



EGYPT COURTS AND SOME RECENT CHALLENGES

A Report by

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Chapter I

INTRODUCTION



1.1. Introduction

1. This report commissioned by the State Litigation Authority of Egypt will address a number of headline issues concerning human rights in Egypt. The chapters look at the law of Egypt and the final outcome of certain cases that have been globally examined by the world's media and international agencies. The report demonstrates the developing state of the human rights programme of the government in today's Egypt that has had to cope with problems of the past and turbulence in recent years, as it establishes a modern democracy.
2. **Chapter 2** examines and explains the independence of the judiciary in Egypt and provides an outline of the structure of the legal system. It also analyses the provisions that seek to guarantee the institutional and personal independence and impartiality of the judiciary. In examining this fundamental principle, consideration is given to the mechanisms in place to ensure the accountability of the judiciary and that such independence is used for the benefit of those appearing before the courts, as part of their inalienable right to a fair trial. This chapter also examines the application of the right in practice in Egypt.
3. In **Chapter 3**, the fairness of trials within Egypt is considered within the framework of the applicable laws in practice. This chapter examines the right to equality before the law and the specific minimum procedural guarantees that constitute the right to a fair trial. It also considers due process in the context of military courts and whether or not Egypt's national laws are consistent with international minimum guarantees of fairness. In order to assess whether Egypt implements



fair trial guarantees in practice, this chapter analyses a number of key trials that have been the subject of media attention since 2014.

4. In the last two years, Egypt has faced unprecedented allegations from the international community and Non-Governmental Organisations (“NGOs”) of mass and arbitrary arrests, enforced disappearances, of failing to comply with due process during arrest, and criticisms in relation to the conditions of pre-trial detention and torture in custody. **Chapter 4** examines the State’s response and actions taken by Egypt in relation to these allegations. The context of the impact of unprecedented levels of terrorism in Egypt, including the emergence of Islamic State-Sinai Peninsula in mid-2015 with ISIS Sinai Province continuing its terrorist campaign throughout 2015 and 2016 is also considered.
5. **Chapter 5** examines the issue of the protection of freedom of expression and the independence of the press in Egypt. The striking of the balance between protecting expression and protecting security interests and public order is analysed within the context of the statutory and practical protection of this fundamental freedom. The historical and political context in which these rights are exercised in Egypt is also considered.
6. Finally, **Chapter 6** reviews the context in which Egypt has seen a recent rise in the issuance of death sentences. The legal framework in which death penalties have been issued and the number of death sentences in 2014 and 2015, including the circumstances in which executions were



carried out in 2015 form the focus of analysis of this concluding chapter.

7. This report was produced using both open-source materials, drawing heavily on news reports and other public sources, as well as official documents, legislation and case records obtained from key individuals and the Egyptian Government. Where reference is made to sources freely available on-line, hyperlinks have been inserted for ease of reference. Electronic versions of this report and others may be found at www.egyptevidence.com.

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Chapter II

INDEPENDENCE OF THE JUDICIARY



2.1. Introduction

8. The principle of the independence of the judiciary originates from the theory of separation of powers, whereby the executive, legislature and judiciary form three separate branches of government, each independently able to carry out their own respective functions and constituting a system of mutual checks and balances, to prevent abuses of power.¹ The independence of the judiciary is considered [fundamental](#) to upholding the rule of law and ensuring the effective enforcement of human rights and fundamental freedoms.²
9. The principle of independence of the judiciary requires that the judiciary as an institution and the individual judges must be able to exercise their professional responsibilities impartially without being influenced by the executive, legislature, or by other sources.
10. Pressures compromising judicial independence may come from the way in which judges are appointed (for example: where judges are appointed exclusively by the executive or legislature), a lack of security of tenure (for example: where judges are employed on temporary contracts), or inadequate remuneration (which may make judges more susceptible to corruption), amongst others. Public criticism to intimidate the judiciary, or persecution through direct threats, arbitrary detentions, killings and disappearances may inhibit the judiciary's

¹ The "separation of powers" was coined by Baron de Montesquieu, "The Spirit of Laws" (1748).

² [Human Rights Council, A/HRC/26/32, Report of the Special Rapporteur on the independence of judges and lawyers, 28 April 2014, para. I.3.](#)



ability to carry out its professional duties freely, independently and impartially.

