



Egypt: National Council for Human Rights

**The Egypt's national institution for human rights before the
International Coordinating Committee of NHRIs**

Alkarama Foundation

24 June 2016

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1. Introduction

The Egyptian National Council for Human Rights (NCHR) was established by Law n°94 of 2003 and it was reviewed by the Sub-Committee on Accreditation of the International Coordination Committee of NHRIs (SCA) in 2006, for its initial accreditation. The SCA decided to recommend the accreditation of the NCHR with status B and requested the institution to provide further "*detailed assurances of its independence*".¹ Following new information received from the Egyptian NCHR, the SCA recommended that the NCHR be accredited with status A in October 2006.

In light of the internal circumstances in Egypt and the resignation of all NCHR members following the 2011 revolution, the SCA deferred the NCHR's re-accreditation for one year in October 2011.² At its November 2012 session, the SCA deferred the re-accreditation again, underlining that the envisaged amendments to the NCHR enabling law had failed to be adopted, especially after the upper house of Parliament was dissolved. As in 2011, the SCA made recommendations to the NCHR, particularly citing "*concerns about the selection and appointment process, the duration of appointment of members, security of tenure, appropriately defining the grounds and process for dismissal of members, access to places of detention and confinement and a broader mandate to promote and protect human rights.*"³

Similarly, the NCHR's re-accreditation was deferred in 2013 during the SCA's 31st session and no mention of the NCHR was made in subsequent reports, until the SCA declared in 2015 that the re-accreditation would take place at its second session of 2016. It is of Alkarama's view that regular reviews undertaken by the SCA are essential to the strengthening of NHRIs' mandates and to their compliance with the Paris Principles. We thus welcome its decision to review Egypt's NCHR. It is also our view that through these regular reviews, the SCA provides NHRIs with valuable recommendations to ensure that NHRIs be in a position to carry out their mandate in conformity with the 1993 Paris Principles.⁴

Alkarama believes that, to ensure an efficient and transparent review of Egypt's NCHR, inputs from independent organisations are crucial. Hence, we would like to provide information that could serve to assist in the evaluation of the legal and practical compliance of the Egyptian NCHR with the Paris Principles.

In this report, Alkarama makes an in-depth analysis of the activities and mandate of the Egyptian NCHR and what it has achieved for the promotion and protection of human rights in Egypt. Since the time between its initial accreditation and the 2016 re-accreditation cover different political and social periods, Alkarama however decided to focus its report on the work done by the NCHR since the appointment of its current members in 2013.

Finally, it is understood that the head of the House of Representatives' Human Rights Committee recently presented a draft to the NCHR's enabling law.⁵ However, no tentative date for its review has been issued so far. In order to provide the SCA with the most accurate information, Alkarama's report includes both observations on the current law n°94 of 2003 and on its possible amendments.

2. Background

Since the NCHR's initial accreditation in 2006, many political and social changes took place in Egypt. In 2011, the Egyptian people took the streets to protest against police brutality, state of emergency laws, corruption, poverty and more generally, against the authorities. It led to the resignation of

¹ ICC 17th session, Report and Recommendations of the Sub-Committee on Accreditation, Geneva, 12 April 2006, p. 3.

² ICC, 28th session, Report and Recommendations of the Sub-Committee on Accreditation, Geneva, 25-28 October 2011, point 3.5.

³ ICC, 30th session, Report and Recommendations of the Session of the Sub-Committee on Accreditation, Geneva 19-23 November 2012, point 3.4.

⁴ Adopted by General Assembly resolution 48/134 of 20 December 1993.

⁵ Parlmany, ["حصري.. قانون استقلال "حقوق الإنسان"](#), 12 May 2016.

Hosni Mubarak in February 2011, opening the way for a six-month rule of the Supreme Council of the Armed Forces (SCAF). Then, the parliamentary elections held between November 2011 and January 2012 were won by the Freedom and Justice Party, the political wing of the Muslim Brotherhood. In June 2012, while the country was still experiencing political instability, the Muslim Brotherhood's candidate, Mr Mohamed Morsi, was elected president. These different political events had at the time justified the deferral of the Egypt's National Human Rights Institution (NHRI).

One year after Mr Mohamed Morsi's election, the army led a coup against the government. As a consequence, on 3 July 2013, the president was ousted from power and arrested. Two days later, the Shura Council – the upper-chamber of the Parliament – was dissolved. The Constitution was suspended and Mr Adly Mansour, Chief Justice of the Supreme Constitutional Court of Egypt became interim president. In August 2013, the army and the police violently dispersed Raba'a Al Adawiya and El Nahda Squares, leading to the death of hundreds of demonstrators and the wounding of thousands of others.⁶ In the meantime, the SCA decided to defer the NCHR's re-accreditation, especially since a draft law amending the law n°94 of 2003 was expected to be adopted. Because of the military coup however, all members of the NCHR resigned and the draft law was abandoned.

