



MAKING SILENCE THE LAW OF THE LAND

EGYPT'S CRACKDOWN ON
FREEDOM OF EXPRESSION

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EXECUTIVE SUMMARY

Since Egypt's military takeover of July 3, 2013, it is estimated that more than 60,000 individuals have been arrested, a majority for acts of free speech. Enforced disappearances, torture, unfair trials, arbitrary detentions, as well as summary and extrajudicial executions are among the severe human rights violations carried out by the authorities in order to establish a climate of fear and to stifle dissent.

While the Egyptian authorities' narrative has been either to deny the occurrence of these violations or to justify them under the pretext of counterterrorism and ensuring stability, the accounts of victims and their families as well as independent NGOs tell a different story. Under the guise of maintaining stability and security, an entire population is under surveillance, its civil society and independent press is silenced, and countless students have been abducted, tortured and prosecuted.

This report aims at explaining the process through which Egypt – a country whose revolution seven years ago inspired many – has become a country in which a culture of silence and fear has been imposed. It also tells the stories of some of the victims who have been at the receiving end of its crackdown on freedom of expression, showing that this crackdown has targeted individuals from all backgrounds and walks of life.

INTRODUCTION

NGOs estimate that since 2013, more than 60,000 individuals have been arrested and detained in Egypt, a majority for merely peacefully exercising their right to freedom of expression. The country has become the third worst jailer of journalists worldwide, and since May 2017, more than 400 websites – including those of news outlets and human rights organisations – have been blocked.

Since 2013, arrests have taken the form of abductions followed by enforced disappearances, and thousands of individuals have been forcibly taken by State Security forces to unknown places of detention, where they are subjected to torture and, in some cases, summary executions.

Torture – which was already widely practiced before 2011 – has today become a tool for repression targeting men, women, and children indifferently. In addition, conditions of detention are appalling. Detainees are kept in overcrowded cells and denied medical care, leading to several thousand deaths in custody since 2013, while numerous extrajudicial executions of political opponents and peaceful protesters across the country – including students and children – have been carried out at the hands of the Egyptian security services.

Within this context, the space for peaceful criticism and civil disobedience – as well as the possibility for journalists, lawyers and human rights defenders to respond to this unprecedented crackdown – has been severely restricted. The 2016 Press and Media Law has led to the prosecution of journalists who cover such abuses, while lawyers trying to defend the rights of their fellow citizens are prosecuted under the 2015 Anti-Terrorism Law.

Government pressure on civil society, which has been ongoing since 2013, forcing international organisations to close their local offices, culminated with the 2017 NGO Law which left many local organisations with no choice but to either cease their activities or to relocate to another country in fear of reprisals.

How did we get here? The process by which this unprecedented crackdown has unfolded in recent years cannot be understood without explaining how the Egyptian authorities have enacted legislation to criminalise the peaceful exercise of fundamental freedoms. This repressive legal framework – which includes the Anti-Protest Law, the Anti-Terrorism Law, the Press and Media Law and the NGO Law – will be analysed in the first chapter of this report.

The implementation of this draconian legislation has made thousands of individuals – including students, journalists, human rights defenders, activists and political opponents – victims of arbitrary arrests, which constitute the starting point in a series of systematic violations and abuses. Abductions, secret detention, torture, rape, arbitrary arrests, unfair trials, and summary executions are used on a daily basis in order to instil fear and to stifle any form of peaceful dissent. These widespread violations are also enabled by the excessive and unchecked power of State Security forces and other forces, which act without any effective judicial control and with complete impunity. These violations of fundamental human rights – as well as their causes – will be addressed in the second chapter of this report.

Lastly, the crackdown on freedom of expression has been made possible by the strict control of information sharing, notably through the censorship of media outlets, but also by the extensive surveillance of online communication. Since May 2017, access to more than 400 websites has been blocked inside Egypt, including those of media outlets and human rights organisations. This, coupled with the surveillance of media content, especially on social media, has allowed the authorities to arrest individuals based on opinions shared on their public accounts and in private conversations. The situation reached such an extent that on August 30, 2017, several UN experts expressed “grave concerns” over Egypt’s “ongoing assault on freedom of expression”, referring specifically to the “expanding list of websites shut down or otherwise blocked by authorities for ‘spreading lies’ and ‘supporting terrorism’”.¹ These crucial aspects of Egypt’s assault on freedom of expression will be addressed in the third chapter.

As the crackdown on freedom of expression in Egypt has reached unprecedented levels, it is important to tell the stories of those at its receiving end. This report will highlight some of the cases submitted by Alkarama to the United Nations, representing individuals from all backgrounds and walks of life.

Building on its #SpeakUp4Egypt campaign, this report aims at fostering a better understanding of the situation in Egypt and raising awareness of Egypt’s continuing assault on fundamental human rights. As today marks the seven-year anniversary of the beginning of Egypt’s 2011 revolution, it is crucial to ensure that the rights and freedoms for which the Egyptian people raised their voices are not silenced by a brutal crackdown.

¹ OHCHR, *Egypt extends its assault on freedom of expression by blocking dozens of websites – UN experts warn*, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22008> (accessed on December 10, 2017).

I. MAKING SILENCE THE LAW OF THE LAND

Space for free expression in Egypt has been progressively restricted in recent years through several laws, virtually emptying fundamental rights – such as the freedoms of peaceful assembly and association, opinion and expression, as well as the right to information – of their substance.

These laws include, among others, the 2013 Anti-Protest Law, the 2015 Anti-Terrorism Law, the 2016 Press and Media Law and the 2017 NGO Law. These legislations have been used to impose more restrictions on fundamental freedom and provide for heavy penalties against those who peacefully and publicly criticise or oppose the authorities, through the press, social media, or through associative and political activities.

Since 2013, a majority of cases submitted by Alkarama to the United Nations concerning severe violations against journalists, political activists and human rights defenders for having held critical views of the authorities' policies stemmed from the application of these laws. Subsequently, and on many occasions, United Nations experts requested the release of those detained on the basis of these laws and called on the authorities to repeal or amend them, highlighting that they were in direct contradiction with Egypt's obligations under international human rights law.

1. Preventing and punishing peaceful demonstrations: the 2013 Anti-Protest Law

On November 24, 2013, the Law on the "Organisation of the Right to Public Assembly, Processions and Peaceful Demonstrations in Public Places" (Law No. 107 of 2013) was passed, in the absence of a parliament, by Egypt's interim President Adly Mansour.² This law is so restrictive and punitive that civil society and rights organisations refer to it as the "Anti-Protest Law".

Article 1 states that "citizens have the right to organise and join peaceful public meetings, processions and protests"; however, the law goes on to restrict this right to such an extent that it becomes impossible for individuals to assemble freely. Such restrictions include a notification system designed to impede demonstrations, as well as an overly broad power given to the executive to suspend, cancel or postpone protests. The law also permits

² The protest law is available in English on *Ahram Online*: <http://english.ahram.org.eg/News/87375.aspx> (accessed on January 24, 2018).

security services to use force against demonstrators, while judges are granted power to prosecute individuals for a large range of acts falling under the right to peaceful assembly.

1.1. PREVENTING UNWANTED DEMONSTRATIONS

In its Article 8, the 2013 Law establishes a notification system requiring organisers to notify the authorities prior to holding a protest. In practice, this means that individuals wishing to protest publicly must notify, in writing, the nearest police station of their intention to demonstrate at least three working days prior to the event. The notification must state the location, timing, subject, route and names of the organisers of the gathering.

The notification system fails to abide by international standards by posing undue obstacles to the free exercise of the right to peaceful assembly. First of all, it forbids all impromptu peaceful gatherings, while international law favours laws which allow individuals to gather spontaneously.³

Secondly, this system directly violates the principle that when notification procedures are set, they must fall under the responsibility of an independent government body free from any executive interference. However, by giving the Ministry of Interior the right to decide on the legality of an assembly, this law is a telling example of how prior notifications are used by states to control and restrict the right to peaceful assembly.⁴ In practice, the prior-notification system allows police stations to reject notifications, and thus forbid individuals from demonstrating, which has become common practice for protests against government policies. Furthermore, this system allows the security forces to identify individuals who are critical of the state's policies, and place them under closer surveillance.

1.2. GIVING THE EXECUTIVE AUTHORITY THE RIGHT TO SUSPEND, CANCEL, POSTPONE OR BAN ANY PROTEST

The notification system is strengthened by Article 10 of the law, which hands the Ministry of Interior the power to suspend, cancel, postpone or ban any scheduled protest on the overly vague basis of "serious information or indications of a threat to the national peace and security".

³ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, Maina Kiai and Christof Heyns, 4 February 2016, UN Doc. A/HRC/31/66, paras 18-27.

⁴ Ibidem.

Even if this provision does provide for the possibility to challenge the decision before the administrative court, two main obstacles make this process ineffective in practice. Firstly, the article does not set any time limit for the administrative judge to decide on the matter. Secondly, the Egyptian judiciary is not independent from the executive,⁵ which gives little hope to those wishing to challenge the executive decision and obtain a ruling in their favour.

For citizens to enjoy their right to organise and participate in peaceful gatherings, states must fulfil their positive obligation to facilitate the exercise of this right. The prior notification system, alongside the power of the executive to arbitrarily ban demonstrations, constitutes a direct violation of this obligation.

1.3. ALLOWING EXCESSIVE USE OF FORCE TO DISPERSE PROTESTERS

Articles 11, 12 and 13 of the law set out the circumstances in which security forces may disperse a public meeting or protest. The law grants law enforcement officials and other security forces – including the military – the right to use force with increasingly brutal means to disperse protests, from using water cannons, batons and tear gas to firing warning shots, sound bombs or gas bombs, rubber bullets and metal pellets (articles 12 and 13). Security forces may resort to using firearms, even when the demonstration poses no direct threats to people's lives, disregarding one of the most fundamental rights in international law: the right to life.⁶ Under international law, the use of force against a person can only be resorted to when there is an imminent threat and in "in self-defence or in the defence of others", and not when there is a threat to an object or property.⁷

Furthermore, under international law, gatherings and demonstrations must be presumed peaceful by the state.⁸ In practice, this means that even isolated acts of violence during

⁵ See notably: International Commission of Jurists, *Egypt's Judiciary: A Tool of Repression. Lack of Effective Guarantees of Independence and Accountability*, September 2016, <https://www.icj.org/wp-content/uploads/2016/10/Egypt-Tool-of-repression-Publications-Reports-Thematic-reports-2016-ENG-1.pdf> (accessed on January 17, 2018).

⁶ Article 13 of Law No. 107 of 2013

⁷ "Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries and, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life. Firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful. Intentional lethal use of force is only lawful where it is strictly unavoidable to protect another life from an imminent threat". *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, op.cit, para. 57.