11. However there is a [balance](#) to be struck - whilst the judiciary must enjoy some privileges and immunities because of their functions to ensure their independence and impartiality, they must also be accountable for their actions and conduct – accepting responsibility for functioning in ways consistent with accepted standards of conduct and facing sanctions for failures to do so – so that the guarantees of their independence are not abused.³
12. Judges cannot act arbitrarily or decide cases according to their personal preferences but have a duty to apply the law – the principle of the independence of the judiciary is not aimed at benefitting the judges themselves but at [protecting individuals](#) from abuses of power and ensuring court users receive a fair and impartial hearing.⁴ They must render and must be seen to render justice impartially and transparently, on the basis of law, protecting the human rights and fundamental freedoms of the individual before them.
13. Mechanisms should thus be in place to verify that judicial privileges that ensure independence and impartiality are used properly, to guarantee fair trial, and that their purpose is not perverted.

³ [Human Rights Council, A/HRC/26/32, Report of the Special Rapporteur on the independence of judges and lawyers, 28 April 2014, para. 3.](#)

⁴ [Human Rights Council, A/HRC/26/32, Report of the Special Rapporteur on the independence of judges and lawyers, 28 April 2014, para. 59.](#)



Independence and immunity do not mean [impunity and irresponsibility](#).⁵

14. This chapter will outline the structure of Egyptian legal system, and the provisions that separate it from the executive, in the context of the Egyptian constitution, legal provisions and regulations, and the international laws and standards to which Egypt is bound, that seek to guarantee the institutional and personal independence and the objective and subjective impartiality of the judiciary.
15. It will also consider the mechanisms in place to ensure the accountability of the judiciary and that the independence and impartiality is used to the benefit of those before the courts, as part of their inalienable right to a fair trial, rather than for the judiciary themselves.
16. It will analyse the independence, impartiality and accountability of the judiciary in practice in Egypt. It will consider the ordinary courts, the administrative courts, the Supreme Constitutional Court and the military courts. It will consider how the judiciary withstands outside pressure and decisions by the courts that go to the issue of independence and the judicial rulings and actions that run counter to, or are detrimental to, the executive's will or interests, and it will consider statements by the executive acknowledging that fact.

⁵ [Human Rights Council, A/HRC/26/32, Report of the Special Rapporteur on the independence of judges and lawyers, 28 April 2014, paras 23 and 84.](#)



2.2. Independence of the Judiciary - International Standards

2.2.1. *International standards to which Egypt is bound*

17. An independent judiciary is crucial in order to uphold the [rule of law](#) and ensure the effective enforcement of human rights and fundamental freedoms.⁶
18. Article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which Egypt is [legally bound](#),⁷ includes the requirement of an independent judiciary as part of the right to a fair trial. [Article 14](#) states in part, that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”⁸
19. The United Nations Human Rights Committee General Comment No. 32 provides an authoritative interpretation of article 14 of the ICCPR. It confirms that the notion of a “tribunal” in [article 14 \(1\)](#):

[D]esignates a body, regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases

⁶ [International Commission of Jurists, Egypt’s new Constitution: A flawed process; uncertain outcomes, 2012.](#)

⁷ Egypt ratified the ICCPR in 1982 see [UN OHCHR, Status of Ratification of 18 International Human Rights Treaties](#). See also [Article 93 of Constitution of the Arab Republic of Egypt, 2014](#) which confirms the State shall be bound by the international human rights agreements, covenants and conventions ratified by Egypt, and which shall have the force of law after publication in accordance with the prescribed conditions.

⁸ [UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966.](#)



judicial independence in deciding legal matters in proceedings that are judicial in nature.⁹

20. It further confirms that the requirement of independence and impartiality of a tribunal in the sense of article 14(1) is an [absolute right](#) that is not subject to any exception,¹⁰ and is thus applicable to all tribunals, in all circumstances.