In the absence of the Shura Council, the interim president was vested with legislative powers. He subsequently gave nomination powers to the interim Prime Minister, at the time Mr Hazem El Beblawi, and the latter appointed 27 new NCHR members in August 2013.⁷ In February 2014, a new Constitution was adopted by referendum. This Constitution made no reference to the Shura Council, which is according to Law n°94 of 2003, in charge of appointing the NCHR members. Furthermore, the executive power assumed the Parliament's functions until parliamentary elections were held between November and December 2015. In January 2016, the new parliamentarians opened their first session at the House of Representatives. In the meantime, General Abdelfattah El Sisi was elected president in June 2015.

Throughout this period of political unrest, the human rights situation worsened, particularly after July 2013, leading to unprecedented human rights violations. Thousands of individuals were summarily executed, dozens of thousands others have been arrested and often charged under the restrictive law n°107 of 2013 on the "*Right to Public Meetings, Processions and Peaceful Demonstrations*"⁸ before being sentenced to harsh prison sentences following mass unfair trials,⁹ sometimes before military courts. Additionally, dozens of journalists have been subjected to harassment and many were sentenced to prison or death following unfair trials.¹⁰ The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression himself noted "*an increasing trend of criminalization of expression and imprisonment of journalists.*"¹¹

Moreover, enforced disappearances, a practice that was nearly inexistent under previous regimes, became a matter of concern.¹² Finally, numerous individuals have reported having been tortured and ill-treated during periods of secret detention and in fact, this practice remains generalised across the country, favoured by a culture of impunity for authors of such crimes. Regarding freedom of association, numerous organisations were closed under accusations of being affiliated with the Muslim Brotherhood, a group that has been designated a terrorist entity in 2013, and without being given the opportunity to challenge these procedures. These procedures were later extended to secular organisations and renowned NGOs such as Al Nadeem Centre for the Rehabilitation of Victims of Violence.¹³

⁶ Alkarama, [Egypt: Ensure accountability for crimes against humanity](#), 16 August 2013.

⁷ Daily News Egypt, [NCHR reshuffle receives mixed reactions](#), 24 August 2013.

⁸ Human Rights Watch, [Egypt: Deeply Restrictive New Assembly Law](#), 26 November 2013.

⁹ OHCHR, [Mass imposition of death penalty in Egypt outrageous: Pillay](#), Geneva, 29 April 2014.

¹⁰ Alkarama, [Egypt: UN Working Group Calls for the Release of 9 Journalists Sentenced in "Raba'a Operations Room" Case](#), 3 June 2016.

¹¹ OHCHR, Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, [Reference: AL EGY 14/2015](#), 6 October 2015.

¹² See in this regard: Alkarama, [Egypt: Alkarama once Again Alerts the UN on the Institutionalised Practice of Enforced Disappearances](#), 9 May 2016.

¹³ Alkarama, [Egypt: Alkarama Condemns Closure Procedure Against Nadeem Center for the Rehabilitation of Victims of Violence and Torture](#), 22 February 2016.

3. Egypt's NCHR Constitutional and Legislative Provisions

3.1 Constitutional provisions

When the NCHR was established in 2003, the Egyptian Constitution did not make any reference to it. It was only in 2012 with the adoption of a new Constitution that the NCHR was first referenced, granting it the power to inform the General Prosecution's office of violations of constitutional rights. The NCHR retained this power with the adoption of the new Constitution in February 2014. Indeed, Article 99 stipulates that (Alkarama's emphasis):

"Any violation of personal freedom, or the sanctity of the private life of citizens, or any other public rights and freedoms which are guaranteed by the Constitution and the Law is a crime. The criminal and civil lawsuit arising of such crime shall not abate by prescription. The affected party shall have the right to bring a direct criminal action.

The State shall guarantee fair compensation for the victims of such violations. The National Council for Human Rights may file a complaint with the Public Prosecution of any violation of these rights, and it may intervene in the civil lawsuit in favor of the affected party at its request. All of the foregoing is to be applied in the manner set forth by Law."

The inclusion of this power in the Constitution is a positive step and in fact, the NCHR's powers have been extended compared to the former Constitution. Indeed, the NCHR can now "file a complaint" when it could only "inform the Public Prosecution" under the previous constitutional provisions.¹⁴ The problem is that the Criminal Procedure Code does not include this possibility and there is therefore a legal uncertainty about its concrete application in practice. For example, only the Public Prosecutor can launch investigations into allegations of torture and ill-treatment.

The NCHR's independence has also been constitutionally guaranteed under Article 214 that specifies:

"The law shall specify the independent national councils, including the National Council for Human Rights, the National Council for Women, the National Council for Childhood and Motherhood, and the National Council for Disabled Persons. The law shall state the composition, mandates, and guarantees for the independence and neutrality of their respective members. Each council shall have the right to report to the competent authorities any violations pertaining to their fields of work.

These councils shall have legal personalities and shall be technically, financially, and administratively independent. They shall be consulted with respect to the bills and regulations pertaining to their affairs and fields of work."

Providing a clear constitutional framework for the NCHR is essential, even if Article 214 makes reference to the law regarding several aspects of the Council's composition, mandates, and guarantees. Finally, the mention of the technical, financial and administrative independence of the NCHR in the Constitution is another important element.

