



# **Universal Periodic Review: Egypt**

## **Second Cycle**

### **Submission to the Stakeholders' Summary**

**Geneva, 14 March 2014**

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## **1 Introduction**

1. During its first Universal Periodic Review (UPR) in 2009, Egypt accepted numerous recommendations, including to bring its laws in line with international standards. This report seeks to shed light on Egypt's constitutional framework and the extent to which Egypt has worked to change its laws and/or practice with regards to torture, fair trial standards, detention, freedom of expression and assembly, and accountability for extra-judicial killings.

2. In February 2011, Egypt was rocked by the downfall of its President, Hosni Mubarak following a popular revolution. Following Mubarak's ouster, the Supreme Command of the Armed Forces (SCAF) held power until the presidential elections which brought Muslim Brotherhood candidate Mohamed Morsi to power in June 2012, with 51.73% of votes. Morsi's presidency lasted until 3 July 2013 when he was deposed by the military following large scale demonstrations. The head of the Constitutional Court, Adli Mansour, was nominated by the army as interim president. Unfortunately, none of those who have held power in Egypt since the revolution have fulfilled the aspirations of the Egyptian people who sought to rid their country of authoritarianism on 25 January 2011. This is evidenced by the authorities' lack of meaningful efforts to align legislation and practice with international standards over the past four years.

## **2 Constitutional and Legislative Framework**

3. Since Egypt's last UPR, the country witnessed three different constitutions respectively adopted in September 1971, December 2012 and January 2014. The second was adopted by referendum, with 63.8% of voters in favour, and the third at a staggering 98.1% after it had been drafted by a 50-person assembly appointed by the military. Egypt also witnessed two constitutional declarations adopted in March 2011 and July 2013 respectively. While the emergency law in place since 1981 expired on 31 May 2012, a state of emergency was declared against on 14 August 2013, ending three months later. In the current constitution, the President can declare a state of emergency after consultation with the Cabinet and with the approval of the Parliament.

4. As it currently stands since the adoption of the 2014 constitution, Egypt is a republic whose executive is headed by the President of the Republic elected by the people for a maximum of two four-year terms. The legislative, unlike the previous constitution, is composed of one chamber, the Parliament, elected by direct suffrage.

5. Egypt's National Council for Human Rights experienced the same tribulations as the country. In February 2011, the members of the Council resigned following the 2011 revolution. In September 2012 during Morsi's presidency, the Shura Council elected the 27 members of the Council. After the military takeover of July 2013 a new membership of the Council was appointed by the military-backed executive in August 2013.

## **3 International Obligations and Cooperation with Human Rights Mechanisms**

6. Egypt, which ratified the International Covenant on Civil and Political Rights (ICCPR) in 1982, has not ratified the Optional Protocol relating to individual complaints (ICCPR-OP1). Its report for the Committee has been overdue since 2004.

7. Egypt ratified the Convention against Torture (CAT) in 1991 but has not made declarations under articles 21 and 22 of the Convention allowing for individual and state-to-state complaints. It has not ratified the Optional Protocol to the Convention (OPCAT) that would provide for better oversight of places of detention, refusing a recommendation from France to that end during its last UPR in 2010. Its report for the Committee against Torture has been overdue since 2004.

8. Egypt has not ratified the Rome Statute nor the International Convention on Enforced Disappearance.

9. Furthermore, Egypt has failed to implement the decisions of the Working Group on Arbitrary Detention that sought the release of individuals who were arbitrarily detained. Nor has it accepted

requests for visits by a number of Human Rights Council-mandated Special Procedures mandate-holders.<sup>1</sup>

## 4 Torture

10. During its last UPR, Egypt agreed to align article 126 (on the definition of torture) of its penal code with article 1 of the CAT.

11. Until today, article 126 has remained the same. It contains a very restrictive definition of torture, fostering impunity for such acts. Egypt has attempted to amend article 126 by expanding the definition of torture found therein, with the latest attempt dating from February 2013 when a draft was referred to the Senate. This draft would have brought the definition of torture closer to international standards, but it still fell short of the definition in article 1 of CAT.