21. Egypt is also bound by the [African Charter](#) on Human and Peoples' Rights.¹¹ [Article 7](#) provides in part that every individual shall have the right to be presumed innocent until proved guilty by a competent court or tribunal, and further, the right to be tried within a reasonable time by an impartial court or tribunal.¹²

22. The African Commission on Human and Peoples' Rights has held that article 7 should be considered non-derogable as it provides "minimum protection to citizens."¹³

23. Moreover, [article 26](#) of the African Charter imposes a duty on State Parties to guarantee the independence of the Courts.¹⁴

⁹ [UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966.](#)

¹⁰ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007.](#)

¹¹ Egypt became state party to the African Charter in 1984 see [African Commission on Human and Peoples' Rights, Ratification Table: African Charter on Human and Peoples' Rights.](#)

¹² [Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 \(1982\), African \(Banjul\) Charter On Human And Peoples' Rights, 27 June 1981.](#)

¹³ ACHPR, Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v. Nigeria, Communication No. 218/98, decision adopted during the 29th Ordinary session, 23 April – 7 May 2001, p. 3.

¹⁴ [Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 \(1982\), African \(Banjul\) Charter On Human And Peoples' Rights, 27 June 1981.](#)



24. The principle of an independent and impartial judiciary is also considered to form part of customary international law and general principles of law, having been set out in [article 10](#) of the Universal Declaration of Human Rights, 1948.¹⁵
25. Standards on judicial independence are set out within the UN Basic Principles on the Independence of the Judiciary, which was adopted by the United Nations General Assembly in 1985, and thus represent a general consensus of the standards required.
26. The Basic Principles require independence of the judiciary to be guaranteed by the State and enshrined in the Constitution or the law of the country. The [Basic Principles](#) also set out judges' rights to freedom of expression, belief, association and assembly and emphasise the importance of selecting and training judges appropriately and their qualifications, the importance of making provisions for their conditions of service and tenure, their professional secrecy and immunity, and the conditions for their discipline, suspension or removal.¹⁶
27. The [Beirut Declaration on Judicial Independence](#) in 1999 following the First Arab Conference on Justice and the [Cairo Declaration on Judicial Independence](#) in 2003 following the Second Arab Conference on Justice represent a regional consensus as to principles of independence and priority reforms.¹⁷

¹⁵ [UN General Assembly, Resolution 217A, Universal Declaration of Human Rights, 10 December 1948.](#)

¹⁶ [Basic Principles on the Independence of the Judiciary, 1985, Principle 1.](#)

¹⁷ [Beirut Declaration, 1999, Recommendations adopted by the 110 Arab jurists from 13 Arab states who participated in the First Arab Conference on Justice on "The Judiciary in the Arab](#)



2.2.2. *Independence*

28. [General Comment No. 32](#) of the United Nations Human Rights Committee states that independence of the judiciary as required by article 14 of the ICCPR refers, in particular, to:

- 1) the procedure and qualifications for the appointment of judges,
- 2) the guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office,
- 3) the conditions governing promotion, transfer, suspension and cessation of their functions,
- 4) the actual independence of the judiciary from political interference by the executive branch and legislature.¹⁸

29. The constitution or laws should guarantee the independence of the judiciary protecting judges from political influence in their decision-making and through establishing [clear procedures and objective criteria](#) for their appointment, remuneration, tenure, promotion,

[Region and the Challenges of the 21st Century”, Beirut, 14 – 16 June 1999](#), convened by the Center for the Independence of the Judiciary and the Legal Profession (ACIJLP), in collaboration with the Geneva-based Center for the Independence of Judges and Lawyers (CIJL).

[The Cairo Declaration on Judicial Independence, 2003, adopted by the participants of the second Arab justice conference on “Supporting and Promoting the Independence of Judiciary”, February 21-24, 2003](#) in Cairo, organized by the Arab Center for the Independence of the Judiciary and the Legal Profession (ACIJLP) in cooperation with the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Development Program (UNDP).

¹⁸ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007.](#)



suspension, dismissal and disciplinary sanctions.¹⁹ A situation where the executive is able to control or direct the judiciary is [incompatible](#) with the notion of an independent tribunal.²⁰

30. The Basic Principles state that to guarantee independence the judiciary must also be able to handle its own administration, including assigning “[cases to judges within the court to which they belong](#)”²¹ and must be granted sufficient funds to properly perform its functions.²² The judiciary must have [autonomy](#) over questions of jurisdictional competence²³ and has the right and duty to ensure fair proceedings and issue reasoned decisions.