⁸ The peacefulness of an assembly should be presumed, and a broad interpretation of the term "peaceful" should be afforded. *Ibid.* para.18.

a demonstration do not strip a protest of its peaceful character and should not be used as a pretext for the Egyptian authorities to resort to a disproportionate use of force under the guise of maintaining the public order. On the contrary, international law provides that the state has a positive duty to protect demonstrators from individuals that aim to disrupt a protest's peaceful character, and to ensure that the protest can continue safely.

In a 2011 report, the Special Rapporteur on extrajudicial, summary or arbitrary executions highlighted that "the only circumstances warranting the use of firearms, including during demonstrations, is the imminent threat of death or serious injury".⁹ With regard to the use of tear gas, permitted by the 2013 Anti-Protest Law, UN experts recalled that its use "does not discriminate between demonstrators and non-demonstrators, healthy people and people with health conditions" and considered that it enables security forces to inflict unnecessary pain, violating the right to humane treatment.¹⁰

1.4. PROSECUTING PEACEFUL DEMONSTRATORS

Chapter 3 of the law outlines the penalties demonstrators may receive for violating the provisions of the law. In its Article 7, the law outlines a particularly vague and broad set of punishable acts:

"Participants in public meetings or processions or protests are prohibited to disrupt public security or order or obstruct production, or call for it, or hamper citizens' interests or harm them or subject them to danger or prevent them from exercising their rights and work, or affecting the course of justice, public utilities, or cutting roads or transportation, or road, water, or air transport, or obstructing road traffic or assaulting human life or public or private property or subjecting it to danger".

Article 19 then states that any person found to have committed one of the above-mentioned acts is punishable with imprisonment between two to five years and/or a heavy fine ranging from 50,000 to 100,000 Egyptian pounds. By providing such a broad and vague definition of criminalised acts, this article entails in practice that peaceful protests'

⁹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 23 May 2011, UN Doc. A/HRC/17/28, para. 60.

¹⁰ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 21 May 2012, UN Doc. A/HRC/2017, para. 35.

organisers or participants can be punished with imprisonment for the mere fact that the demonstration was “obstructing road traffic”.

Therefore, the implementation of this law swiftly brought about dramatic infringements on the right to freedom of peaceful assembly in Egypt, putting peaceful protesters at risk of mass arbitrary arrests, often followed by mistreatment, torture and unfair trials.¹¹

In fact, cases documented by Alkarama show a pattern of torture and mistreatment practiced by security forces to punish political opponents and activists for having held or partaken in protests. Furthermore, as peacefully organising or participating to protest cannot constitute a legitimate reason to prosecute individuals, the UN Working Group on Arbitrary Detention (WGAD) has found multiple times that trials on such motives are unfair.

¹²

Lastly, it is important to note that as Egyptian criminal law equates the incitement to commit a crime to the crime itself, many activists have been arrested and prosecuted for the simple act of calling for a peaceful protest.¹³

2. Prosecuting peaceful criticism and activism under the pretext of counter-terrorism

In 2015, two counterterrorism laws were adopted. The first one, which was enacted in February, laid down the conditions applicable to the designation of individual and entities as “terrorists”. The second one, which was approved in August,¹⁴ criminalised a wide range of acts as terrorist acts, and was denounced by international organisations as not only one of the most repressive anti-terrorism laws issued to date in the Middle East and North Africa

¹¹ See for example : Alkarama, *Egypt: Repeatedly Tortured by Security Forces for Taking Part in Peaceful Demonstration*, February, 25, 2015, <https://www.alkarama.org/en/articles/egypt-repeatedly-tortured-security-forces-taking-part-peaceful-demonstration> ; See also: Alkarama, *Egypt: torture and continuous detention of 10 young women for peacefully demonstrating*, <https://www.alkarama.org/en/articles/egypt-torture-and-continuous-detention-10-young-women-peacefully-demonstrating> (all accessed on January 22, 2018). See also Chapter 2 for more details on the abuses documented by Alkarama.

¹² See for example the cases of April 6 activists : United Nations Working Group on Arbitrary Detention, *Opinion No. 49/2015 concerning Ahmed Saad Douma Saad, Ahmed Maher Ibrahim Tantawy, and Mohamed Adel* (Egypt), February 3, 2016.

¹³ Alkarama, *Egypt: UN Urges Release of Civilians Tried Before Military Courts for Participating in Demonstration*, September 12, 2014, <https://www.alkarama.org/en/articles/egypt-un-urges-release-civilians-tried-military-courts-participating-demonstration> ; Alkarama, *Egypt: hundreds of peaceful demonstrators arrested and detained in renewed wave of repression*, April 28, 2016, <https://www.alkarama.org/en/articles/egypt-hundreds-peaceful-demonstrators-arrested-and-detained-renewed-wave-repression> ; see also: Human Rights Watch, *Egypt: Scores of Protesters Jailed Unjustly. 47 Hunger Strikers May Be Freed*, May 25, 2016, <https://www.hrw.org/news/2016/05/25/egypt-scores-protesters-jailed-unjustly>, (all accessed on January 22, 2018).

¹⁴ An English and Arabic version of the law is available here: <http://www.atlanticcouncil.org/blogs/menasource/egypt-s-anti-terror-law-a-translation> (accessed on December 10, 2017).

region, but also an additional tool for the government to crack down on dissenting voices. The promulgation of the law was also described as a “big step toward enshrining a permanent state of emergency as the law of the land” in Egypt.¹⁵

2.1. THE LAW REGULATING LISTS OF TERRORIST ENTITIES AND TERRORISTS

On February 17, 2015, Law No. 8/2015 on “Regulating Lists of Terrorist Entities and Terrorists” was adopted by presidential decree in the absence of a parliament.¹⁶ The law defined both “terrorist” and “terrorist entities” so broadly that it allowed for the listing of peaceful human rights activists and journalists.¹⁷ Article 1 of the law defines terrorist entities as:

“any association, organization, group or gang that attempts to, aims to or calls for destabilizing public order; endangers society’s wellbeing or its interests of safety; harms individuals or terrorizes them, or endangers their lives or freedoms or rights or safety; endangers social unity; harms the environment or natural resources or monuments or communications or transportation or funds or buildings or public or private property, or occupies them; obstructs the work of public authorities or the judiciary or government entities or local municipalities or houses of worship or hospitals or scientific institutions or diplomatic missions or international organizations; blocks public or private transportation, or roads; harms national unity or national peacefulness; obstructs the implementation of the constitution or laws or bylaws; uses violence or power or threats or acts of terrorism to achieve one of its goals.”

The law gives power to the Public Prosecution to decide on the listing of individuals and entities (Article 2). The lists have to be submitted by the Public Prosecution to the Cairo Criminal Court of Appeals, which has power to rule on the listing request. Once a decision is taken by the court, the listing is valid for a period of three years, renewable upon request from the prosecution (Article 4).

¹⁵ Human Rights Watch, *Egypt: Counterterrorism Law Erodes Basic Rights Broad ‘Terrorist Acts’ List May Criminalize Civil Disobedience*, August 19, 2015, <https://www.hrw.org/news/2015/08/19/egypt-counterterrorism-law-erodes-basic-rights> (accessed on December 4, 2017).

¹⁶ Law No. 8/2015 of 17 February 2015 regulating designated terrorist and terrorism lists.

¹⁷ Egyptian Initiative for Personal Rights, *Law on Terrorist Entities Allows Rights Groups and Political Parties to Be Designated Terrorists*, March 1, 2015, <https://eipr.org/en/press/2015/03/law-terrorist-entities-allows-rights-groups-and-political-parties-be-designated> (accessed on December 10, 2017).

Individuals or entities are not notified of their listing, and are, therefore, not informed of the process, nor given any opportunity to challenge the elements on which the decision to list them has been taken or to bring any exculpatory evidence to defend themselves. It is only after the Cairo Criminal Court of Appeals rules in favour of a listing that concerned individuals and entities are allowed to appeal the decision before the Cassation Court, within sixty days from the publication of the decision (Article 6). In addition to the lack of transparency of the listing process and the absence of notification of those listed, the lack of independence of the judiciary, particularly in security or terrorism related matters, makes it virtually impossible for those listed to effectively challenge the decision.

Once an association or any other entity is listed under this law, its activities are banned, its premises closed, its assets frozen, and all funding activities banned and criminalised. Any individual found to belong to the "terrorist entity", or any individual found to "promote or raise its slogans" can, in turn, be listed as a terrorist and prosecuted. The effects of the listing on individuals include travel bans, the withdrawing and cancelling of passports, as well as a prohibition of engaging in public affairs and the freezing of the individual's assets (Article 7).

On January 12, 2017, this law was used to adopt a terrorist listing of about 1,500 individuals, the majority of whom were not notified nor able to challenge the legality of the listing fairly.¹⁸ In May 2017, nine journalists prosecuted in the "Rabaa Operations Room" mass trial were included on a new "terrorist list" issued by the Egyptian authorities, which also included activists and political opponents.¹⁹ The listing was based on the mere assumption that they either belonged to or supported the Muslim Brotherhood, since the party was designated by an executive decision as a "terrorist entity" in December 2013.²⁰ The law was also extended to lawyers who defended listed individuals, as well as journalists who reported on violations committed against listed individuals and entities, as such activities can be interpreted as a form of "support".²¹

¹⁸ Human Rights Watch, *Egypt: Court Names 1,500 to Terrorist List. Punishment without Fair Hearing Mocks Due Process*, January 24, 2017, <https://www.hrw.org/news/2017/01/24/egypt-court-names-1500-terrorist-list> (accessed on December 10, 2017).

¹⁹ Alkarama, *Egypt: Nine Journalists Placed on a "Terrorist List" in Increased Crackdown on Freedom of Expression*, July 27, 2017, <https://www.alkarama.org/en/articles/egypt-nine-journalists-placed-terrorist-list-increased-crackdown-freedom-expression> (accessed on December 10, 2017)

²⁰ Shadia Nasralla, "Egypt designates Muslim Brotherhood as terrorist group", *Reuters*, December 25, 2013, <https://www.reuters.com/article/us-egypt-explosion-brotherhood/egypt-designates-muslim-brotherhood-as-terrorist-group-idUSBRE9BO08H20131225> (both accessed on January 23, 2017)

²¹ Alkarama, *Egypt: Human Rights Activist Missing After Arrest Tortured, Raped and Prosecuted Under Anti-Terrorism Law*, <https://www.alkarama.org/en/articles/egypt-human-rights-activist-missing-after-arrest-tortured-raped-and-prosecuted-under-anti>, April, 27, 2017 (accessed December 10, 2017)

2.2. THE ANTI-TERRORISM LAW

Drafted after the terrorist attack that killed Public Prosecutor Hisham Barakat on June 29, 2015, the Anti-Terrorism Law No. 95/2015 uses the same overly broad definition adopted in Law No. 8/2015,²² and has also been used to arrest and prosecute peaceful political opponents, lawyers, human rights defenders, and journalists.