12. Torture and other forms of cruel, inhumane and degrading treatment and punishment (ill-treatment) are carried out in a systematic way in Egypt. It is part of the usual practice of the Egyptian authorities, carried out by police, military and prison authorities. It is most common at the initial arrest stage where suspects are beaten. Torture and other forms of ill-treatment also include sexual harassment of the victim, such as rape, beatings on the genitals, and virginity and pregnancy tests. Torture is also inflicted on minors. Torture and ill-treatment have also been used during protests against demonstrators to intimidate them. Alkarama has documented cases of individuals tortured after being caught holding insignia indicating their political affiliation, or expressing their political opinions in other ways. Torture and ill-treatment also manifests itself in deplorable conditions of detention such as overcrowded or dirty and unhygienic cells.

13. Impunity for acts of torture is also widespread. Egyptian authorities, specifically prosecutors and prisons directors, do not react as they should when faced with torture allegations. Alkarama has documented cases of torture whereby prosecutors ignored medical certificates that attest to such acts, or have prosecuted people based on confessions that they were aware had been coerced.

14. Another face of impunity is the lenient sentences handed down to officials implicated in torture or other forms of ill-treatment, in the rare cases they are prosecuted.

### 15. Recommendations:

- a) Amend article 126 of the Penal Code to include a definition of torture that does not fall short of the benchmark of the definition found in article 1(1) of the CAT.
- b) End the practice of torture by conducting prompt and impartial investigations into alleged acts of torture and bring those responsible to justice, ratify OPCAT and submit Egypt's overdue report to the CAT.

## 5 Fair Trial

### 5.1 Trials in Prison

16. The Minister of Justice has issued decisions that transferred trials from the courthouse to prison, undermining the fair trial requirements of impartiality and independence of judges, for reasons of security. This also violates the right for trials to be held in public, as established in article 14 of the ICCPR. The most recent of these decisions is decision No. 8587 of 3 November 2013, signed by the Minister of Justice himself. Alkarama has publicly expressed its concern about this issue.<sup>2</sup>

### 17. Recommendation:

- a) Stop trials in prisons.

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<sup>1</sup> For example, the Special Rapporteur on human rights defenders in 2010 and 2012, Special Rapporteur on executions in 2013, the Special Rapporteur on human rights and counter-terrorism's request for a follow up visit in 2011 and 2012, the Working Group on Arbitrary Detention in 2011 and 2012 and the Special Rapporteur on freedom of association and assembly in 2011 and 2013.

<sup>2</sup> Alkarama, [Egypt: Stop Unlawful Prison Trials](#), 22 November 2013 (accessed 3 March 2014).

## 5.2 Military Trials

18. Egypt's last two constitutions enshrined the practice of military trials of civilians despite strong opposition by civil society. Egypt's National Council for Human Rights also manifested its opposition to this practice. It stated that such trials violate the right to a fair trial by an ordinary judge when commenting on sentences handed down by a military court in Suez against civilians on 3 September 2013.<sup>3</sup> The 2014 Constitution also allows this practice, in article 204 (2). Despite efforts to define the jurisdiction of courts, some provisions are unclear and can be interpreted expansively, such as one that grants military courts jurisdiction over crimes that are "a direct assault against the officers or personnel of the Armed Forces by reason of performing their duties."<sup>4</sup> Journalists have been convicted by military courts in Egypt for spreading "false" news about Egypt's military campaign in the Sinai.

19. Practice has shown that Egypt's military courts indeed fail to meet fair trial norms. These trials are remarkably expeditious, in contrast with the situation in normal courts, where trials are usually excessively long. In the latest military trial documented by Alkarama, individuals were arrested on 14 August 2013 and convicted on 3 September 2013. In addition, military courts are not the right venue to handle cases of human rights violations by the military, as it is unlikely military prosecutors and judges would be inclined to hold their colleagues accountable due to the military hierarchy in place.

20. By permitting the trials of civilians by military courts, Egypt is violating its international obligations. The African Commission on Human Rights has for example stated that "[m]ilitary courts should not in any circumstances whatsoever have jurisdiction over civilians."<sup>5</sup>

### 21. Recommendation:

- a) Repeal all laws that allow trial of civilians by military courts.

## 5.3 Arbitrary Detention

22. During the Mubarak and SCAF eras, Egypt witnessed a substantial number of individuals administratively detained without being charged, or tried pursuant to the state of emergency.

23. It is concerning that Egypt's laws on administrative detention for individuals under investigation or awaiting trial are not in line with international standards. Even more unfortunate is the amendment by Law 83 (adopted on 23 September 2013) to article 143 of Egypt's Code of Criminal Procedure. This amendment removes the maximum limit of two years of administrative detention for persons convicted by the court of first instance if the sentence handed down is life imprisonment or the death penalty. This paves the way for indefinite administrative detention.