31. The executive and the legislature, as well as other authorities must respect and abide by the [decisions of the judiciary](#), even when they do not agree with them and judicial decisions must not be subject to revision, except in accordance with the law.²⁴

2.2.3. *Impartiality*

32. According to General Comment No. 32, article 14 of the ICCPR requires that Judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the

¹⁹ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, footnote 27](#) citing Concluding observations, Slovakia, CCPR/C/79/Add.79 (1997), para. 18.

²⁰ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, footnote 31](#) citing Communication No. 468/1991, Olo’ Bahamonde v. Equatorial Guinea, para. 9.4.

²¹ [Basic Principles on the Independence of the Judiciary, 1985, Principle 14.](#)

²² [Basic Principles on the Independence of the Judiciary, 1985, Principle 7.](#)

²³ [Basic Principles on the Independence of the Judiciary, 1985, Principle 3.](#)

²⁴ [Basic Principles on the Independence of the Judiciary, 1985, Principles 1 and 4.](#)



particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. The tribunal must also appear to a [reasonable observer](#) to be impartial.²⁵

2.2.4. International Standards for specialised civilian or military courts

33. Although the ICCPR does not prohibit the establishment of military or special courts, the provisions of article 14 of the ICCPR apply to [all courts and tribunals](#), whether ordinary or specialized, civilian or military, without limitation or modification.²⁶

34. Trials of civilians by military or special courts should be [exceptional](#) and limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where, with regard to the specific class of individuals and offences at issue, the regular civilian courts are unable to undertake the trials.²⁷

²⁵ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, footnotes 34 and 35](#) citing Communication No. 387/1989, Karttunen v. Finland, para. 7.2.

²⁶ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007.](#)

²⁷ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, footnotes 36 and 37](#) citing Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, art. 64 and general comment No. 31 (2004) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 11 and communication No. 1172/2003, Madani v. Algeria, para. 8.7.



35. During a state of emergency, the right to be tried by an independent and impartial tribunal remains, an absolute right that may suffer no exception.²⁸
36. The UN Basic Principles guarantee the right to trial, “[by ordinary courts or tribunals using established legal procedures](#)” and prohibit the creation of tribunals not meeting such requirements to displace ordinary courts.²⁹
37. The African Commission on Human and Peoples’ Rights has taken a [stricter approach](#) than the UN Human Rights Committee with respect to military tribunals’ jurisdiction over civilians, holding that, “military courts should not, in any circumstances whatsoever have jurisdiction over civilians. Similarly, Special Tribunals should not try offences that fall within the jurisdiction of regular courts.”³⁰

2.2.5. International standards for customary and religious courts

38. The State also has an obligation under the ICCPR to protect the rights of any persons affected by the operation of customary and religious courts. Trials must meet the basic requirements of a fair trial other relevant guarantees of the Covenant. Trials should be limited to minor

²⁸ UNHRC, UN Doc CCPR/C/46/D/263/1987, Communication No 263/1987, González del Río v Peru, (1992), and see also [UNHRC, UN Doc CCPR/C/21/Rev.1/Add.11, CCPR General Comment No 29: Article 4: Derogations during a State of Emergency, 31 August 2001, para 11.](#)

²⁹ [Basic Principles on the Independence of the Judiciary, 1985, Principle 5.](#)

³⁰ [ACHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003](#); see also [ACHPR, 224/98, Media Rights Agenda \(on behalf of Niran Malaolu\) v Nigeria, African Commission on Human and Peoples’ Rights, Comm No 224/98 \(2000\), para 62.](#)



civil and criminal matters, their judgments must be validated by State courts and the judgments must be challengeable by the parties concerned in a procedure meeting the requirements of article 14 of the Covenant.

2.3. Egyptian Law – Constitutional Protections

2.3.1. The Ordinary Courts

39. The independence of the judiciary has been explicitly guaranteed in the Egyptian Constitution for many years.

40. The Egyptian Constitution of 1971 outlined the powers of three separate branches of government, providing chapters on the legislature, executive and judiciary. Moreover, it provided, at [article 65](#), that, “the independence and immunity of the judiciary are two basic guarantees to safeguard rights and liberties.”³¹

41. [Articles 165, 167 and 173](#) further protected the institutional independence of the judiciary.³² [Articles 166 and 168](#) further protected the judges’ independence.³³

³¹ [Article 65 of Constitution of the Arab Republic of Egypt, 1971.](#)

³² [Articles 165, 167 and 173 of Constitution of the Arab Republic of Egypt, 1971.](#) Article 165 provides: The judiciary shall be independent. It shall be exercised by courts of justice of different types and forms which shall issue their judgments in accordance with the law. Article 167 provides: The law shall determine the organisation of the judiciary and its functions and the way in which it is established and shall prescribe the conditions and procedures concerning the appointment and transfer of its members. Article 173 provides: Every judicial body shall manage its own affairs.