2.2.1. *An overly broad definition of terrorism criminalising peaceful dissent*

The Law No. 95/2015 defines terrorism in vague terms, violating the principle of legal certainty, applicable in international and Egyptian law, according to which crimes must be defined in a precise manner in order to avoid arbitrariness. Article 2 of the law states that the following acts may be characterised as terrorist:

“any use of force, violence, threat, or intimidation domestically or abroad for the purpose of disturbing public order, or endangering the safety, interests, or security of the community; harming individuals and terrorizing them; jeopardizing their lives, freedoms, public or private rights, or security, or other freedoms and rights guaranteed by the Constitution and the law; harms national unity, social peace, or national security or damages the environment, natural resources, antiquities, money, buildings, or public or private properties or occupies or seizes them; prevents or impedes public authorities, agencies or judicial bodies, government offices or local units, houses of worship, hospitals, institutions, institutes, diplomatic and consular missions, or regional and international organizations and bodies in Egypt from carrying out their work or exercising all or some of their activities, or resists them or disables the enforcement of any of the provisions of the Constitution, laws, or regulations”.

Furthermore, the law criminalises political opposition in Article 18, which states that any person “who tries by force, violence, threat, intimidation, or another means of terrorist acts to overthrow the regime or change the State’s Constitution, its Republican system, or the form of government shall be punished by life imprisonment or imprisonment with hard labour for no less than ten years”. The broad spectrum of acts – which do not necessarily

²² Article 1 (B) of the Anti-Terrorist Law No. 95/2015 defines a “terrorist” as: “Any natural person who commits, attempts to commit, incites, threatens, or plans a terrorist crime domestically or abroad by any means, even if individually, collaborates in such a crime in the context of a joint criminal venture, or commands, leads, manages, founds, or establishes or of any terrorist entity as stipulated in Article (1) of President of the Arab Republic of Egypt Decree by Law No. 8 of 2015 on the designation of terrorists, terrorist entities, or any person who funds such entities or contributes to their activity knowingly.”

need to be violent – has led to the criminalisation of any political opponent for opposing the regime.

In the same vein, Article 35 criminalises the coverage of any terrorist attack or counter-terrorism operations which are considered as not reflecting the authorities' narrative. This provision, which was vehemently contested by the Egyptian Syndicate of Journalists as "breaching media freedoms",²³ states that "whoever intentionally, by any means, publishes, broadcasts, displays, or promotes false news or statements on terrorist acts inside the country or anti-terrorism operations contrary to the official statements released by the Ministry of Defence shall be punishable by a fine of no less than 200,000 Egyptian pounds and no more than 500,000 Egyptian pounds" and journalists found guilty of crimes of "false news" may be banned from practising.

2.2.2. Violations to fundamental legal safeguards

The Anti-Terrorism Law lacks sufficient guarantees against arbitrary detention and unfair trials, and, in practice, cases documented by Alkarama show an alarming pattern of abduction, secret detention, torture and unfair trials in all terrorism-related cases, including when peaceful activists were prosecuted under this legislation.

Article 40 states that any person suspected of terrorism may be kept in custody for 24 hours, extendable to a week-long period. However, in practice, individuals arrested under this law have been subjected to enforced disappearances by being kept in secret and unacknowledged detention for periods ranging from several days to several weeks.

Aside from the unchecked and habitual abuses by State Security forces in charge of counter-terrorism, another reason this practice has prevailed is the loophole contained in Article 41 of Law No. 95/2015, which states that the person in custody "shall have the right to call and inform a family member of his choice and to seek a lawyer", though it adds that such a right is "without prejudice to the interests of evidence-collection". In practice, this means that the prosecutor or the security forces can deny the right of a detainee to contact her/his lawyer and family as long as they consider that it might hinder their investigation. Therefore, while the right to inform one's family and seek a lawyer's assistance is considered to be absolute and not subjected to any condition,²⁴ security

²³ Mada Masr, *Press Syndicate insists Article 33 of anti-terror law is annulled not amended*, July 8, 2015, <https://www.madamasr.com/en/2015/07/08/news/u/press-syndicate-insists-article-33-of-anti-terror-law-is-annulled-not-amended/> (accessed on January 24, 2018).

²⁴ United Nations Counter-Terrorism Implementation Task Force CTITF Working Group on Protecting Human Rights while Countering Terrorism, *Basic Human Rights Reference Guide: Detention in the Context of Countering Terrorism*, October 2014, paras 65-67.

forces can discretionarily forbid any communication between detainees and the outside world.²⁵

This practice does not only amount to an enforced disappearance, it also violates the most fundamental guarantees granted to all individuals under both international and Egyptian constitutional law. First, by forbidding access to a lawyer, it prevents individuals in custody from challenging the legality of their detention. This right, known as the right to *habeas corpus* in international law, has been considered as absolute by UN experts who highlighted that it was crucial to protect all persons from further abuses, including torture and the extraction of confessions thereof.²⁶ This is all the more concerning considering that cases documented by Alkarama show that individuals have been forced to confess to crimes under torture, and, in some cases, sentenced to harsh penalties – including capital punishment – in the absence of any material evidence against them.²⁷

Furthermore, the law sets up dedicated circuits within ordinary criminal courts to hear terrorism cases (Article 50). These circuits are headed by Chief Judges, who are, in practice, chosen by the executive. This clearly undermines the independence and impartiality of such jurisdictions which are subjected to interference from the executive, creating *de facto* special courts.

In addition, cases documented by Alkarama show that trials are held *in camera*, defence lawyers are not given access to the prosecution file, nor are they allowed to bring any exculpatory evidence, and the accused are usually held behind sound-proofed glass during the hearings,²⁸ in violation of the right to a fair and public trial.²⁹ In this regard, Article 36 of the law disproportionality restricts public access to hearings by prohibiting all “filming, recording, broadcasting, or displaying any proceedings of the trials of terrorist crimes”, except with the permission of the court's Chief Judge.

Lastly, penalties provided by the law are extremely harsh, including for acts which did not lead to the death of a person, as well as acts falling under the rights to freedom of

²⁵ See for example: Alkarama, *Egypt: 18 Men and Women Disappeared, Tortured, and Accused of “Belonging to a Banned Group*, August 2, 2017, <https://www.alkarama.org/en/articles/egypt-18-men-and-women-disappeared-tortured-and-accused-belonging-banned-group>; *Egypt: Secret Detention and Torture of an 18 Year-Old Student Charged With “Terrorism”*, December 22, 2016, <https://www.alkarama.org/en/articles/egypt-secret-detention-and-torture-18-year-old-student-charged-terrorism> (all accessed on January 10, 2018).

²⁶ Report of the Working Group on Arbitrary Detention, United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, UN. Doc A/HRC/30/xx, June 2015, paras 80-85.

²⁷ See for example: Alkarama: *Egypt: Execution of four men sentenced to death in the Kafr El Sheikh Stadium bombing case*, January 3, 2018 <https://www.alkarama.org/en/articles/egypt-execution-four-men-sentenced-death-kafr-el-sheikh-stadium-bombing-case> (accessed January 10, 2017).

²⁸ See *infra* chapter 2 of the report for more detailed information of the violations to fundamental rights.

²⁹ ICCPR, article 14 (1).

expression or peaceful assembly.³⁰ Article 6 also criminalises any act constituting an “incitement to commit any terrorist crime”, including through public and private declarations, and regardless of its effect, providing for the same punishment as the terrorist crime itself, i.e. the death penalty.

3. Restricting press freedom

On December 26, 2016, Law No. 92/2016 on the “Institutional Regulation of the Press and the Media” was passed. The law directly threatens journalists and media outlets by undermining the right to freedom of opinion and expression guaranteed under article 65 of the Egyptian Constitution, which states that “every person shall have the right to express his/her opinion verbally, in writing, through imagery, or by any other means of expression and publication.” The law falls within the government’s broader crackdown on media workers, seeing numerous journalists arrested and prosecuted.

3.1. MONITORING THE PRODUCTION OF INFORMATION

The law created three regulatory bodies to supervise all Egyptian media outlets, granting the president the power of nomination over the majority of the members of these bodies under Article 32 of the law. Such power of nomination violates Article 72 of the Constitution, which stipulates that “the State shall ensure the independence of all State-owned press institutions and media outlets in a manner ensuring their neutrality and presentation of all political and intellectual opinions.”

The three regulatory bodies are provided with broad powers including:

- The Higher Council for Media Regulation aims to regulate all media and press outlets, whether private or state-owned, in cooperation with the two other bodies;
- The National Press Organisation aims to monitor and supervise state-owned press organisations, and is responsible for selecting their board’s members and the chief editors of affiliated publications;
- The National Media Organisation aims to develop state-owned media outlets.

³⁰ For the position of UN independent experts on the issue see for example: “The death penalty should not be used as a deterrent for terrorism” – UN rights experts warn, October 10, 2016 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20659> (accessed on December 10, 2017).

The law states that the Higher Council aims at “protecting the right of citizens to enjoy press and media” that are “free and honest”, and in accordance with Egyptian “cultural identity”. The establishment of the Council was also aimed at ensuring the “independence, impartiality, multiplicity and diversity of media and press institutions”, while ensuring that that “these outlets abide by the exigencies of national security”.

3.2. “NATIONAL SECURITY” AND “CULTURAL IDENTITY” AS A PRETEXT TO IMPOSE A MONOPOLY ON THE PUBLICATION OF INFORMATION

The regulatory bodies' powers show that, far from aiming at protecting their citizens' right to free and independent information, the Higher Council's role is in fact to ensure that information fits into the government's own narrative. The Higher Council gives its opinion on any upcoming media and press related draft laws, grants the necessary permits and licences for the establishment of any media outlet, receives complaints regarding publication and dissemination of information that affects the reputation or privacy of individuals, and takes measures against institutions or journalists that would violate the law (Article 30).

Consequently, if a media institution is found, for example, to contravene “national security exigencies”, the Higher Council can either refer the “contravention” to the judiciary, or enforce a myriad of penalties. Such penalties can include *inter alia* ordering the institution to remedy the infraction within an imparted time limit by deleting the information, imposing a fine, or declaring a temporary ban of the outlet (Article 26).

3.3. CRIMINALISING COVERAGE OF HUMAN RIGHTS ABUSES

Since May 2017, more than 400 websites, including at least 21 news agencies, have been blocked by the Egyptian authorities for “spreading lies” and “supporting terrorism” under the 2015 Anti-Terrorism Law.³¹

The blockade shows that in addition to the Press and Media Law, the Anti-Terrorism Law is being used to forbid any narrative over political and security issues that would contradict the official one.

³¹ Human Rights Watch, *Egypt Blocks Human Rights Watch Website*, September 7, 2017, <https://www.hrw.org/news/2017/09/07/egypt-blocks-human-rights-watch-website> (accessed on January 24, 2018).

On August 30, 2017, the United Nations Special Rapporteur on the right to freedom of opinion and expression, David Kaye, and the Special Rapporteur on human rights and counter-terrorism, Fionnuala Ní Aoláin, raised grave concerns over the Egyptian government's ongoing assault on freedom of expression.³² The UN experts highlighted that the blockings appeared to be based on "overbroad counter-terrorism legislation", and to be lacking "any form of transparency and have extremely limited, if any, judicial control".³³ According to both experts, such a ban also means that the Egyptian society as a whole is being "[denied] access to websites of all sorts, but especially news sites," and thus effectively deprived of "basic information in the public interest".