24. Egyptian administrative detention laws, and more generally the practice of the authorities (i.e. prosecutors) on deciding whether to order this form of detention fail to take into account that administrative detention is an exceptional measure. Having documented hundreds of cases of arbitrary detention in Egypt, Alkarama has found that the practice of prosecutors is far from conform to international standards, with administrative detention ordered in cases where there is absolutely no necessity. Most worrying is the administrative detention of minors for non-violent crimes.

25. In addition, Alkarama notes with dismay that it is prosecutors, rather than judges that rule on questions of administrative detention, despite the fact that human rights law requires a judge to rule on this matter.<sup>6</sup> Also, the length of time between when charges are brought against the accused and the start of the trial is generally very long, and thus violates the right to have a trial within a reasonable time and the right to presumption of innocence when the accused is detained.

### 26. Recommendation:

- a) End use of administrative detention.

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<sup>3</sup> Egypt National Council for Human Rights, *The Council Demands to Stop Trials of Civilians Before Military Courts*, 5 September 2013 (accessed 27 January 2014).

<sup>4</sup> An informal English translation of the constitution is available online on the State's Information Services: <http://www.sis.gov.eg/Newvr/Dustor-en001.pdf> (accessed 3 March 2014).

<sup>5</sup> African Commission on Human Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003) Principle G(c).

<sup>6</sup> Human Rights Committee, *Torobekov v. Kyrgyzstan*, No. 1547/2007, 2011 (CCPR/C/103/D/1547/2007) para. 6.2.

## 6 Violation of the Right to Freedom of Expression and Assembly

### 6.1 Right to Freedom of Opinion and Expression

27. Journalists have not enjoyed freedom to express their ideas freely, and there have been widespread closures of media outlets since the military takeover. Attacks on journalists have taken various forms. Some were interrogated, like Bassem Youssef, a well-known TV comedian questioned in March 2013 for insulting religion. Others have been convicted, such as Mohamed Sabry, a journalist covering the military campaign in Sinai who received a six-month suspended sentence by the North Sinai Misdemeanour Military Court in November 2013. Similarly, human rights defenders have also been interrogated, temporarily arrested or sentenced for expressing their opinions, or participating in demonstrations. Membership of a political group may also lead to arrest. Since the military takeover on 3 July 2013, a wave of arrests has been launched against Muslim Brotherhood members and supporters who expressed their opposition to the takeover.

### 6.2 Right to Freedom of Assembly

28. The Egyptian authorities have attempted to build a legal framework to circumscribe the right to freedom of assembly, particularly since the military takeover. Alkarama has systematically denounced these attempts, first by condemning the draft "demonstration law" that was discussed under Morsi's presidency<sup>7</sup>, and later the draft law under *interim* president Adli Mansour that was promulgated in November 2013.<sup>8</sup> It is unfortunate that Egyptian president promulgated the bill without taking into account the National Council for Human Rights' recommendations on the draft. After the promulgation of the law, the Council expressed its opposition to the adopted text, and regretted that the government did not take its recommendations into account.<sup>9</sup> The law places draconian restrictions on the right to freedom of assembly and expression, and contradicts Egypt's commitment to align its laws with international standards.

29. Infringements of the right to freedom of assembly were not restricted to the passing of this law, but have been a feature of Egyptian life over the past four years, during which peaceful demonstrators were subjected to all sorts of abuse, including arrest, conviction and death. Prosecutors have indicted peaceful demonstrators on a variety of charges, including degrading public property and even terrorism.

### 30. Recommendation:

- a) Cease infringements on the right to freedom of expression, assembly and association by allowing the free circulation of opinions in whatever form, and amending laws that permit restrictions on these rights such as the Law on Demonstrations.

## 7 Extra-judicial Killing of Demonstrators and Lack of Accountability

31. Egypt's Law on Demonstrations permits the use of force in circumstances that extend beyond what is permitted under international law, particularly in article 13. It permits the use of force to protect property and possessions, not just when there is a threat to life or serious injury.