3.2 Legislative provisions

Since its adoption in 2003, NCHR's enabling law n°94 has not been amended, despite several recommendations made by the SCA in this sense and multiple draft laws presented between 2011 and today, including one recently but that has yet been discussed by the House of Representatives. The NCHR has repeatedly advised the government to amend Law n°94 of 2003, echoing the SCA's concerns over its independence and its means of implementing its mandate, but to no avail.¹⁵

Law n°94 of 2003 does not specifically address the question of the NCHR's independence from the executive and legislative branch. Indeed, if its Article 1 mentions that it shall perform its duties, activities and powers independently, it however mentions that the NCHR shall be "affiliated" to the Shura Council. It also specifies that part of the council's budget shall be overseen by the Shura

¹⁴ See Article 80 of the [2012 Constitution](#).

¹⁵ Daily News Egypt, [NCHR files draft law demanding more freedom, facilitation in its work](#), 14 May 2016.

Council. Hence, the absolute independence of the NCHR from the Shura Council is not clearly established in Article 1 of Law n°94. Article 14 nevertheless seems to guarantee the council's independence by stating that the "*Council shall issue by-laws regulating its activities, as well as statutes regulating the work of its technical secretariat, personnel, financial and administrative affairs, without being restricted by governmental systems.*"

The legal uncertainty of Article 1 is all the more concerning since the Shura Council was dissolved in 2013 and that the 2014 Constitution made no reference to it, only preserving the lower house of Parliament, the House of Representatives. Hence, since there was no Shura Council, the members of the NCHR were appointed by the executive branch following a non-transparent process, undermining the necessary independence of the Council and of its members. We consider that this practice contravenes the Paris Principles.¹⁶

Besides these practical elements, in 2011, the SCA underlined several possible incompatibilities of the NCHR with the 1993 Paris Principles regarding its selection and appointment process; the term of office of its members; security of tenure of members; access to places of Detention and Confinement; and its Mandate. These different elements will be addressed below, taking into account the draft law to be discussed by the House of Representatives.

3.2.1 Selection and appointment process

As regard the selection and appointment of NHRI members, the 1993 Paris Principles stipulate that "*the composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (...)*". According to Article 2 of Law n°94 of 2003, members of the NCHR shall be selected amongst "*public figures known to have an interest and expertise in human rights issues or who have a distinguished input in this field*", by a decree issued by the Shura Council.

In 2011, the SCA stated that this article 2 does "*not provide a clear, transparent and participatory selection process that promotes the independence of, and public confidence in, the senior leadership of the NCHR*". It had therefore recommended several amendments in this regard¹⁷ but the Egyptian authorities have failed to adopt them since. Hence, issues highlighted throughout the different SCA sessions regarding this specific issue have not been addressed, in law and practice.

As highlighted above, since the Shura Council was dissolved and removed, the current members of the NCHR were appointed by the executive branch on its own motion without having followed a transparent and participatory selection process. In fact, out of the 27 members initially selected by the executive branch, one individual – Mr Hossam Bahgat – refused the position, while another one learned her nomination from the press.¹⁸ Additionally, criteria for the selection of these individuals were not made available to the public and in fact, there was no prior consultation of the civil society.

Mr Hossam Bahgat, founder and director of the Egypt Initiative for Personal Rights, refused the appointment as soon as he learned it; it does not appear that he was replaced since. Another member, Mr Naguib Ibrahim, resigned for personal reasons during the same period¹⁹ and was replaced by Mr Mohammed Mohsen Awad in November 2013. Similarly, Mr Negad El Borai, head of the United Group, resigned in January 2014, claiming that the NCHR lacked strategy as to effectively assist the authorities to implement human rights principles. He further stated that the NCHR should not be confined to a role of issuing statements and condemning violations.²⁰ He does appear to have been replaced since.

¹⁶ Particularly para.1 « Composition and guarantees of independence and pluralism.

¹⁷ Namely, the SCA recommended to publicise vacancies, maximise the number of potential candidates from a wide range of societal groups, promote broad consultation and/or participation in the application, screening and selection process and to ensure pluralism in the composition of the Council and the staff. It also encourages the Council to refer to its General Observation 2.2 "Selection and appointment of the governing body".

¹⁸ Al Ahram, ["مينال الطيسى: الحق في العمل والسكن والصحة أهم أولويات 'قومي حقوق الإنسان'"](#), 22 August 2013.

¹⁹ Youm7, ["ناجح إبراهيم يعتذر عن قبول عضوية 'مجلس حقوق الإنسان'"](#), 22 August 2013.

²⁰ El Masrawy, ["ننشر نص استقالة نجاد البرعي من المجلس القومي لحقوق الإنسان"](#), 28 January 2014.

Mr El Borai was recently summoned by the authorities under accusations of “*broadcasting false information, disturbing public security, establishing an illegal group and receiving unauthorized foreign funding*”. These accusations came after his organisation submitted a draft law amending the current torture legislation.²¹ Finally, Ms Shahenda Maklad died in early June 2016 and has not been replaced since. In fact, she continues to appear in the list of members on the NCHR’s website.²²

Regarding the NCHR’s composition, the SCA underlined in its General Observations the need to have an equitable participation of women in the National Institution.²³ There is however a vast majority of men sitting at the Council (19). Furthermore, while some of the members have expertise in the field of human rights, some members do not have an extensive knowledge of this topic, which could hamper the correct work of the Council. Finally, there are no representatives of individuals working in the field of physical and mental disability; as well as migrant workers and refugees.