4. Putting civil society's work under strict governmental control

The 2017 NGO law represented a culminating point in a series of measures taken by the authorities to restrict civil society space in the country. However, NGOs were already affected by an amendment to the Criminal Code in 2014 which criminalised the receiving of foreign funding.

4.1. THE 2014 AMENDMENT TO ARTICLE 78 OF THE PENAL CODE

On September 21, 2014, President Al Sisi issued Decree No. 128/2014, amending Article 78 of the Penal Code. This amendment aimed at restricting foreign funding of individuals and organisations, hence creating a barrier for NGOs operating in Egypt.³⁴ Both international and local funding is prohibited if received for a purpose allegedly contrary to the interests of the state.

The amended Article 78 states that receiving foreign funds with the aim of carrying out activities "harming national interests" or "disrupting public peace" is punishable by life imprisonment and a fine of up to 500,000 Egyptian pounds. In its previous wording, Article 78 criminalised funding from foreign states while sentencing the recipient with imprisonment and a fine of no less than 1,000 Egyptian pounds.

³² OHCHR, *Egypt extends its assault on freedom of expression by blocking dozens of websites – UN experts warn*, Geneva, August 30, 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22008&LangID=E> (accessed on January 23, 2018).

³³ *Ibidem*.

³⁴ Enas Ahmed, "Egyptian activists fear new penalties for foreign funding", *Al-Monitor*, October 10, 2014, <http://www.al-monitor.com/pulse/originals/2014/10/egypt-president-decree-counter-terrorism.html#ixzz50Hy5fySk> (accessed on December 4, 2017).

4.2. THE END OF INDEPENDENT CIVIL SOCIETY: THE 2017 NGO LAW

On May 24, 2017, the Parliament passed Law No. 70/2017 regulating the activities of Associations, Foundations and Other Entities Working in the Civil Sphere. Published in the Official Gazette on May 29, the law severely restricts the work of all civil society organisations, from those working on civil and political rights to those working in development and relief. The number of associations affected by the law is estimated to be over 47,000.³⁵

Under the new legislation, civil society's work is restricted on several levels: existing associations and NGOs are compelled to go through a strict process of registration which allows the authorities to ban independent organisations, funding and activities are closely monitored by a newly established body, and violations to the law are severely punished.

The text violates Article 75 of the Egyptian Constitution which promotes the right to form associations, as well as Article 22 of the International Covenant on Civil and Political Rights (ICCPR), under which states have the obligation to protect the right to freedom of association by ensuring that restrictions imposed on them are proportionate, necessary to protect public order, and non-discriminatory.

5.2.1. Banning independent organisations

Under the previous NGO Law of 2002, if, following an association's request for registration, the authorities failed to respond within 60 days, the association would be registered (declaratory system). Article 2 of the 2017 Law states that following a request for registration, the absence of a reply from the administration means that the registration has been denied (system based on explicit

UN EXPERTS PUBLICLY CONDEMN NGO LAW

In 2016, the UN Special Rapporteur on freedom of peaceful assembly and of association expressed concern over the draft law, stating that it "would aggravate already constraining legislative framework and raise further questions about compatibility of the Egyptian legislation with its international human rights obligations."

In June 2017, the UN High Commissioner for Human Rights affirmed that "[t]he new legislation places such tight restrictions on civil society that it effectively hands administration of NGOs to the Government".

³⁵ Farah Najjar, "Why is Egypt's new NGO law controversial?", *Aljazeera*, 31 May 2017, <http://www.aljazeera.com/indepth/features/2017/05/egypt-ngo-law-controversial-170530142008179.html> (accessed on January 23, 2018).

authorisation). The law further provides that organisations that do not register under the new law within six months would automatically be dissolved (Article 2).

As highlighted by UN experts, this system of prior approval does not allow individuals to create associations freely, without undue interference from their governments.³⁶ Furthermore, it has been highlighted that when new regulating laws are being issued, existing associations and NGOs should not be compelled to register again under the new rules.³⁷ Such a guarantee, which aims at protecting civil society from arbitrary rejections, is ignored in the 2017 Law, which, on the contrary, prohibits all entities from carrying out any activity without being subject to the provisions of the new law (article 4).

Associative work is restricted by several provisions that directly infringes freedom of association. In particular, Article 13 states that associations “shall work in the fields of social development”, and are forbidden from carrying out “work of political nature” or “work that may cause harm to the national security, law and order”. In practice, this means that civil society working in the field of civil and political rights are automatically denied the right to carry out their activities. Such a limitation is not only an unjustified restriction of freedom of association but also infringes upon the right of Egyptians to participate in public affairs protected by Article 25 of the ICCPR. As the UN Human Rights Committee stated, “the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25”.³⁸

Secondly, the law imposes on local civil society that they “shall work to achieve their purposes [...] within the scope of the state plans and development needs and priorities” (Article 14), while foreign NGO must prove that their activities shall be consistent with the needs of the Egyptian society based on the priorities of development plans to be allowed to carry out their work (Article 62).

5.2.2. Monitoring civil society

While the law provides that local associations are subjected to the control of an administrative entity within the Ministry relevant to their field of activity, the law establishes a new body dedicated to the control of foreign NGOs the “National Authority for the Regulation of Non-Governmental Foreign Organisations” (NARNGFO). The NARNGFO is composed of representative of different administrations, including the Ministry of Defence,

³⁶ Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN. Doc A/HRC/20/27, 21 May 2012, paras. 58-60.

³⁷ *Ibid*, para. 62.

³⁸ UN Human Rights Committee, *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)*, *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, para. 26.

the Ministry of Interior and the Intelligence Services. Under Article 70, the NARNGFO is in charge of controlling virtually every single aspect of foreign NGOs work:

- Inspecting the work, funds, headquarters of any organisation at any time, and, if found not to abide by all the provisions of the law, subsequently request the dissolution or suspension of the organisation;
- Controlling all sources of funding, which, whether local or international, must be notified to the NARNGFO;
- Monitoring all foreign and Egyptian NGOs which receive foreign funding;
- Authorising field research and surveys, and reviewing their findings before publication to ensure “to make sure of their integrity and neutrality”

5.2.3. Criminalising associative work

Chapter nine of the law sets out a series of severe punishments – including imprisonment – for individuals who are found to violate its provisions. The law has therefore worsened an already dire situation by creating additional grounds to judicially harass and prosecute founders and members of independent human rights organisations.

Article 87 provides for jail sentences of not less than a year and not exceeding 5 years for individuals who commit a series of violations, including whomever “established an association, which real purposes are proven to conduct prohibited activities” (i.e. any work of political nature or that is “destabilizing the national unity, national security, public law and order, and public morals”, even if such work is peaceful (Article 87(a)).

The same punishment is provided for anyone who “received funds from abroad” or “sends money to abroad or collects donations” without prior approval from the executive (Article 87(b)). Furthermore, the same prison sentence is provided for whoever helped or participated with a foreign organization in carrying out its activities in Egypt without prior authorization and to individuals who carry out surveys or research and publish their findings without the prior approval of the National Regulatory Agency (Article 87(e)).

The NGO Law represents the latest blow in the escalating crackdown on the right to freedom of expression and association since the military takeover. Along with the 2013 Anti-Protest law, the 2015 Anti-Terrorism Law and the 2016 Press and Media Law, the authorities have criminalised any form of peaceful dissent and, combined with systematic human rights abuses, have established a pervasive culture of fear and silence within Egyptian society.

II. INSTILLING FEAR THROUGH VIOLENCE

Since 2013, Alkarama has submitted complaints on behalf of more than 2,600 victims of severe human rights abuses in Egypt. These abuses are the result of the extreme brutality with which the laws analysed in the first part of this report are implemented. From these cases – which represent only a fraction of the thousands of abuses committed by security forces over this period – a clear pattern emerges. Arbitrary arrests and abductions are often followed by varying periods of secret detention, after which victims are presented before a prosecutor and charged without the presence of their lawyer. Victims are systematically subjected to torture and mistreatment while in custody, and many are forced to sign confessions which will be used against them during unfair trials. During this process, violations to the right to life take different forms: while many victims have been sentenced to death following unfair trials,³⁹ the practice of extrajudicial killings and the wilful denial of medical care have also claimed the lives of thousands.⁴⁰

The aims of such abuses are manifold: they are used as a form of punishment for holding views deemed to be dangerous to the “stability” or the “image” of the state, while torture is also used as a tool to coerce victims into signing self-incriminating, pre-written statements – or even reading them in front of a camera to be broadcast on public TV.⁴¹ These statements are then used as evidence against the victim once she or he is brought before a court – which can be under civilian or military jurisdiction. Despite many accounts of victims reporting such abuses to judges, and even showing them the scars on their bodies, such claims remain largely ignored. Accepting evidence extracted under torture goes against international fair trial guarantees,⁴² and, as a result, victims are regularly punished with harsh sentences following unfair trials.

³⁹ OHCHR, *Egypt: Mass death sentences – a mockery of justice*, March 31, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14457> (accessed on January 17, 2018).

⁴⁰ Alkarama, *Egypt: Death Behind Bars - Torture and Denial of Medical Care in Detention in Egypt*, November 4, 2015, <https://www.alkarama.org/en/articles/egypt-new-report-shows-cases-death-detention-more-trebled-past-2-years>, (accessed on January 17, 2018).

⁴¹ See for example the following case: Alkarama, *Egypt: Mansoura Case Death Sentences Violate Egypt's International Obligations*, June 16, 2017, <https://www.alkarama.org/en/articles/egypt-mansoura-case-death-sentences-violate-egypts-international-obligations> (accessed on January 24, 2018).

⁴² Article 15 of the UNCAT. See also: Tobias Thienel, “The Admissibility of Evidence Obtained by Torture under International Law”, *The European Journal of International Law*, Vol. 17, No.2, 2006, pp. 349–367.

1. Arbitrary arrests, abductions and enforced disappearances

More than 60,000 individuals have been arrested in Egypt since July 2013⁴³, a majority for acts of free speech.⁴⁴ Women, men, children, journalists, students, academics, human rights defenders, political opponents and other peaceful activists are among those who have been targeted by the sweeping crackdown on dissent. Though their backgrounds differ, they all share a common story.

1.1. ARBITRARY ARRESTS AND ABDUCTIONS

In most of the cases Alkarama has documented, victims are arrested by members of the State Security Forces (*Amn Al Dawla* or *Amn Al Watani*) and/or the police – occasionally in uniform, but most often in plainclothes. The arrests are carried out in individuals' homes or in the street, with a disproportionate use of force not only against the victim, but also against family members.