32. The Egyptian authorities have often resorted to violent repression of demonstrations in the past four years. This was the case during the 2011 revolution, and under the SCAF and President Morsi, as Alkarama has documented. However, the killing of protestors became more systematic and widespread after the 3 July 2013 military takeover. Between then and the end of 2013, Alkarama documented some 1450 protestor deaths, with a staggering number of cases of protestors who did not pose a threat but were nevertheless shot with live ammunition. However, the violence peaked on 14 August 2013 when security forces dispersed the anti-coup Rabaa' Al-Adawiyah and Nahda sit-ins. This violence appears to have been planned in advance, as indicated by statements made by political and military figures prior to the violent dispersals, and seems to point to a desire to escalate the

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<sup>7</sup> Alkarama, [Egypt: Draft Demonstration Law Restricts Right to Freedom of Expression](#), 5 June 2013, (accessed 3 March 2014).

<sup>8</sup> Alkarama, [Egypt: New Draft Law on Demonstrations Disregards Fundamental Rights Enshrined in International Conventions](#), 29 October 2013, (accessed 3 March 2014).

<sup>9</sup> Egypt National Human Rights Council, [Press Release on the Law on Demonstrations](#), 26 November 2013, (accessed 30 January 2014).

situation.<sup>10</sup> Alkarama followed developments that day closely, and sought the intervention of relevant Special Procedures to ensure that an investigation into the killings in conformity with international standards takes place. This call for an investigation has been echoed by the international community, most recently by a group of 27 states speaking at the 25<sup>th</sup> session of the Human Rights Council.<sup>11</sup>

33. This is necessary, as Egypt has failed to deliver proper accountability for the killing of demonstrators since the 2011 revolution. Egyptian courts have been unable to end impunity. And while commissions of inquiries have been constituted under the SCAF and Mohamed Morsi and Adli Mansour to investigate the killing of demonstrators, they have not lead to results which would ensure an end to impunity. Under the presidency of Mohamed Morsi, a fact-finding commission was established pursuant to Decision 10 of 20 July 2012 to investigate the killing and injuring of demonstrators from 25 January 2011 to 30 June 2012 and determine who was responsible for protestor deaths. The findings were submitted to President Morsi in December 2012, who refused to publish the results. Under interim president Adli Mansour, the National Council for Human Rights established a commission of inquiry into the events of 14 August 2013. Unlike its predecessor under Morsi, this commission has weak investigation powers, and investigation it carries out are unlikely to conform to international standards. Its report, published on 5 March 2014, identified 632 deaths<sup>12</sup>, while other official figures were much higher, and NGOs reporting figures close to 1000 killed<sup>13</sup>.

#### **34. Recommendations:**

- a. Cease using excessive force against demonstrators by repealing laws that allow for excessive amount of force to be used, and provide effective training to security officials managing demonstrations.
- b. Launch an investigation meeting international standards into the killing of demonstrators since 25 January 2011, and where applicable, bring the persons responsible to justice and provide effective redress to victims.

## **8 Anti-Terrorism Legislation**

35. Following the military takeover, the fight against terrorism has been instrumentalised to clampdown on freedoms. Former Muslim Brotherhood leaders, including the former President, himself a member of the MB, have been arrested and charged for crimes involving terrorism.

36. The broad definition of terrorism in article 86 of the Criminal Code falls short of international standards. Concerns about article 86 have already been voiced by the Special Rapporteur on human rights and counter-terrorism.<sup>14</sup> The definition should be limited to the working definition provided in UN Security Council resolution 1566.

#### **37. Recommendation:**

- a) All persons accused of terrorism for having exercised their lawful right under international law, whether appearing before civil or military courts, should be released immediately.

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<sup>10</sup> Alkarama, [Egypt: Ensure accountability for crimes against humanity](#), 16 August 2013, (accessed 12 March 2014).

<sup>11</sup> [Statement delivered by Iceland on behalf of 27 countries at the 13<sup>th</sup> meeting of the 25<sup>th</sup> session of the UN Human Rights Council](#), 7 March 2013. See for more information (accessed 12 March 2014).

<sup>12</sup> Middle East Monitor, [Military-appointed panel blames protesters for Rabaa massacre](#), 6 March 2014, (consulted 12 March 2014).

<sup>13</sup> 13 Egyptian and international NGOs, [Egypt: No Acknowledgment or Justice for Mass Protester Killings](#), 10 December 2013 (accessed 12 March 2014).

<sup>14</sup> Human Rights Council, [Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism submitted to the Human Rights Council at its thirteenth session](#), 14 October 2009, (A/HRC/13/37/Add.2), p.6.