As mentioned above, the Shura Council has been dissolved and was removed from the Constitution in 2014. Hence, vested with legislative powers, it was the executive branch that appointed the current NCHR’s members. Their tenure ending in September 2016, a draft law amending Law n°94 of 2003 was presented in April 2016 by the head of the Human Rights Committee of the House of Representatives, Mr Mohamed Anwar Sadat. The draft stipulates that the appointment of NCHR members would be of the House of Representatives’ Human Rights Commission prerogative from now on. If this draft is not adopted before September 2016, the NCHR would remain in a legal limbo since no official body will be entitled to appoint its members.

According to the information available, the draft specifies that the selection of candidates would now be based on individual candidacies – without giving details about the process – and that they would be appointed by acclamation of the Human Rights Committee of the House of Representatives. It stipulates that appointed members should have records in human rights. The draft however specifies that the parliamentarians should ensure a plurality in the NCHR’s composition by selecting members coming from all intellectual and religious currents; from the civil society; trade unions; and of the judicial, legislative and executive branches. Furthermore, the Council states that the area of residence and the candidates’ gender should also be taken into account, without specifying if a balance should be observed for this criterion.²⁴ Finally, the draft states that there would now be 25 members only and not 27.

If some of these amendments seem positive, the means of selecting the candidates should be further clarified and a transparent process set up in order to ensure that the process be as participatory as possible. Additionally, Alkarama recommends that the principal criterion for the selection of candidates should be their expertise in the field of human rights and that this should be clearly stated in the new law. It invites the authorities and the House of Representative to take advantage of the recommendations formulated to the NCHR in this regard in 2011 and 2012.

Finally, Alkarama is concerned by the mention that members of the government could be appointed as members and that this would be a possible criterion for the selection of candidates. It again invites the NCHR to refer to the SCA recommendations of 2013 where it stated that “*election as a member of Parliament or membership of a political party is not, in itself, a relevant criteria for the selection of members to the governing body of an NHRI.*”²⁵ Additionally, the Paris Principles clearly stipulate that representatives of Government department should only act in an advisory capacity. Hence, in order to “*ensure the actual and perceived independence of the NCHR,*” these elements should be integrated in the law.

3.2.2 Security of tenure of members

²¹ Mada Masr, [Rights lawyer Negad al-Borai summoned to interrogation for 5th time](#), 16 May 2016.

²² NCHR, [Council Members](#).

²³ SCA General Observations, 1.7 « Ensuring pluralism of the National Human Rights Institution ».

²⁴ Parlmany, [حصري.. قانون استقلال "حقوق الإنسان"](#), 12 May 2016

²⁵ ICC, 31st session, Report and Recommendations of the Session of the Sub-Committee on Accreditation, Geneva, 13-16 May 2013, point. 3.3.

While the Paris Principles do not specifically address the question of NHRI members' dismissal, it nevertheless emphasises the need for members to have a "*stable mandate*".²⁶ Alkarama however shares the view of the SCA stated in its General Observations that in order for members to have a stable mandate, procedural rules and grounds for their possible dismissal must be clearly stated in the enabling law to avoid any arbitrariness in this process.

Law n°94 of 2003 does not address this specific issue and in fact there is no mention of any kind of immunity for NCHR members. The SCA had thus recommended in 2011 to amend the enabling law and to provide members "*with immunity from legal prosecution for actions undertaken in good faith in the context of their employment.*" It had further added that "*grounds for the dismissal of members of the governing body should be clearly defined and decisions undertaken by a regularly constituted court, tribunal or other bodies as appropriate.*"

Since the law has not been amended since, these recommendations remain relevant and Alkarama encourages the authorities to take them into consideration when amending the enabling law and to have use of the SCA's General Observations on the Guarantees of Tenure in this regard.

3.2.3 Term of Office of Members

The SCA had also made a recommendation in 2011 regarding the term of office of NCHR's members, encouraging the authorities to increase the current term from three years – which is viewed as the minimum by the SCA – to "*between three and seven years with the option to renew once.*"²⁷ The SCA advocates for longer terms because it considers that it is a crucial element of NHRIs' independence and for members to be able to "*ensure continuity of [their] programs and services.*"²⁸

This recommendation remains valid today and Alkarama invites the authorities to adopt a longer term of office for NCHR members. In this sense, the fact that the current draft law envisages a new tenure of four years renewable once is a positive development.

4. Structure and Mandate

4.1 Structure of the NCHR

The Paris Principles clearly foresee that "*the national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding*" in order to ensure its effective independence and avoid any possible interference from the Government into its activities.²⁹

In its different observations regarding the Egyptian NCHR, the SCA did not make specific recommendations regarding the structure of the NCHR nor did it comment on whether it was receiving sufficient funding from the Government. In practice, it does not appear that the NCHR has been impeded to perform its activities because of a lack of sufficient funding. In fact, the NCHR's annual reports show an increase of its funding in the past years, that should however be tempered by the high inflation of the Egyptian pound. The NCHR has also been funded by international organisations such as UNDP to develop certain activities or programmes, as well as foreign governments. The Kingdom of the Netherlands notably helped the NCHR in developing its complaints department for victims of torture and ill-treatment.³⁰ It has also developed programs with international NGOs such as the Denmark-based International Rehabilitation Institute for Torture Victims.