According to many accounts of families and other witnesses, arrests are carried out without any arrest warrant shown, and security forces do not explain the reasons behind the arrests. These practices violate numerous fundamental guarantees enshrined in both international and Egyptian law, which require that no one be arrested arbitrarily.⁴⁵

1.2. FROM ABDUCTION TO ENFORCED DISAPPEARANCE

Following arbitrary arrests, victims are taken to unknown places of detention or held without any official acknowledgement of them being in custody. Thus, the arrest quickly takes the form of an abduction followed by secret detention, which amounts to an enforced disappearance. Enforced disappearance is defined by international law⁴⁶ as a situation in which:

⁴³ Human Rights Watch, *Egypt: Torture Epidemic May Be Crime Against Humanity*, September 6, 2017, <https://www.hrw.org/news/2017/09/06/egypt-torture-epidemic-may-be-crime-against-humanity> (accessed on January 17, 2018).

⁴⁴ According to Amnesty International, the crackdown on dissent has led to the detention of at least 34,000 persons. See: Amnesty International, *Egypt: 'Officially, You Do Not Exist' Disappeared and Tortured in the Name of Counter-terrorism*, 2016, Index: MDE 12/4368/2016, p.7, https://www.amnesty.ch/de/laender/naher-osten-nordafrika/aegypten/dok/2016/folter-und-verschwindenlassen-als-staatliche-politik/20160713_report_officially-you-do-not-exist.pdf (accessed on January 17, 2018).

⁴⁵ Article 54 of the 2014 Egyptian Constitution and article 9(1) of the ICCPR.

⁴⁶ Preamble of the Declaration on the Protection of All Persons from Enforced Disappearance, adopted

“[...] persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law”.

According to the testimonies of victims, individuals are often taken to detention centres run by state security services and the army, and, most of the time, these detention centres are unofficial facilities. Victims are held without any access to the outside world – including their family and lawyer – for periods ranging from several days to several months at a time. Their families' many requests for information on their fate and whereabouts are either ignored by the authorities, or they trigger reprisals against the victim herself or her relatives. Legal assistance is constantly denied during this period of *incommunicado* detention, and dates of arrest are regularly falsified in order to cover up these prolonged periods of secret detention.

Enforced disappearance, considered under international law as a violation which “undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms”,⁴⁷ has seen a dramatic escalation since 2013 in Egypt, with thousands of victims reported across the country.⁴⁸ While the authorities continue to deny the magnitude of the phenomenon as well as their own involvement, as of May 2017, 434 cases had been reported to the UN Working Group on Enforced or Involuntary Disappearances (WGEID).⁴⁹ In its latest annual report, the WGEID expressed its concern over the fact that in the past year, “it has had to transmit to the Government 101 new cases under its urgent action procedure”.⁵⁰

by the United Nations General Assembly on 18 December 1992, UN.Doc. A/RES/47/133.

⁴⁷ *Ibidem*.

⁴⁸ See: Amnesty International, Egypt: 'Officially, You Do Not Exist' Disappeared and Tortured in the Name of Counter-terrorism, 2016, *op.cit.* p. 7.

⁴⁹ Report of the Working Group on Enforced or Involuntary Disappearances, 31 July 2017, UN Doc. A/HRC/36/39, p. 28.

⁵⁰ *Ibid.* para. 79.

2. Torture and mistreatment as systematic practices

Over the course of their secret or *incommunicado* detention, victims are subjected to long sessions of interrogations without any legal assistance, during which they are systematically tortured by the security services, whose aim is to punish and/or to extract self-incriminating statements. In general, it is only after this period of secret detention that families are able to locate their relatives, and, in some cases and with great difficulty, manage to secure the assistance of a lawyer.

2.1. TORTURE IN CUSTODY: PUNISHING, HUMILIATING AND COERCING A CONFESSION

In almost all cases documented by Alkarama since 2013, victims of the authorities' crackdown on freedom of expression reported severe accounts of torture and other ill-treatment. Methods of torture include electrocution, waterboarding, cigarette burns and other body mutilations, suspension from the ceiling by the wrists, severe and prolonged beatings, blindfolding for prolonged periods, as well as food and sleep deprivation.

Sexual abuses are also used as a method of torture, taking the form of rape, as well as other forms of sexual assault targeting men, women and minors indifferently. Several cases of rape with a wooden stick and threats of rape against female relatives were reported to Alkarama against human rights defenders and activists.⁵¹ Furthermore, female activists or protesters have been subjected to forced "virginity tests" by the authorities as a means of punishment.⁵² Similarly, LGBTQI persons, or persons

BEHIND THE NUMBERS

In 2014, Alkarama sent a complaint on behalf of at least 52 minors, aged between 15 and 18 years old who were detained in the prison of Koum El Dekka in Alexandria for having participated in peaceful protests. The minors reported having been subjected to severe acts of torture, including sexual abuse.

In May 2015, 10 young women were arrested and tortured by security services for having peacefully demonstrated against the authorities' repression as well as to call for the release of their relatives. They were subjected to "virginity tests", detained with men, threatened with rape, and deprived of food, water and sleep for days. They further reported they had been forced to stand in front of a wall with their hands up for hours and that officers would beat them or pour cold water on them each time they moved.

⁵¹ Alkarama, *Egypt: Human Rights Activist Missing after Arrest Tortured, Raped and Prosecuted under Anti-Terrorism Law*, April 27, 2017, <https://www.alkarama.org/en/articles/egypt-human-rights-activist-missing-after-arrest-tortured-raped-and-prosecuted-under-anti> (accessed on December 10, 2017).

⁵² Alkarama, *Egypt: Torture and continuous detention of 10 young women for peacefully demonstrating*,

suspected of being LGBTQI – especially men and teenagers – have been subjected to systematic forced anal examinations after their arrests, which amounts to rape.⁵³

These different forms of torture are not only being used as a form of punishment and as a tool to deter criticism and dissent through the fear that it creates among society; the authorities have systematically resorted to torture in order to extract confessions that are used as the sole source of evidence against defendants in court.

After signing a self-incriminating statement, victims are brought before a court – in most cases without the presence of a lawyer – and charged by the Public Prosecutor without being able to prove their innocence, and rarely being allowed to make a statement.

Reports of torture made by the victim are systematically ignored by the Public Prosecutor, even when victims showed marks of torture on their bodies, or when they were successful in obtaining a medical record of their abuses. Investigations are never ordered by judicial authorities who dismiss claims made by victims, in violation of articles 4 and 15 of the UN Convention against Torture (UNCAT). In fact, in 2017, following a four-year long inquiry, the UN Committee against Torture concluded that “torture is a systematic practice in Egypt”, and that it “appears to occur particularly frequently following arbitrary arrests and is often carried out to obtain a confession or to punish and threaten political dissenters.”⁵⁴

April 1, 2016 <https://www.alkarama.org/en/articles/egypt-torture-and-continuous-detention-10-young-women-peacefully-demonstrating> (accessed on December 4, 2017).

⁵³ Egyptian Initiative for Personal Rights, EIPR demands the immediate release of detainees and warns against violations in detention EIPR calls on the media to halt its hate speech and incitement against LGBTQI individuals, October 4, 2017, <https://eipr.org/en/press/2017/10/egyptian-state-wages-unprecedented-arrest-campaign-against-individuals-based-their> (accessed on December 10, 2017).

⁵⁴ Report of the Committee against Torture, General Assembly, Seventy-second Session, UN Doc. A/72/44.

THE COMMITTEE AGAINST TORTURE'S CONFIDENTIAL INQUIRY ON EGYPT

In March 2012, Alkarama initiated an inquiry with the UN Committee against Torture (CAT) under Article 20 of the UNCAT. Article 20 gives the Committee power to conduct a confidential inquiry if it receives reliable information containing well-founded indications that torture is being systematically practised in a State Party to the Convention.

After a four-year-long investigation, during which Alkarama submitted regular reports documenting the systematic practice of torture in Egypt, the CAT issued its conclusions on June 23, 2017, stating that the practice of torture is "habitual, widespread and deliberate" in Egypt. The Committee went on to say that "the information provided by non-governmental organizations and the findings of United Nations sources, including the Special Rapporteur on torture, reflected trends regarding the perpetrators, methods and location of torture in Egypt, as well as the trend of impunity for perpetrators," leading them "to the inescapable conclusion that torture is a systematic practice".

The Committee identified several trends with regards to the practice of torture in the country, including the fact that "torture appears to occur particularly frequently following arbitrary arrests and is often carried out to obtain a confession or to punish and threaten political dissenters." The CAT observed that "torture occurs in police stations, prisons, State security facilities, and Central Security Forces facilities" and is "perpetrated by police officers, military officers, National Security officers and prison guards".

Furthermore, the CAT emphasised that "prosecutors, judges and prison officials also facilitate torture by failing to curb practices of torture, arbitrary detention and ill-treatment or to act on complaints", highlighting the obligation of the Egyptian authorities to immediately put an end to the practice and to the impunity enjoyed by perpetrators, including those with command or superior responsibility.

In its comments and observations on the inquiry report, the Egyptian authorities failed to respond to specific allegations made by Alkarama, describing them as "based on hearsay", despite the corroborating documentation from UN experts as well as local and international NGOs. Furthermore, it rejected specific recommendations made by the CAT, including by refusing "to immediately end the use of *incommunicado* detention; create an independent authority to investigate allegations of torture, enforced disappearance and ill-treatment; restrict the jurisdiction of the military courts to offences of an exclusively military nature; and enforce the prohibition against "virginity tests" and end the practice of forensic anal examinations for those accused of crimes".

2.2. CONDITIONS OF DETENTION AND DENIAL OF MEDICAL CARE AS A FORM OF MISTREATMENT

Humane conditions of detention and access to medical care are considered as crucial parts of a detainee's fundamental rights and guarantees. Consequently, their absence or denial constitute a form of torture or cruel and inhumane treatment, violating articles 1 and 16 of the UNCAT.

As the number of arbitrary arrests carried out by the authorities has increased exponentially in recent years, the conditions in prisons and other places of detention have become increasingly inhumane. Victims are detained in overcrowded cells infested with insects, where they are at a high risk of developing infectious diseases due to the lack of preventive sanitary measures taken by the authorities. Sleeping conditions, as well as basic hygiene conditions, are extremely poor; detainees have access to running water for only a few minutes per day, while electricity cuts occur on a regular basis. Detainees are provided with poor and insufficient portions of food, leading to malnutrition.

Furthermore, detainees suffering from pre-existing or newly diagnosed medical conditions who request appropriate medical care are systematically denied this right by the prison authorities. Denial of medical care is increasingly used as a form of punishment against those detained on political charges, such as activists, political opponents, journalists and human rights defenders.⁵⁵

Although families have submitted numerous requests to prison authorities for their relatives to be transferred to hospitals at their own expense, their requests have been constantly denied.⁵⁶ One of the main reasons behind such refusals is that transfers are subject to the approval of the Public Prosecutor, and require a medical statement testifying that there is a direct threat to the detainee's life. In several cases, although the direct threat to the life of the detainee was substantiated with medical evidence, the authorities refused to grant permission for the detainee to be transferred to appropriate facilities.

