condition its staff was only able to monitor less than 20 percent of constituencies compared with over 40 percent that the EOHR monitored in the 1995 elections.⁵⁵ Moreover, had it not been for the election coming in three stages, human rights groups would have had the capacity to monitor less than 7 percent of constituencies as compared with the nearly 60 percent monitored by the Egyptian National Commission for Monitoring the 1995 Parliamentary Elections. Reduced monitoring during the 2000 elections resulted in less documentation of violations by the regime and fewer lawsuits in the administrative courts.

Despite the weakened capacity of the human rights movement to monitor electoral fraud, the full judicial supervision brought about by the SCC ruling had a clear impact on the ability of opposition candidates to win. By all accounts, the 2000 People's Assembly elections were the cleanest *inside* the polling stations, although the degree of coercion outside polling stations reached unprecedented levels. Perhaps the most surprising outcome in the first two rounds was the strong showing of Muslim Brotherhood candidates. The Brotherhood took fifteen seats in the first two rounds, more than any other opposition trend, and this despite the arrest and detention of thousands of Brotherhood activists.⁵⁶ Judicial monitoring was also credited as the likely reason why prominent and longstanding NDP figures suffered early losses, including Ahmed Khayry (head of NDP for Alexandria), Mohamed Abdullah (chair of the foreign relations committee), and Mahmoud Abu el-Nasr (chair of the planning and balancing committee).

By the end of the second stage, Egyptian human rights groups were already celebrating that "judicial supervision has ended the period of filling ballots with fake names, which was prevalent in previous elections."⁵⁷ At the same time, however, opposition parties and human

rights groups highlighted the fact that what the regime could not produce inside the voting stations, it tried to induce outside the stations.⁵⁸ Arrests of hundreds of Brotherhood members continued throughout the three stages and state security forces prevented voters from entering polling stations. According to the EOHR, "In the third stage, security blockades were not limited to a few polling stations, but were extended to block whole roads leading to polling stations, and sometimes up to 2 to 3 kilometers from the stations."⁵⁹ Maamoun el-Hodeibi, the leader of the Muslim Brotherhood, lamented that "elections are not about ballot boxes only. Inside the polling stations nobody can tamper with the process, but outside it is like a war."⁶⁰

Increased coercion in the third round contained opposition advances, but the total number of seats won by opposition forces was still greater than they had enjoyed since 1990. By the end of the third round, formal opposition parties had won sixteen seats, independent candidates affiliated with the Muslim Brotherhood won a further seventeen seats, independent Nasserist candidates won five, and unaffiliated independent candidates won fourteen seats. Independent candidates for the Muslim Brotherhood had for the first time won more seats in the People's Assembly than all of the candidates standing for election from the formal opposition parties combined, despite the intense campaign of government repression in the lead-up to the elections.

As with previous rulings on the electoral law, the SCC ruling on judicial monitoring did not dislodge the regime from power, but it did have a significant effect on the means by which the regime maintained its power. Once again, the regime was forced to resort to even more extreme forms of extralegal coercion to ensure that the SCC ruling would not undermine the NDP's grip on power. Yet, despite the increased reliance on extralegal coercion, the regime took every opportunity to capitalize on the SCC ruling. President Mubarak addressed the opening session of the new People's Assembly and hailed both the SCC ruling and full judicial monitoring as a great step forward in the march of democracy. The televised speech was intended to showcase the legitimacy of the voting process in the 2000 People's Assembly elections and to assure the public that the widespread electoral fraud, which had reached unprecedented levels for the 1995 People's Assembly, was a thing of the past. But the continued shift from pseudo-legal to extralegal control increasingly exposed the hypocrisy of the regime; the growing disparity between the regime's constitutionalist rhetoric and its repressive measures was untenable. While Mubarak publicly praised the SCC for its service to democracy, the regime was preparing to deal a blow to SCC independence behind closed doors.

The Supreme Constitutional Court Compromised, a New NGO Law Issued

With the retirement of Chief Justice Asfour in late 2001, the regime would have its opportunity to rein in the SCC. To everyone's surprise, including SCC justices, the government announced that Mubarak's choice for the new chief justice would be none other than Fathi Naguib, the man who held the second most powerful post in the Ministry of Justice. Opposition parties, the human rights community, and legal scholars were stunned by the announcement. Not only had Fathi Naguib proved his loyalty to the regime over the years, but he had drafted the vast majority of the regime's illiberal legislation over the previous decade, including the oppressive law 153/1999 that the SCC had struck down only months earlier. Moreover, by selecting a chief justice from outside the justices sitting on the SCC, Mubarak also broke a strong norm that had developed over the previous two decades. Although the president of the republic always retained the formal ability to appoint whomever he wished for the position of chief justice, constitutional law scholars, political activists, and justices on the court themselves had come to believe that the president would never assert this kind of control over the court and that he would continue to abide by the informal norm of simply appointing the most senior justice on the SCC.⁶¹ Mubarak proved them wrong.