³³ [Articles 166 and 168 of Constitution of the Arab Republic of Egypt, 1971.](#) Article 166 provides: Judges shall be independent and be subject to no other authority but the law. No outside authority may intervene in court cases or judicial matters. Article 168 provides: The



42. However, the 1971 Constitution did not provide for the supremacy of the constitution and elevate it above other laws.³⁴ Emergency provisions within the 1971 Constitution and under the Emergency Law granted additional powers to the executive,³⁵ and these broad powers, which gave the [President](#) a role within the judicial system, in particular through the power of appointment, were the subject of criticism by the Human Rights Committee.³⁶

43. Nevertheless, [articles 174 – 178 of the 1971 Constitution](#) did provide for the Supreme Constitutional Court, which had, “the exclusive competence to control the constitutionality of laws and regulation and to interpret the legislative texts in the manner prescribed by the law.”³⁷

44. The Supreme Constitutional Court has been described as having, “earned a reputation of being the most powerful court in the Arab world and at times has stood out on a global level for the audacity of its ruling (it has forced the dissolution of parliament on three separate occasions)”.³⁸ The independence and impartiality of the Supreme Constitutional Court in practice will be discussed further below.

45. Judicial independence was similarly guaranteed under the Interim Constitution of March 2011 with the institutional independence of the

judges may not be dismissed from office. The law shall determine the disciplinary measures which may be applied to them.

³⁴ The Concept of the Supremacy of the Constitution, Jutta Limbach, The Modern Law Review, January 2011, Volume 64, Issue 1, p 1-11

³⁵ Emergency Law No. 162 of 1958, as amended.

³⁶ [HRC, CCPR/C/78/Add.23, Concluding Observations of the Committee on Human Rights on Egypt, 9 August 1993, para. 9.](#)

³⁷ [Articles 174-178 of Constitution of the Arab Republic of Egypt, 1971.](#)

³⁸ [Brown, N., Egypt: A Constitutional Court in an Unconstitutional Setting, 23 October 2013.](#)



judiciary protected by article 46 and article 47 protecting the individual independence of judges.³⁹

46. The general principle of judicial independence was also guaranteed under the 2012 Constitution. [Article 74](#) recognised the importance of judicial independence and the immunity of judges in safeguarding rights and freedoms.⁴⁰ [Article 168 and 169](#) protected the institutional independence of the judiciary. [Article 168](#) also made interference in judicial affairs a crime and [article 169](#) provided that judicial bodies were financially independent and should administer their own affairs.⁴¹ The individual independence of the judges was guaranteed under [article 170](#).⁴²

47. The July 2013 Constitutional Declaration provided for judicial independence under [article 16](#).⁴³

³⁹ [Interim Constitution of the Arab Republic of Egypt, 2011](#). Article 46 provides: Judicial authority is independent and invested in courts of different varieties and degrees. Rulings will be issued according to the law.” Article 47: “Judges are independent and not subject to removal. The law regulates disciplinary actions against them. There is no authority over them except that of the law, and it is not permissible for any authority to interfere in their issues or matters of justice.

⁴⁰ [Article 74 of Constitution of the Arab Republic of Egypt, 2012](#).

⁴¹ [Article 168 of Constitution of the Arab Republic of Egypt, 2012](#). Article 168 provides: The judiciary is independent. It is vested in the courts of justice, which issue their judgments in accordance with the law. Its powers are defined by law.

⁴² [Article 170 of Constitution of the Arab Republic of Egypt, 2012](#). Article 170 provides: Judges are independent, cannot be dismissed, are subject to no other authority but the law, and are equal in rights and duties. The conditions and procedures for their appointment and disciplinary actions against them are defined and regulated by the law. When delegated, their delegation is absolute, to the destinations and in the positions defined by law, all in a manner that preserves the independence of the judiciary and the accomplishment of its duties.