These appalling conditions of detention and the denial of medical care – which already constitute forms of cruel and inhumane treatment – also amount to a violation of the right to health and the right to life. Under international law, the authorities have a positive

⁵⁵ Alkarama, Egypt: Death Behind Bars - Torture and Denial of Medical Care in Detention in Egypt, op.cit. See also: Human Rights Watch, 'We Are in Tombs', Abuses in Egypt's Scorpion Prison, September 28, 2016, <https://www.hrw.org/report/2016/09/28/we-are-tombs/abuses-egypts-scorpion-prison> (accessed on January 15, 2018).

⁵⁶ Alkarama, Egypt: 18 Men and Women Disappeared, Tortured, and Accused of 'Belonging to a Banned Group', August 2, 2017, <https://www.alkarama.org/en/articles/egypt-18-men-and-women-disappeared-tortured-and-accused-belonging-banned-group> (accessed on January 15, 2018).

obligation to take all necessary measures to ensure that individuals under their custody are provided with independent healthcare and that their lives are not put in danger by the absence and/or the denial of medical care. The authorities' refusal to respect these obligations has led to an increasing number of deaths in custody.⁵⁷

3. Unfair trials

Despite the guarantees enshrined in the Egyptian Constitution,⁵⁸ the judicial system remains dysfunctional and characterised by its lack of impartiality and independence vis-à-vis the executive, leading to severe violations of fair trial rights.

Such violations occur in cases related to the exercise of fundamental freedoms, as well as in state security or counter-terrorism cases. In the aftermath of the military takeover, there was a surge in the use of military courts to try civilians, *en masse*, leading to the issuance of hundreds of death sentences.⁵⁹ The individuals prosecuted in these trials were routinely denied fair trial rights, and many are still kept in arbitrary detention today.

3.1. PROSECUTION DUE TO THE EXERCISE OF FUNDAMENTAL RIGHTS AND FREEDOMS

Since 2013, thousands of individuals – including journalists, activists, political opponents, and human rights defenders – have been arbitrarily arrested, denied their fair trial rights, and subsequently sentenced to heavy penalties, including life imprisonment and capital punishment. This practice has led UN experts to express serious concerns about the independence of the judiciary in Egypt.⁶⁰

In August 2017, the United Nations Special Rapporteur on freedom of expression, David Kaye, and the Special Rapporteur on human rights and counter-terrorism, Fionnuala Ní Aoláin, noted that: “the situation for journalism and the freedom of expression and access

⁵⁷ Alkarama, *Death behind bars, torture and denial of medical care in detention in Egypt*, op.cit.

⁵⁸ Article 186 of the 2014 Constitution.

⁵⁹ Spokesperson for the UN High Commissioner for Human Rights Rupert Colville, *Press briefing note on Egypt*, Geneva, December 2, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15368&>; Spokesperson for the UN High Commissioner for Human Rights Liz Throssell, *Press briefing notes on Egypt and the Democratic Republic of the Congo*, Geneva, January 5, 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22573&LangID=E> (all accessed on January 17, 2018).

⁶⁰ See notably: OHCHR, *Egypt: Mass death sentences – a mockery of justice*, op.cit.

to information in Egypt has been in crisis for several years," and that this crisis took many forms "including the unlawful detention and harassment of journalists and activists".⁶¹

The prosecution of peaceful activists and journalists would usually be based on charges criminalising their rights to freedom of expression as well as their rights to freedom of association and peaceful assembly (on the basis of the laws described in the first part of this report). The nature of the charges brought against them, in particular "spreading false news" or "harming the image of the state" as well as "illegal gathering" or "inciting protest" exemplifies the use of restrictive laws to prosecute those who document and oppose the authorities' violations.

The "Rabaa operation room" mass trial constituted an unprecedented attack on freedom of expression by the Egyptian authorities. Following a severely flawed trial, 14 journalists were condemned to lengthy prison sentences and, in some cases, to capital punishment.⁶² The journalists were arrested and charged with "spreading false information and chaos" as well as "harming the reputation of the State" for their coverage of the killing of more than a thousand protesters by security forces in *Rabaa Al Adawiya* Square in August 2013.⁶³ In 2015, the UN Working Group on Arbitrary Detention stated that the journalists must be released, and all charges against them dropped as their detention and trial was in violation of their right to freedom of expression and of opinion.⁶⁴

Another example of the prosecution of peaceful activists is the trial of April 6 youth movement founders Ahmed Douma, Ahmed Maher and Mohamed Adel for having "demonstrated without permission" after they carried out peaceful protests against the military trials of civilians, which were violently dispersed by the security forces in November 2013.⁶⁵ The activists were arrested without a mandate and denied their fundamental guarantees, including their rights to legal assistance and to communicate with their

⁶¹ OHCHR, *Egypt extends its assault on freedom of expression by blocking dozens of websites – UN experts warns*, August 30, 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22008&LangID=E> (accessed on January 17, 2018).

⁶² Alkarama, *Egypt: Nine Journalists of Raba'a Operation Room Case Still at Risk of Life Imprisonment and Death*, May 3, 2017, <https://www.alkarama.org/en/articles/egypt-nine-journalists-rabaa-operation-room-case-still-risk-life-imprisonment-and-death> (accessed on December 15, 2017).

⁶³ Human Rights Watch, *All According to Plan. The Rab'a Massacre and Mass Killings of Protesters in Egypt*, August 12, 2014, <https://www.hrw.org/report/2014/08/12/all-according-plan/raba-massacre-and-mass-killings-protesters-egypt>, (accessed on January 17, 2018).

⁶⁴ Working Group on Arbitrary Detention - *Opinion No. 7/2016 concerning Abdullah Ahmed Mohammed Ismail Alfakharany, Samhy Mostafa Ahmed Abdulalim, Mohamed Mohamed Aladili, Waleed Abdulraoof Shalaby, Ahmed Sabii, Youssouf Talat Mahmoud Mahmoud Abdulkarim, Hani Salheddin, Mosaad Albarbary and Abdo Dasouki (Egypt)*, adopted by the WGAD at its seventy-fifth session, 18-27 April 2016.

⁶⁵ Alkarama, *Egypt: Three prominent activists unlawfully detained under new assembly law*, April 17, 2014, <https://www.alkarama.org/en/articles/egypt-three-prominent-activists-unlawfully-detained-under-new-assembly-law>, (accessed on January 17, 2018).

families. Subjected to torture and cruel treatment in detention, they were the first to be prosecuted under the restrictive 2013 Anti-Protest Law. After a hasty trial, the activists were sentenced to three years imprisonment and a heavy fine, despite Opinion No. 49/2015 of the WGAD which highlighted the unfair nature of the trial and requested that the authorities immediately release the activists.⁶⁶ Today, while Ahmed Maher and Mohamed Adel have been released, they are required to spend each night at a police station

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Architectural engineering student and freelance photographer **Omar Mohamed Ali** was arrested by members of the State Security on June 1, 2015 without a warrant. He was then taken to the Lazoughli National Security Agency offices in Cairo where he was held in secret for several weeks, subjected to torture and forced to sign and read a self-incriminating statement in front of a camera.

A year later, on May 29, 2016, Omar was brought before the West Alexandria Military Court, and charged with "leaking classified Military information to a terrorist cell targeting Military and Police personnel". The same day, after a summary mass trial, Omar was sentenced to life imprisonment despite the lack of any evidence against him.

On September 21, 2016, Omar's sentence was upheld by the Minister of Defence following an appeal. Omar filed a second appeal with the Military High Court in October 2016; he is still awaiting trial. He remains detained at the Tora Istiqbal Prison in inhumane conditions and is denied medical care despite his deteriorating health condition.

between 6 p.m. and 6 a.m., which still constitutes a form of the arbitrary deprivation of their liberty.

3.2. PROSECUTION OF CIVILIANS BY MILITARY COURTS

The use of military courts to try civilians for having opposed the authorities was an established practice under Mubarak. However, after the military takeover, the Al Sisi government has expanded its use to an unprecedented level. Soon after his arrival to power, Al Sisi imposed the jurisdiction of military courts to try civilians who engaged in protests through the Presidential Decree No. 136 of 2014 on the "Security and Protection of Public and Vital Facilities" of October 27, 2014.

Article 2 of the Presidential Decree allows for the prosecution of civilians before military courts, which do not meet the fundamental requirements of independence and impartiality, in violation Article 14 of the ICCPR. As a result, an alarming number of civilians have been brought before military courts to be tried, including

⁶⁶ Omar Said, "Court upholds 3-year sentence for activists Maher, Adel and Douma", *Mada Masr*, January 27, 2015, <https://www.madamasr.com/en/2015/01/27/news/politics/court-upholds-3-year-sentence-for-activists-maher-adel-and-douma/> (accessed on January 18, 2018).

journalists and protesters. Most of the trials were mass trials which resulted in the sentencing of several hundred civilians to life imprisonment or the death penalty.⁶⁷

3.3. VIOLATIONS OF DEFENCE RIGHTS AND THE USE OF COERCED EVIDENCE

Defence rights are an essential part of the right to a fair trial. Such rights must be respected in order to ensure that individuals who are prosecuted have all the adequate means to defend themselves and establish their innocence in front of an impartial and independent tribunal.⁶⁸ State authorities cannot derogate or limit these rights under any pretext whatsoever, even in times of war or any other national emergencies.⁶⁹ Nevertheless, following the military takeover and the subsequent crackdown on opposition and criticism in Egypt, practices which directly and severely violate these rights proliferated.

Among the main violations of defence rights documented by Alkarama in both civilian and military trials is the use of confessions obtained under torture as the sole source of evidence to convict individuals to heavy sentences, including the death penalty.⁷⁰ The widespread use of coerced evidence is a direct consequence of the systematic practice of torture in custody, which is widely used to obtain such statements.⁷¹ Furthermore, judges do not order any investigations into torture allegations by victims, and accept such statements as evidence despite the claims made by victims that they were forced to sign them under torture. This practice, which exemplifies the lack of independence of judges, constitutes a failure from judicial authorities to uphold their duty to "respect and promote human dignity and human rights"⁷² and to ensure that allegations of torture are fully investigated.⁷³

Such practices not only violate international and Egyptian law's absolute prohibition of torture, but also the right to be considered innocent until proven guilty, as well as the right not to be compelled to testify against oneself or to confess guilt.⁷⁴ All the more concerning

⁶⁷ Human Rights Watch, *Egypt: 7,400 Civilians Tried In Military Courts. Torture, Disappearances Used to Elicit Confessions*, April 13, 2016, <https://www.hrw.org/news/2016/04/13/egypt-7400-civilians-tried-military-courts> (accessed on January 18, 2018).

⁶⁸ Article 14 of the ICCPR.

⁶⁹ Article 4 of the ICCPR.

⁷⁰ Report of the Committee against Torture, General Assembly, Seventy-second Session, UN Doc. A/72/44, paras 67-69.