Regarding the NCHR's infrastructure, its premises were arsoned in 2011 and have been replaced since. Additionally and as mentioned in Article 1 of its enabling law, the NCHR has opened branches

²⁶ Paris Principles, "Composition and guarantees of independence and pluralism", para. 3.

²⁷ ICC, 28th session, Report and Recommendations of the Sub-Committee on Accreditation, Geneva, 25-28 October 2011, point. 3.5.

²⁸ *Ibid.*

²⁹ Paris Principles, "Composition and guarantees of independence and pluralism", para. 2.

³⁰ More information is available on the [Netherlands Embassy to Egypt](#).

in Sohag, Beni Suef, Port Said, Kafr El Sheikh and Ismailia, according to its website. We regret that the NCHR has not opened branches in Alexandria, Egypt's second largest city, and the Sinai Peninsula, a region facing tremendous challenges in terms of human rights violations, poverty, lack of infrastructures and unemployment.

Alkarama encourages the NCHR to continue advocating for sufficient funding in order to be able to implement its mandate and projects and to consider opening new branches in order to ensure that all citizens can benefit from its work and activities.

4.2 Mandate of the NCHR

In 2011, the SCA encouraged the "NCHR to advocate to maintain a broad mandate to promote and protect all human rights, and for the enactment of additional amendments that provide it with the necessary powers to fulfil its mandated functions."³¹ The SCA had at this occasion noted that the NCHR mandate was listed in Article 3 of Law n°94 of 2003. It has not been amended since its initial adoption.

4.2.1 Commenting on human rights related legislations

Article 3 of the NCHR's enabling law does not specifically give power to the NCHR to comment on existing and draft legislations related to the promotion and protection of human rights. It is however vested with the right to give "*opinions, suggestions and recommendations in relation to those matters related to the protection and protection and enhancement of human rights submitted or referred to the National Council for Human Rights by the concerned authorities and entities*"³² and to ensure "*compliance with international treaties and conventions on human rights*"³³ by submitting suggestions, findings and recommendations in this regard. Finally, Article 214 of the Constitution specifies that the NCHR should be consulted for every law "*pertaining to [its] affairs and fields of work.*" Such obligation has not been always respected by the authorities however.

Since July 2013, the authorities have adopted numerous legislations that restricted Egyptians' fundamental rights. Law n°107 of 2013 on the "Right to Public Meetings, Processions and Peaceful Demonstrations" is illustrative in this sense. Prior to its adoption, the NCHR had received a version of the draft and had not made any observations at the time. It is only after the civil society voiced concerns about the draft provisions and pressured the NCHR to ask for amendments that the members eventually made recommendations to the authorities.

It however did not make recommendations regarding the fact that the law was granting the authorities the right to use firearms even in the absence of an imminent threat to life or serious injury. Eventually, the authorities did not take all of its recommendations into consideration and the law was adopted in November 2013, pushing the High Commissioner for Human Rights to ask for its amendment.³⁴ The NCHR has since regularly invited the authorities to repeal or amend this law. It is regrettable that it did not advocate for more changes prior to its adoption.

Additionally, if some members of the NCHR have sometimes voiced concerns regarding specific legislations during interviews with media, it is rare for the NCHR to publish formal statements about it and it is therefore impossible to know the official position of the Council on specific issues. The NCHR had however clearly opposed the anti-terrorism legislation and regretted that it had not been consulted by the authorities prior to its drafting.³⁵ The law was adopted in August 2015 despite the NCHR's opposition.³⁶ It does not appear that it has proposed to repeal it since.

³¹ ICC, 28th session, Report and Recommendations of the Sub-Committee on Accreditation, Geneva, 25-28 October 2011, point. 3.5.

³² Law n°94 of 2003, Article 3§3.

³³ *Ibid*, Article 3§5.

³⁴ OHCHR, [New law on demonstrations in Egypt seriously flawed and must be amended – Pillay](#), 26 November 2013.

³⁵ Ahram Online, [Egypt's National Council for Human Rights: We did not review the 'anti-terrorism' draft law](#), 8 July 2015.

³⁶ Al Masry Al Youm, [القومي لحقوق الإنسان: «قانون الإرهاب» صرية قاصمة لدولة القانون](#), 17 August 2015.

The NCHR has also not fully taken advantage of Article 3§5 that gives to its members the possibility of suggesting to the concerned authorities some amendments to pieces of legislations that contradict international human rights instruments. For example, the NCHR made recommendations to the government regarding the anti-torture law in its annual report of 2014³⁷ as well as in other annual reports, but it has never taken a clear and public stance against this legislation and its consequences otherwise, nor has it submitted official drafts in this regard.

We encourage the authorities not only to seek the opinion of the NCHR for every law impacting human rights but also to draft these laws with its assistance and to implement its recommendations. On its side, the NCHR should take the initiative of proposing new legislations regarding human rights and advocate for their adoption in order to ensure that every piece of legislation meet Egypt's international obligations in this regard.