⁴³ [Article 16 of Constitution of the Arab Republic of Egypt, 2014](#). Article 16 provides: Judicial authority is independent. It is exercised by different types and degrees of courts. Rulings are issued in accordance with the law. Judges are independent and irremovable, subject to no



48. Judicial independence is currently guaranteed by the [2014 Constitution](#) of Egypt which, following a referendum, was issued by Adly Mansour, who was acting President of Egypt at the time, and the former head of Egypt's Supreme Constitutional Court, on 18 January 2014.⁴⁴ Articles 184 – 199 of the 2014 Constitution contain the key provisions on the judiciary.

49. Institutional judicial autonomy, freedom of interference and the requirement of impartiality is guaranteed by [article 184](#), which provides that:

The Judiciary is an autonomous authority that carries out its tasks through courts of all types and degrees. Courts shall issue their rulings in accordance with the law.⁴⁵

50. Article 184 also makes it a criminal offence to interfere in the affairs of the courts or the lawsuits under their consideration.

51. The financial and organisational independence of each judicial body is guaranteed by [article 185](#), which provides that each judicial body or organization shall manage its own affairs, and shall have an independent budget.⁴⁶ [Article 188](#) further provides that:

authority in their rulings other than the law. No authority may interfere in lawsuits or the affairs of justice.

⁴⁴ [Constitution of the Arab Republic of Egypt, 2014.](#)

⁴⁵ [Article 184 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁴⁶ [Article 185 of Constitution of the Arab Republic of Egypt, 2014.](#)



The affairs of the judiciary shall be managed by a Supreme Council, the structure and jurisdiction of which shall be regulated by law.⁴⁷

52. Individual independence of the judges is guaranteed by [article 186](#), which provides that:

Judges are independent and immune to dismissal, are subject to no other authority but the law, and are equal in rights and duties.⁴⁸

53. The independence of the judiciary is also guaranteed throughout the 2014 Constitution. [Article 94](#) confirms that:

[T]he rule of law shall be the basis of governing in the State” and that, “the independence, immunity and impartiality of the judiciary are essential guarantees for the protection of rights and freedoms.⁴⁹

54. [Article 5](#) guarantees a political system based on “separation and balance of powers” and “respect for human rights and freedoms.”⁵⁰

55. However, to some degree the Constitution leaves it to the legislator to articulate judicial independence of the ordinary courts (the Court of Cassation, Courts of Appeal, Primary Courts and Summary Courts) For example, [article 184](#) determines that the law shall define the

⁴⁷ [Article 188 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁴⁸ [Article 186 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁴⁹ [Article 94 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁵⁰ [Article 5 of Constitution of the Arab Republic of Egypt, 2014.](#)



jurisdiction of the courts.⁵¹ [Article 186](#) determines that the conditions and procedures for judicial appointment, secondment and retirement, and the disciplinary accountability of the judiciary shall be regulated by the law.⁵²

56. The principal legislation governing Egypt's ordinary courts is Judicial Authority Law No. 46/1972, as amended by Law No 17/2007, and is discussed further below.

2.3.2. The State Council

57. In contrast to the ordinary courts, the State Council and the Supreme Constitutional Court have both been given equal standing to the executive and the legislature by the Constitution itself.

58. Indeed, under [article 190](#) of the 2014 Constitution the autonomy and of the State Council, which includes the administrative courts, and its exclusive jurisdiction to settle administrative disputes (i.e. cases to which the State is a party), is explicitly set out.⁵³

⁵¹ [Article 184 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁵² [Article 186 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁵³ [Article 190 of Constitution of the Arab Republic of Egypt, 2014.](#) Article 190 provides: The State Council is an autonomous judicial body, and shall have the exclusive jurisdiction to settle administrative disputes and disputes relevant to the execution of all its rulings. It shall have the jurisdiction over disciplinary suits and appeal. The jurisdiction of the Council of State is outlined in law no. 82/1979 & the administrative courts by Law no. 47/1972.