⁷¹ *Ibidem*.

⁷² *Guidelines on the Role of Prosecutors*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁷³ Article 12 of the UNCAT.

⁷⁴ Article 14 (3) (g) of the ICCPR.

is the practice of forced confessions in front of cameras, and the publishing of these forced testimonies on the website of the Ministry of Interior in complete disregard of the presumption of innocence enshrined in Article 14 (2) of the ICCPR.

Since 2013, mass trials have been widely used to prosecute collectively those who led or participated in the mass protests opposing the military takeover. Hundreds of protesters, political opponents, and journalists covering the events were tried in the same cases, using similar charges in trials rigged with multiple irregularities. For example, in March 2014, 529 people were sentenced to death following a mass summary trial. The charges brought against them were not clearly established, defence lawyers did not have access to their clients' files, and none of the accused had been allowed to attend court. Never in Egyptian history had so many people been sentenced to death at once. This led to a strong reaction from the UN Special Procedures, which qualified the mass trial as a "mockery of justice" and called on the Egyptian authorities to revoke the convictions.⁷⁵ Despite this international condemnation, almost three months later, a court upheld 183 of 683 provisional death sentences that had been pronounced following a trial that lasted no more than a few minutes, and in which the accused were absent from court.⁷⁶ UN experts reiterated their outrage and expressed their deep concern over the fact that courts had become "instrumental in the arbitrary and politically motivated prosecutions by the State".⁷⁷

Similarly, following the violent dispersal of protesters at the *Rabaa Al Adawiya* Square, more than 739 defendants – including Muslim Brotherhood leaders, journalists covering the sit-in, protesters and even by-standers – were arrested and tried together, and sentenced to heavy penalties, including life imprisonment.⁷⁸

4. Summary and extrajudicial executions

Arbitrary executions take mainly two forms: victims can be sentenced to the death penalty following grossly unfair trials, which amounts to a summary execution, or they can be

⁷⁵ OHCHR, *Egypt: Mass death sentences – a mockery of justice*, *op.cit.*

⁷⁶ OHCHR, *Egypt: UN Experts "outraged" at confirmation of 183 death sentences*, June 30, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14801&LangID=E> (accessed on December 15, 2017).

⁷⁷ *Ibidem.*

⁷⁸ One of the defendant, photojournalist Mahmoud "Shawkan" was the subject of UN WGAD Opinion No. 41/2016 which highlighted systematic violations of due process and fair trial rights and notably that: "it is difficult to ensure that in such a trial, each accused would be considered individually for his or her criminal responsibility".

subjected to extrajudicial killing when they are executed outside of any legal procedure, whether in detention or during peaceful demonstrations.

4.1. DEATH PENALTY

Since 2013, no less than 105 executions have been carried out, while more than 1,500 individuals have been sentenced to capital punishment.⁷⁹ While the Egyptian authorities continue to pronounce and uphold such sentences, hundreds of individuals remain on death row, at risk of being executed following unfair trials. These death sentences, should they be carried out, would constitute a severe violation of Egypt's human rights obligations, particularly the right to life enshrined in Article 6 of the ICCPR.

4.2. EXTRAJUDICIAL KILLINGS

In recent years, the Egyptian security forces have carried out hundreds of extrajudicial executions of political opponents and peaceful protesters across the country, including numerous students and children. In spite of the many complaints filed by the families of the victims, no investigations were conducted to bring the perpetrators to justice. In general, such killings are carried out when security forces or the military use disproportionate force to forcibly disperse peaceful demonstrations. However, over the past year, Alkarama has documented an increasing number of extrajudicial killings of young students, occurring a few months after their abductions by security forces.

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Heba Gamal Abdelalem Mohamed Soliman, a 19-year-old student, and **Yousuf Abdelkader Mohamed Abdelkader Khafagi**, a 14-year-old child, were both summarily executed by the security forces and the army after taking part in a peaceful protest in Alexandria on July 3, 2014.

Similarly, on April 7, 2017, **Mohamed Adel Belboula**, a young religious scholar from the Al Azhar University of Cairo, was arrested and shot dead by members of the security forces shortly after posting a message on his Facebook account in which he criticised the current regime and called for the respect of civil and political freedoms.

⁷⁹ According to Amnesty International's figures. See: *Amnesty International Global Report. Death Sentences and Executions in 2013*, March 2014, Index: ACT 50/001/2014, <https://www.amnestyusa.org/files/act500012014en.pdf>; *Amnesty International Global Report. Death Sentences and Executions in 2014*, April 2015, Index: ACT 50/001/2015, https://www.amnestyusa.org/pdfs/DeathSentencesAndExecutions2014_EN.pdf; *Amnesty International Global Report. Death Sentences and Executions in 2015*, April 2016, Index: ACT 50/3487/2016, https://www.amnestyusa.org/files/act_5034872016_en_2103_web.pdf; *Amnesty International Global Report. Death Sentences And Executions in 2016*, April 2017, Index: 50/5740/2017, https://www.amnestyusa.org/files/4_embargoed_stats_report.pdf; For 2017 figures, see for example: Mona Eltahawy, "Tuesday Becomes Execution Day in Egypt", *New York Times*, January 15, 2018, <https://www.nytimes.com/2018/01/15/opinion/egypt-executions-sisi.html> (accessed on January 24, 2018).

4.2.1. Arbitrary executions of peaceful protesters

The trend of arbitrarily executing peaceful protesters in Egypt is exemplified by the violent

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Imad El Dim Sami El Far, a 21-year-old law student, and his 27-year-old brother, **Ali Sami Fahim El Far**, disappeared following their abduction from their home by State Security Forces. Four months after their abductions, their relatives were informed of their deaths during a “counter-terrorist operation” through a statement published on the website of the Ministry of Interior.

Similarly, in December 2017, Alkarama was informed that student **Abdelrahman Mohamed Ahmed Gamal**, who had been missing since August 2017 after having been abducted in the Giza Governorate by State Security forces, was announced to have been “killed” during a “counter-terrorist operation” targeting a house in Sinai in another press release on the Ministry of Interior’s website.

dispersal of peaceful protesters who were organising a sit-in in the *Rabaa Al Adawiya Square* on August 14, 2013, during which the indiscriminate firing of bullets into the crowd of protesters caused the death of over 1,150 peaceful protesters.⁸⁰ These violations to the right to peaceful demonstration and the right to life of thousands of people were characterised as a crime against humanity by several organisations⁸¹ that investigated and documented the violations, including Alkarama.⁸²

Instead of launching an investigation into the events in *Rabaa Al Adawiya Square*, as required by international law, perpetrators were given impunity and protesters were prosecuted *en masse* and held collectively responsible for the violence that occurred. The massacre was also justified by the authorities through the use of hate speech against political opponents, notably members or supporters of the Muslim Brotherhood.⁸³ The killing of peaceful protesters by security services in charge of “dispersing” demonstrations has since claimed the lives of victims from all political backgrounds. For example, on January 24, 2015, 31-year-old Shaimaa Al Sabbagh was shot dead by security forces during

⁸⁰ Human Rights Watch, *All According to Plan, The Rab'a Massacre and Mass Killings of Protesters in Egypt*, August 12, 2014, <https://www.hrw.org/report/2014/08/12/all-according-plan/raba-massacre-and-mass-killings-protesters-egypt> (accessed on December 15, 2017).

⁸¹ Ibidem.

⁸² Alkarama, *Egypt, Impunity is not an option, ensure accountability for mass killings*, February 2014 <https://www.alkarama.org/en/documents/egypt-impunity-not-option-ensure-accountability-mass-killings-2014> (accessed on December 15, 2017).

⁸³ In January 2016, the Egyptian Minister of Justice made a disturbing speech in which he called for the killing of Muslim Brotherhood members and their supporters. Not only do such comments violate fundamental principles of international human rights law – namely article 20 of the ICCPR, prohibiting any “discrimination, hostility or violence” –, they also constitute a breeding ground for further violations and equally create a climate of impunity for perpetrators. Alkarama, *Egypt: Minister of Justice hate speech creates breeding ground for additional extra-judicial killings*, January 29, 2016, <https://www.alkarama.org/en/articles/egypt-minister-justice-hate-speech-creates-breeding-ground-additional-extrajudicial> (accessed on December 15, 2017).

the dispersal of a small peaceful protest organised by the Socialist People's Alliance Party (SPAP).⁸⁴

4.2.2. Extrajudicial killings of victims of enforced disappearance

Documented cases of extrajudicial executions show an alarming pattern, especially in the Sinai region, where victims – mainly young students – have been violently abducted from their homes, university campuses, dorms, workplaces or the street by members of the State Security Forces or the police, and taken to unknown locations. In the majority of cases, the abductions were carried out in front of witnesses – either relatives or bystanders. The victims would remain forcibly disappeared for periods ranging from several weeks to several months, during which time their relatives would be denied any information on their fates and whereabouts, before being informed of their deaths. In the cases documented by Alkarama, parents have learnt that their children had been shot during “anti-terrorism” operations in the Sinai from press releases published in pro-government media.⁸⁵

Such statements generally revealed the identity of the victim, before describing the circumstances which surrounded their death. In cases documented by Alkarama, the Ministry of Interior explained that the death of the victim occurred during a counter-terrorist operation. Victims' relatives reported that when they were allowed to see and identify their bodies a few days after the incident, they noticed marks of torture such as bruises, cigarette burns and mutilations on different parts of their bodies, as well as bullet wounds.⁸⁶

⁸⁴ John Beck, “Anatomy of a Killing: How Shaimaa al-Sabbagh Was Shot Dead at a Cairo Protest”, Vice News, February 24, 2015, <https://news.vice.com/article/anatomy-of-a-killing-how-shaimaa-al-sabbagh-was-shot-dead-at-a-cairo-protest> (accessed on December 10, 2017).

⁸⁵ Human Rights Watch, *Egypt: Videos Show Army Executions in Sinai, US, Other Countries Should Suspend Military Aid*, April 21, 2017, <https://www.hrw.org/news/2017/04/21/egypt-videos-show-army-executions-sinai> (accessed on December 15, 2017).

⁸⁶ See notably: Alkarama, *Egypt: Extrajudicial Execution of Four Individuals by Security Forces amid Growing Trend of Human Rights Violations*, May 10, 2017, <https://www.alkarama.org/en/articles/egypt-extrajudicial-execution-four-individuals-security-forces-amid-growing-trend-human> (accessed on January 10, 2018).

III. ONLINE INFORMATION SHARING: MONITORING, CENSORING AND PUNISHING

The crackdown on freedom of expression has been made possible by the strict control of information sharing, through both the censorship of media outlets, and the extensive surveillance of online communication.