4.2.2 Educating and informing in the field of human rights

Under Article 3§10 of its enabling law, the NCHR is entitled to disseminate "*information on human rights and educating citizens in these concern*", while Article 3§11 states that it can hold "*conferences, forums and seminars to discuss human rights issues or incidents related thereto.*" The NCHR has been holding several workshops and events related to human rights, with the civil society to discuss the draft NGO law,³⁸ or with scholars and Parliamentarians to discuss the new administrative law.³⁹ It had also held conferences on various topics such as the international congress on transitional justice on 20 November 2013. It has however not always published press statements regarding the outcome of such events.

We encourage the NCHR to continue its work of promotion and information in the field of human rights and to widen its scope by holding conferences with the civil society but also with other relevant stakeholders such as private actors. It should in this sense make use of all means available (media, education and cultural affairs), as listed in Article 3§10 of its enabling law and in the Paris Principles.⁴⁰ We also encourage the NCHR to systematically publish the outcomes of these events and to follow-up on them.

4.2.3 Cooperation and reporting to international bodies

The Paris Principles set out several aspects of cooperation of NHRIs with international bodies and regarding the promotion of international human rights instruments. First of all, NHRIs are invited to "*promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation*", and "*to encourage the ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation.*"⁴¹ In this sense, they should also contribute to the reports which States are required to submit to United Nations Treaty Bodies and to cooperate with the "*United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of protection and promotion of human rights.*"⁴²

The 2014 Constitution is silent on these specific issues while law n°94 mentions that the NCHR is tasked with "*ensuring compliance with international treaties and conventions on human rights and submitting suggestions, findings and recommendations to the concerned authorities in order to ensure correct implementation thereof*" and to contribute "*by opining on the preparation of reports that should be submitted by the State to human rights committees and commissions on a regular basis (...) as well as responding to enquiries from such entities on human rights issues.*"

³⁷ Daily News Egypt, NCHR submits human rights report to Al-Sisi, 13 May 2015.

³⁸ NCHR, "القومي لحقوق الإنسان" *صدر توصياته حول قانون الجمعيات الأهلية*, 12 June 2016

³⁹ NCHR, "توصيات" *القومي لحقوق الإنسان حول مشروع قانون المحليات*, 31 May 2016.

⁴⁰ Paris Principles, « Competence and responsibilities », para. 3(f) and 3(g).

⁴¹ *Ibid.*, para. 3(b).

⁴² *Ibid.*, para. 3(d).

Hence, the NCHR is deprived of a clear competence of encouraging the ratification of international human rights instruments, even if that can be broadly interpreted from Article 3§2 of its enabling law since it states that the NCHR can submit suggestions aiming at “*developing human rights for the maximum benefit*”. In any case, the NCHR has repeatedly invited the authorities to ratify international human rights instruments in its annual reports, such as the International Convention for the Protection of All Persons from Enforced Disappearance.

Additionally, the NCHR is entitled to develop collaborations with United Nations organisations, bodies and committees through its Article 3§6,⁴³ even if it does not list these specific mechanisms. Hence, it has developed specific partnerships with different UN special agencies such as UNICEF⁴⁴ and UNDP.⁴⁵ However, it does not seem that the NCHR has cooperated with UN Special Procedures, even if these procedures have been closely monitoring the human rights situation in Egypt and could have benefited from the NCHR’s inputs in this sense. NCHR’s members also took part to several international human rights-related events.

Law n°94 of 2003 does not give power to the NCHR to send its own independent reports to international bodies and committees, since it only grants it the right to “*opining on the preparation of reports*” in its Article 3§8. In practice however, the NCHR has submitted its own report for Egypt’s review before the Committee on the Elimination of Racial Discrimination and for the country’s first and second Universal Periodic Reviews.

It did not submit reports for the reviews before the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on Economic, Social and Cultural Rights (CESR), the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), and the Committee on the Rights of the Child (CRC). Additionally, according to the information available, the NCHR has not advocated for Egypt’s submission of its national reports under the Convention against Torture (UNCAT) and the International Covenant on Civil and Political Rights (ICCPR), that are overdue since 2004.⁴⁶ It also appears that the NCHR has not been disseminating information about international mechanisms and their impact on Egypt, especially when international bodies were reviewing Egypt’s human rights records and made recommendations to the authorities.

Nothing in the draft law to be discussed by the House of Representatives mentions possible amendments to Law n°94 of 2003 regarding these different elements. Alkarama encourages the authorities to clarify the mandate of the NCHR as to its collaboration with United Nations bodies and committees as well as to grant it the power to submit its own reports to these bodies. Alkarama urges the NCHR to further promote international human rights instruments throughout the Egyptian society and to push the authorities to submit their overdue reports. We also urge the NCHR to foster its collaboration and cooperation with UN Special Procedures and other relevant international and regional bodies.

4.2.4 Monitor the human rights situation

4.2.4.1 Access to places of deprivation of liberty

While the Paris Principles are silent about the competence of NHRIs to visit places of deprivation of liberty, the SCA detailed in its General Observations that NHRIs, when provided with a “*mandate to receive, consider and/or resolve complaints alleging violations of human rights*” should be entitled to “*visit places of deprivation of liberty*.”⁴⁷

⁴³ This article reads: “Cooperating with international and national human rights organisations and authorities in order to ensure achieving the objective of the National Council for Human Rights and developing relationships with such entities.”