2.3.3. *The Supreme Constitutional Court*

59. Similarly, the Supreme Constitutional Court's mandate is now enshrined in [article 192](#) of the 2014 Constitution, which provides that the Supreme Constitutional Court:

[S]hall be solely competent to decide on the constitutionality of laws and regulations, to interpret legislative provisions, and to adjudicate on disputes pertaining to the affairs of its members, on jurisdictional disputes between judicial bodies and entities that have judicial jurisdiction, on disputes pertaining to the implementation of two final contradictory judgments, one of which is rendered by a judicial body or an authority with judicial jurisdiction and the other is rendered by another, and on disputes pertaining to the execution of its judgments and decisions.⁵⁴

60. Although [article 192](#) also allows for the statutory expansion of duties and regulation of procedures, its exclusive competence is guaranteed.⁵⁵

61. Moreover the independence of the Supreme Constitutional Court is expressly guaranteed in the Constitution by the following provision:

The judgments and decisions issued by the Supreme Constitutional Courts ... shall be binding upon everyone and all of the State authorities.⁵⁶

⁵⁴ [Article 192 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁵⁵ [Article 192 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁵⁶ [Article 195 of Constitution of the Arab Republic of Egypt, 2014.](#)



62. In contrast to the ordinary courts, and the Supreme Council of the Judiciary, the membership and selection of the Supreme Constitutional Court is provided for in [article 193](#) of the Constitution:

The Court shall be composed of a President and a sufficient number of deputies to the President.... The General Assembly of the Court shall elect its President from among the most senior three vice-presidents of the Court. It shall further choose the vice-presidents and the members of its Commissioners, and the appointment thereof shall be made by virtue of a decree by the President of the Republic.⁵⁷

63. This returns the legal composition of the court to the language of article 3 of Law No. 48 of 1979. In practice, the number of judges had been fixed at 18 for years but, in what was perceived as an attack on the independence of the judiciary and an attempt to expel a number of outspoken critics of the government from the bench, including Judge Tahani el-Gebali, the only female judge, [article 176](#) of the 2012 Constitution had reduced the number of judges to 11.⁵⁸

64. [Article 191](#) of the 2014 Constitution further guarantees the institutional independence of the Supreme Constitutional Court. It is “an autonomous and independent judicial body” [...] “shall have an independent budget” and the “General Assembly of the court shall

⁵⁷ [Article 193 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁵⁸ [Article 176 of Constitution of the Arab Republic of Egypt, 2012.](#) Article 176 provides: The Supreme Constitutional Court is made up of a president and ten members. The law determines judicial or other bodies that shall nominate them and regulates the manner of their appointment and requirements to be satisfied by them. Appointments take place by a decree from the President of the Republic. See also [CBC News, Former top court judge challenges Egypt's new constitution, 8 January 2013.](#)



manage its affairs and it shall be consulted regarding bills relevant to its affairs.⁵⁹

65. [Article 194](#) of the 2014 Constitution guarantees individual independence. Members of the Supreme Constitutional Court are, “independent and immune to dismissal, and are subject to no other authority but the law...” and “[t]he Court shall be responsible for their disciplinary accountability.”⁶⁰

2.3.4. *The Military Courts*

66. Military courts exist in parallel to Egypt’s ordinary court system. Under the 1971 Constitution, [article 183](#) provided that, “[t]he Law shall organise the military courts and determine their competences within the framework of the principles of the Constitution.”⁶¹
67. Military Courts were thus governed by the Military Code of Justice (Law No. 25 of 1966), of which articles 5 and 6 set out their jurisdiction, over anyone, including civilians, who commits a crime happening in locations operated by the military, or that happen on military equipment and supplies, or over specific crimes set out in the Penal Code such as terrorism that are referred by the President of the Republic, or over any of the crimes under the Penal Code or any other law where the President has declared a state of emergency.⁶² Given

⁵⁹ [Article 191 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁶⁰ [Article 194 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁶¹ [Article 183 of Constitution of the Arab Republic of Egypt, 1971.](#)

⁶² Military Code of Justice, Law No. 25 of 1966, as amended, Article 5; “This Law shall apply to anyone who commits one of the following crimes: (a) the crimes that happen in the camps or barracks, institutions, factories, ships, aircraft or vehicles or places or shops operated by the military for the armed forces wherever they exist. (b) crimes that happen on equipment,



that there had been a state of emergency in place in Egypt almost constantly from before 1971 until it expired in May 2012, the President thus had the power to refer civilians to trial before military courts for non-military related crimes. In addition, under article 179 of the 1971 Constitution the President had the power to, “refer crimes of terrorism to any judicial body established by the Constitution or the law”.