1. Web and communication surveillance

Wide scale web and communication surveillance has been facilitated by the broad powers handed to the executive – notably on the basis of the 2015 Anti-Terrorism Law – to monitor information sharing without any independent judicial control. This dangerous practice was already highlighted in 2009 by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, who stated that “there must be no secret surveillance system that is not under review of an independent oversight body and all interferences must be authorized through an independent body.”⁸⁷ Today, a new draft law on cyber-crime, which was approved by the Prime Minister's Cabinet in September 2016, could curb free speech and access to information even more extensively if adopted by the parliament.⁸⁸

This surveillance has been further facilitated by the use of western companies' technology. In July 2017, an article in the French newspaper *Telerama* revealed that Amesys – a French technology company already infamous for having provided Muammar Ghaddafi with the technology to monitor and track his political opponents back in 2011 – had been a service provider for Al Sisi's Egypt since 2014.⁸⁹ Following this revelation, NGOs called for an investigation into the company's responsibility for the mass arrests and torture of peaceful dissidents and activists carried out under Al Sisi's government. In fact, several families reported to *Alkarama* that the security services had shown detainees messages exchanged on social media during interrogations as evidence of their support for opposition groups, calls to demonstrate, their affiliation or association to human rights networks, or even mere criticism of the authorities. This

⁸⁷ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin UN. Doc A/HRC/13/37, December 28, 2009, para. 62.

⁸⁸ Mohamed Hamama, “Egypt's new cybercrime bill could send you to prison”, *Mada Masr*, October 12, 2016, <https://www.madamasr.com/en/2016/10/12/feature/u/egypts-new-cybercrime-bill-could-send-you-to-prison/> (accessed on December 11, 2017).

⁸⁹ Olivier Tesquet, “Amesys: Egyptian trials and tribulations of a French digital arms dealer”, *Télérama*, July 5, 2017, <http://www.telerama.fr/monde/amesys-egyptian-trials-and-tribulations-of-a-french-digital-arms-dealer,160452.php> (accessed on December 11, 2017).

wide surveillance is used to instil fear throughout society, which, in turn, has led to self-censorship, even in private conversations.

The Egyptian authorities' broad use of web and communications surveillance is not only a violation of the rights to freedom of opinion and expression, but also the right to privacy, as enshrined in Article 17 of the ICCPR, which states that "no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence" and that "everyone has the right to the protection of the law against such interference or attacks."

2. Blocking of websites

Since May 2017, the Egyptian authorities have resorted to radical online censorship, blocking access to the websites of hundreds of media outlets and human rights organisations inside Egypt. The situation reached the extent that on August 30, 2017, several UN experts expressed their "grave concerns", and condemned what they considered to be an "ongoing assault on freedom of expression" in Egypt.⁹⁰ The experts stated that "the situation for journalism and the freedom of expression and access to information in Egypt has been in crisis for several years."⁹¹

2.1. CENSORSHIP UNDER THE PRETEXT OF "SPREADING LIES" AND "SUPPORTING TERRORISM"

According to the UN Office for the High Commissioner for Human Rights, as of August 2017, the authorities had blocked at least 130 websites;⁹² however, by December 2017, according to the Association for Freedom of Thought and Expression, the number had increased to 465 websites blocked – including at least 21 news agencies.⁹³ The authorities have censored the websites under the pretext that these organisations were "spreading lies" and "supporting terrorism".⁹⁴ In fact, the authorities have implemented this censorship in order to silence dissenting voices, violating the right of the Egyptian public to freedom of expression and freedom to access information. According to David Kaye, United Nations Special Rapporteur on freedom of expression, and Fionnuala Ní Aoláin, Special Rapporteur on human rights and counter-terrorism, "limiting information as the Egyptian Government has done, without any transparency or

⁹⁰ OHCHR, *Egypt extends its assault on freedom of expression by blocking dozens of websites*, August 30, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22008&LangID=E> (accessed on December 11, 2017).

⁹¹ *Ibidem*.

⁹² *Ibidem*.

⁹³ AFTE, *Occasionally by Decree.. Update on the Block of Websites in Egypt*, December 5, 2017, <https://afteegypt.org/digital-freedoms-2/publications-digital-freedoms-digital-freedoms-en/2017/12/05/13659-afteegypt.html?lang=en> (accessed on January 15, 2018).

⁹⁴ OHCHR, *Egypt extends its assault on freedom of expression by blocking dozens of websites*, *opcit.*

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The case of the RASSD news agency exemplifies the arbitrariness of these measures. On the evening of May 24, 2017, their monitoring system received several complaints from users who could not access the website from inside Egypt.

The RASSD webmaster team reported that while trying to solve what they believed to be a technical issue, they eventually discovered through Twitter that many other websites were facing the same issue.

They reported that it was only a few days later, on May 31, 2017, that a list of the blocked websites and the grounds behind the measure was published for the first time, on the website of the "Al Youm Al Saba'a" news agency, known for its close ties with the Egyptian authorities.

identification of the asserted 'lies' or 'terrorism', looks more like repression than counter-terrorism."

News outlets such as *Al Jazeera*, *Huffpost Arabi*, *MadaMasr*, *RASSD* and *Al Watan*, known for being critical of the government, were blocked under the pretext that they were "affiliated with the outlawed Muslim Brotherhood".⁹⁵ These measures taken by the Egyptian authorities targeted not only the media but also independent human rights organisations. The websites of several organisations, such as *Reporters Without Borders*, the *Arabic Network for Human Rights Information*, *Human Rights Watch*, as well as the *Alkarama Foundation*, have also been targeted.

The Egyptian authorities did not inform the news agencies and other outlets ahead of this shutdown, and, to date, they have not made an official statement about the decision nor its grounds. The information that some websites had become inaccessible first leaked through monitoring websites and Twitter accounts, before being confirmed by national internet providers. On May 24, 2017, the state-run agency, MENA, announced that the blockade had been introduced on the grounds that these websites were "spreading lies" and "supporting terrorism".⁹⁶

⁹⁵ Reuters, Egypt blocks 21 websites including Al Jazeera -security sources, <https://www.reuters.com/article/egypt-censorship/egypt-blocks-21-websites-including-al-jazeera-security-sources-idUSL8N1IQ758> (accessed on January 24, 2018).

⁹⁶ Farah Bahgat, "Two months into blocking of websites, more journalists are being cut off", *Daily News Egypt*, July 30, 2017, <https://dailynewsegypt.com/2017/07/30/two-months-blocking-websites-journalists-cut-off/> (accessed on December 10, 2017).

A few days after the blockade, the authorities announced that legal action would be taken against the 21 news websites accused of “spreading lies”.⁹⁷ However, none of the above-mentioned organisations were informed of any complaint filed against them. The decision was strongly criticised by Egyptian civil society, as well as the Egyptian Syndicate of Journalists, both of which denounced the shutdown as another grave violation of their right to freedom of expression,⁹⁸ while activists took to social media using the hashtag #blocking_the_truth (#حجب_الحقيقة).

2.2. A VIOLATION OF THE RIGHT TO FREEDOM OF EXPRESSION

Under international human rights law, states are permitted to limit the right to freedom of expression for only two purposes: (a) “For respect of the rights or reputations of others”; and (b) “For the protection of national security or of public order, or of public health or morals”. However, Article 19 (3) of the ICCPR – which sets the conditions under which limitations to freedom of expression can be put in place – makes it clear that any limitations imposed must be restricted:⁹⁹ the right to freedom of expression may “be subject to certain restrictions, but these shall only be such as are provided by law and are necessary”.

As declared by the Human Rights Committee, “restrictions on the exercise of freedom of expression” must not “put in jeopardy the right itself”, and “the relation between right and restriction and between norm and exception must not be reversed”.¹⁰⁰ Furthermore, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stated in his 2016 report to the Human Rights Council, that in this context, “State laws and policies must be transparently adopted and implemented.”¹⁰¹

Far from being necessary and proportionate, and instead solely based on the online outlets' critical views of the government, the measures taken by the Egyptian authorities lack transparency, amounting to a violation of the right to freedom of expression. Contrary to what is prescribed under international human rights law, the decision to block access to these websites from within Egypt did not correspond with either of the purposes by which states are permitted

⁹⁷ Ruth Michaelson, “Egypt blocks access to news websites including Al-Jazeera and Mada Masr”, *The Guardian*, May 25, 2017, <https://www.theguardian.com/world/2017/may/25/egypt-blocks-access-news-websites-al-jazeera-mada-masr-press-freedom> (accessed on December 10, 2017).

⁹⁸ Shaimaa Raafat, Conference at Press Syndicate voices rejection of websites blocking, *Daily News Egypt*, May 31, 2017, <https://dailynewsegyp.com/2017/05/31/conference-press-syndicate-voices-rejection-websites-blocking/> (accessed on January 24, 2018).

⁹⁹ Article 19(3) of the ICCPR.

¹⁰⁰ Human Rights Committee, *General Comment No. 34 (Article 19: Freedoms of opinion and expression)*, UN Doc. CCPR/C/GC/34, September 12, 2011, para. 21.

¹⁰¹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN.Doc A/HRC/32/38, May 11, 2016, para. 85.

to limit the right to freedom of expression, and was therefore undeniably another means to silence dissenting voices, in violation of the right to freedom of speech.

2.3. RESTRICTING DEMOCRATIC FREEDOMS

In addition to the prosecution of journalists, the Egyptian authorities are attempting to wipe out any possibility for alternative narratives on government policies and their impact on rights and freedoms in the country. Beyond the violations to the right to free expression,¹⁰² such measures also constitute serious obstacles to Egyptian society's right to information, which, according to the UN Human Rights Committee, constitutes "one of the cornerstones of a democratic society" and is "essential [...] to ensure freedom of opinion and expression and the enjoyment of other rights".¹⁰³

As highlighted by the UN Human Rights Committee, the right to access free and independent media and information "includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output."¹⁰⁴

The Committee also emphasised the importance of freedom of opinion and expression while participating in public affairs, as well as the right to vote. Unrestricted communication as well as "the freedom to share ideas about public and political issues between citizens, candidates and elected representatives" is essential to a free and democratic process, and a "free press and other media able to comment on public issues and to inform public opinion without censorship or restraint" remains crucial in this endeavour.¹⁰⁵

The impact of the Egyptian authorities' crackdown on the realisation of a peaceful democratic process are, therefore, manifold. The impact of the repression of journalists and all critical voices goes further than restricting press freedom. It makes it impossible for Egyptian society to benefit from a "free, uncensored and unhindered press or other media".

¹⁰² Article 19 of the ICCPR. See also: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the UN General Assembly and the Human Rights Council, UN Doc. A/HRC/32/38, May 11, 2016, para. 85. The Special Rapporteur "condemned unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law, and called upon all States to refrain and cease such measures."

¹⁰³ Human Rights Committee, *General Comment No. 34 (Article 19: Freedoms of opinion and expression)*, UN Doc. CCPR/C/GC/34, September 12, 2011, para. 13.

¹⁰⁴ *Ibid.*, para. 18.

¹⁰⁵ Human Rights Committee, *General Comment No. 25 (Article 25 :Participation in Public Affairs and the Right to Vote, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service)*, UN Doc. CCPR/C/21/Rev.1/Add.7, August 27, 1996, para. 25.