⁴⁴ See UNICEF, [Annual Report 2013](#) on Egypt.

⁴⁵ UNDP, [Support to the National Council for Human Rights \(INSAN\) Phase II](#).

⁴⁶ See: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=EGY&Lang=EN.

⁴⁷ SCA, General Observations. 2.10 “The quasi-judicial competency of National Human Rights Institutions (complaints-handling)”.

Since Egypt's NCHR has been granted a quasi-judicial competence under its Article 3§4, it should have been given the right to visit places of deprivation of liberty but its enabling law is silent about it. It has nevertheless been authorised to visit places of detention with prior authorisation from the Ministry of Interior. In 2011, the SCA had underlined that "*limitations on the NCHR's ability to visit and access places of detention without prior notice may hamper the fulfilment of its human rights monitoring and protection obligations.*" It had thus advocated for amending the enabling law in order for the NCHR to be able to make unannounced visits.

Since no amendments have been adopted, this situation remains and the NCHR has only been able to undertake visits in prisons and police stations after obtaining the authorisation from the Ministry of Interior. It has also been refused the right to visit some places of detention, without reason.⁴⁸ Additionally, it is not the NCHR that decides which places of deprivation of liberty it can visit but the Ministry of Interior. As a consequence, some places of detention were prepared for NCHR's visits, preventing it from performing its mandate accordingly.⁴⁹

Even more concerning are the reports made by NCHR members according to which a visit to Al Aqrab prison was authorised by the Ministry of Interior without informing all members, including those who have extensive experience in the field of human rights. The latter were thus unable to attend the visit. Other members reported that officials from the Ministry of Interior accompanied them and filmed the visit even if they were asked not to; and that they could not speak privately with prisoners. Hence, they were not able to make a proper assessment of the situation and their report was largely criticised by other local organisations that had been reporting several torture and ill-treatment cases in this prison.⁵⁰

In many cases of visits to prisons and police stations, the NCHR issued statements that were seen as in favour of the authorities and were not describing the reality of prisons in Egypt. Members of the NCHR themselves criticised the NCHR's report following its visit highlighted above.⁵¹ Finally, while the NCHR documented violations during visits, such as the one in Damanhour prison in August 2015,⁵² it does not seem that a follow-up was undertaken by the NCHR, which undermines the value of these visits.

These different elements show that the NCHR has been prevented from undertaking independent and transparent visits to places of deprivation of liberty even though these visits are essential, especially since it is the only body authorised with the Ministry of Interior to conduct such visits. The statements made by some members also cast doubt on the independence and impartiality of the NCHR. Alkarama encourages the authorities to grant the NCHR with the right to visit places of deprivation of liberty without prior authorisation and to ensure these visits are conducted in an independent and impartial manner and that prisoners can communicate with all NCHR's members and in a confidential manner. The NCHR should also regularly follow-up on prisoners' situations and publish all the outcomes of its visits.

4.2.4.2 Documentation of human rights violations

Under Article 99 of the 2014 Constitution, the NCHR is entitled to "*file a complaint with the Public Prosecution of any violation of these rights, and it may intervene in the civil lawsuit in favour of the affected party at its request.*" According to Article 3§4 of its enabling law, the NCHR is entitled to receive and study "*complaints related to the protection of human rights (...) and referring them to the concerned authorities, together with following up same to advise the parties involved about the legal actions to be taken and assisting them in taking such actions or settling and resolving the complaints with the relevant authorities.*"

⁴⁸ Middle East Eye, [Human rights lawyer denied entry to Cairo's Scorpion prison](#), 6 January 2016.

⁴⁹ Al Arabiya, [Egypt prisons report: Did human rights council curry favor with govt?](#), 24 September 2015.

⁵⁰ Daily News Egypt, [NCHR members criticise latest Aqrab prison visit](#), 2 September 2015.

⁵¹ Al Arabiya, *op. cit.*

⁵² Daily News Egypt, [NCHR discovers violations during visit to Damanhour prison](#), 24 August 2015.

Hence, the NCHR, considered as a quasi-judicial body, can receive complaints and assist victims but it has not been granted with rights to investigate cases on its own and even to initiate a complaint on its own initiative, which contradicts the SCA's General Observations. Additionally, since the law is silent about this aspect, the NCHR is not authorised to compel witnesses or to order protection measures from retaliation for victims and their relatives, which can hamper the efficiency of its work. Hence, in practice, it appears that the NCHR has been mostly acting as a channel between victims and the authorities rather than being a settlement and investigative body. Alkarama has also received reports from victims and their relatives according to which they had solicited the NCHR's intervention on their behalf but that they never received an answer.

Additionally, if the NCHR submitted dozens of names of individuals who had allegedly disappeared or were secretly detained to the authorities,⁵³ it did not take further action regarding their situations once the authorities disclosed their places of detentions nor did it call for measures to prevent the recurrence of such practice. Similarly, the NCHR reported several cases of torture and mistreatment in Abu Zaabal prison⁵⁴ following a visit in March 2015 and the General Prosecutor allegedly launched an investigation⁵⁵ into their report but no follow-up was done as to the results of this investigation.