The threat to SCC independence was compounded when Fathi Naguib announced that he would expand the number of justices on the SCC by 50 percent by recruiting five judges, four from the Court of Cassation and another from the Cairo Court of Appeals.⁶² Even more troubling were reports that upon reaching the SCC, Naguib proposed that justices on the court be divided into three benches: one would continue to handle petitions of constitutional review; the other two would concentrate on questions of jurisdiction between courts and interpretation of legislation, the other formal roles of the SCC. The prospect of a divided bench coupled with the regime's demonstrated willingness to pack the court raised the possibility that activist judges would be isolated on the benches concerned with jurisdictional disputes and legislative interpretation, leaving the far more important role of constitutional review to the new appointees. Although Naguib's initial attempt to implement this reform was rebuffed by other SCC justices, sources believe that this issue remains unresolved and a renewed attempt to introduce a divided bench may be still be in store.

Several months later, the government issued a new association law (84/2002) to replace Law 153/1999, which had been struck down by the SCC. The new law proved to be just as draconian, giving the Ministry of

Social Affairs the power to reject or dissolve any association threatening "public order or public morality."⁶³ But this time around, the human rights movement and opposition activists had been so weakened by the government's continuous assaults they could do little to oppose it. The regime proved its intent to apply the full force of the law when it ordered the closing of the New Woman Research Center and the Land Center for Human Rights in June 2003.⁶⁴

Conclusions

In an authoritarian polity, the potential for any given reform movement is perhaps best measured by the way the regime responds to its new opponents. If a regime does little or nothing at all and opponents are left to organize free of interference, the opposition probably does not pose a viable threat to the regime's control. But when the state takes drastic measures to control its opponents, it is a sure sign that the regime believes it faces a credible threat from the opposition, or at least that it faces a potential threat that it would like to confront early on rather than giving it the ability to gain momentum.

The Egyptian regime's aggressive response to both the SCC and its supporters is proof that constitutional litigation and SCC activism increasingly posed a credible threat to the regime's tools for maintaining control. The SCC provided an effective new avenue for activists to challenge the state through one of its own institutions. Success in battling the regime's restrictive NGO law as well as successful litigation forcing full judicial supervision of elections illustrated how human rights groups and opposition parties had become increasingly adept at using judicial institutions to successfully challenge the regime and defend their interests. Moreover, the SCC's willingness to confront the regime with its landmark rulings on NGOs and full judicial monitoring of elections proved once again the commitment of SCC justices to a political reform agenda.

However, just as the SCC and Egypt's civil society coalition built a movement based on the converging interests of the court, opposition parties, and human rights organizations, so, too, was the regime able to incapacitate this cooperative effort by successively undermining each element of the movement through legal and extralegal tactics. Rather than neutralizing the SCC outright in the mid-1990s, the regime instead adopted the subtler strategy of simply moving against the SCC's supporters. The Lawyers Syndicate was neutralized by 1996, human rights associations faced near total collapse by 1999 due to intimidation and restrictions on foreign funding, and opposition parties were progressively weakened throughout the period, despite SCC rulings on political

rights. By undercutting each support group, the regime effectively killed two birds with one stone; undermining support groups impaired their ability to monitor the regime's increasingly aggressive violations of civil and human rights while at the same time disabling their capacity to raise litigation and mount an effective defense of the SCC when it came under attack.

The ultimate collapse of the human rights movement, the continued weakness of opposition parties, and the institutional assault on the SCC demonstrate how litigation alone, without support from broad sectors of society, was insufficient to protect the SCC-civil society coalition from collapse. Public interest litigation had become the most effective tool for human rights organizations and opposition activists to challenge the state because it provided an effective strategy for challenging the regime in lieu of a broad social movement. But the continued focus on litigation and the inability of human rights organizations and opposition parties to expand their constituencies ultimately undermined the long-term prospects for the reform movement. If a new, more vigorous human rights movement is to emerge in Egypt, it must effectively address these weaknesses.