Finally, while its enabling law does not empower the NCHR to launch inquiries into specific violations, it can nevertheless issue reports about human rights and the NCHR launched four fact-finding committees into the events of summer 2013 and particularly into the violent dispersal of Raba'a Al Adawiya and El Nahda Squares by the police and the army on 14 August 2013 that saw the death of thousands of individuals and hundreds others wounded.⁵⁶ Its report was published in March 2014 and was criticised by some local organisations, reporters and international NGOs.⁵⁷

The criticism mostly concerned the methodology followed by the NCHR and the fact that because of its mandate, the NCHR could only request and use documents provided by the Ministry of Interior and the Armed Forces regarding these events. Additionally, it was not authorised to compel witnesses or to offer them protection measures which made it even more difficult for its members to make an independent and impartial review of the circumstances of the events. In fact, the NCHR itself called for an independent judicial inquiry into these events, which has not been done to date.

Positively, the draft law would allow the NCHR to directly file complaints before courts and not to refer the cases to the Public Prosecution anymore. This would however require the amendment of the Criminal Procedure Code as well. Additionally, any person who would prevent the NCHR from performing its mandate or would refuse to provide them with required documents or would destroy them, could be prosecuted, sentenced to prison and possibly dismissed from public office. The draft law does not make any reference to a power of investigation nor to measures to protect witnesses from retaliation.

Alkarama encourages the authorities to adopt the amendments listed above and to refer to the SCA's General Observation on the powers and functions of NHRIs granted with quasi-judicial competences in order to ensure the full compliance of the NCHR with the Paris Principles.

5. Conclusions and recommendations

5.1 Conclusions

Since its establishment in 2003, the Egyptian National Council for Human Rights has been operating in a context of continuous and widespread human rights violations by the Egyptian authorities. While the 2011 revolution brought hope of a new era for the Egyptian society, current reports on the

⁵³ Daily News Egypt, [NCHR denies 'enforced disappearances' amid disclosure of whereabouts of 99 detained](#), 16 January 2016.

⁵⁴ NCHR, [القومي لحقوق الإنسان "لسجن أبو زعل" تقرير ميداني عن زيارة](#), 31 March 2015.

⁵⁵ Mada Masr, [NCHR confirms allegations of torture of political prisoners in Abu Zaabal](#), 31 March 2015.

⁵⁶ Alkarama, [Egypt: Ensure accountability for crimes against humanity](#), 16 August 2013.

⁵⁷ The Cairo Post, [NCHR issues final Rabaa report, reporters doubt credibility](#), 17 March 2014. See also Human Rights Watch, [All According to Plan, The Rab'a Massacre and Mass Killings of Protesters in Egypt](#), 12 August 2014.

ground show a very different reality and in fact, international organisations and the civil society all agree to say that the situation is now worse than before the revolution.

In this context, the NCHR has not been able to uphold to its role of promotion and protection of human rights and in fact, between its initial accreditation and its upcoming review before the Sub-Committee on Accreditation in November 2016, its mandate and activities have not changed. Its lack of independence from the executive and its perfectible mandate made it an inefficient body and in any case, a body that does not meet the requirements set out in the Paris Principles.

5.2 Recommendations

5.2.1 To the Sub-Committee on Accreditation

In light of the information enclosed in this report and of the previous unimplemented recommendations from the SCA to the NCHR, it appears that this body is not in line with the Paris Principles. While the current draft law could address some of the issues highlighted in this report, we nevertheless invite the Sub-Committee on Accreditation to recommend that the Egyptian NCHR be accredited with B status.

5.2.2 To the National Council for Human Rights

In order to ensure its complete conformity with the Paris Principles, the NCHR should seek its effective and practical independence from any governmental, legislative and judicial interference and uphold to its mandate in order to effectively promote and protect human rights in Egypt. In addition to our observations listed throughout this report, we thus recommend the NCHR to:

- Advocate for the adoption of a new enabling law in line with the Paris Principles and in particular that would guarantee a transparent, pluralist and participatory selection and appointment process of its members; to increase the term of office of its members and guarantee the security of their tenure;
- Increase its activities of commenting on draft legislations and propose new human rights oriented laws and programs;
- Strengthen its collaboration with civil society as well as with international bodies, in particular UN Special Procedures and Treaty Bodies;
- Advocate for the submission of Egypt's overdue periodic reports to the UN Treaty Bodies and submit its own individual reports when applicable;
- Effectively monitor the human rights situation and follow-up on recommendations made to authorities;
- Be empowered to carry unannounced visits to all places of deprivation of liberty without any interference whatsoever; to submit complaints before courts and to seek enforcement of their decisions;
- Be provided with the possibility of compelling witnesses under protection measures to avoid retaliation measures; to obtain all documents required to conduct its investigations effectively;
- Effectively answer and act upon complaints submitted by victims and their relatives and follow-up on their situation until they obtain remedy and, when applicable, compensation;
- Be empowered to commence independent inquiries and to publish the outcomes of these investigations.