68. In 2002, the [Human Rights Committee](#) “noted with alarm that military courts and State security courts have jurisdiction to try civilians accused of terrorism although there are no guarantees of those courts’ independence and their decision are not subject to appeal before a higher court.”⁶³

69. The Military Code of Justice was amended by Law No. 138 of 2010, by Law No. 1 of 2013 on the participation of the armed forces in maintaining security and protecting vital facilities of the state, and by Law No. 136 of 2014 on protecting and securing public and vital facilities.

70. Despite the fact that article 3 of the Military Code of Justice declared military judges to be “independent and irremovable,” and by article 48 the military judges decided whether the offence fell within their jurisdiction, concerns were raised that the military judiciary’s

supplies, weapons, ammunition and documents and the secrets of the armed forces and all Accessories.” Article 6: There shall be referral to the military justice by the President of the Republic: (a) Where the crime is one of the crimes set forth in sections (I and II) the book of the Penal Code and associated crimes [or] (b) When the President has declared a state of emergency, he can transmit to the military justice any of the crimes that are punishable under the Penal Code or any other law.

⁶³ [Human Rights Committee, 76th Session, Egypt 3rd and 4th Periodic Report, 14 October – 1 November 2002.](#)



institutional independence from the executive did not meet international standards.⁶⁴ For example, under article 1 of the code, “The Public Department of Military Judiciary is one of the high command divisions of the armed forces,” military judges were appointed by the Deputy Head of the Armed Forces and as such were subject to the disciplinary procedures of the armed forces, and the President had the power to refer civilians to military trials under article 6.

71. The 2012 Constitution attempted to deal with some of these concerns.

[Article 198](#) explicitly stated that the Military Judiciary was, “an independent judiciary” and that “members of the Military Judiciary are autonomous and cannot be dismissed. They share the immunities, securities, rights and duties stipulated for members of other judiciaries.”⁶⁵

72. Under article 204 of the 2014 Constitution, the judicial independence of the Military Court, and the independence of members of the court, their immunity from dismissal and all other guarantees, rights and duties stipulated for the members of other judicial bodies is again specifically set out.

73. The Military Judiciary Law was also subsequently amended so that article 1 now reads, “[t]he military judiciary is an independent judicial entity.” Although it also specifies that, “[t]he military judiciary shall be administered by an entity affiliated with the Ministry of Defence.

⁶⁴ See for example, [IBHARI, “Justice at a Crossroads: The Legal Profession and the Rule of Law in the New Egypt”, November 2011, p. 21.](#)

⁶⁵ [Article 198 of Constitution of the Arab Republic of Egypt, 2012.](#)



74. Moreover, the President's power to refer cases to the military courts was reduced by [article 198](#) of the 2012 Constitution, which stated that:

[C]ivilians cannot stand trial before military courts except for crimes that harm the armed forces. The law defines such crimes and determines the other competencies of the Military Judiciary.⁶⁶

75. [Article 204](#) of the 2014 Constitution also prohibited civilians from standing trial before the military courts except for crimes that constitute a direct assault against the armed forces or list of related entities.⁶⁷ Moreover, Law No. 136 of 2014, which was passed by the President in October 2014 extended military jurisdiction to, "crimes perpetrated against public facilities [including streets and university campuses], utilities, and properties, referred to in Article 1 of this decree by law."

76. Although these provisions have been criticized as broadening the jurisdiction of the military courts over civilians,⁶⁸ they provide, in clear and specific terms, those exceptional circumstances in which military courts may exercise jurisdiction over a civilian, in accordance with

⁶⁶ [Article 198 of Constitution of the Arab Republic of Egypt, 2012.](#)

⁶⁷ [Article 204 of Constitution of the Arab Republic of Egypt, 2014.](#) Article 204 provides: No civilian shall face trial before the Military Court, except for crimes that constitute a direct assault against military facilities or camps of the Armed Forces, or their equivalents, against military zones or border zones determined as military zones, against the Armed Forces' equipment, vehicles, weapons, ammunition, documents, military secrets, or its public funds, or against military factories; crimes pertaining to military service; or crimes that constitute a direct assault against the officers or personnel of the Armed Forces by reason of performing their duties. The Law shall define all such crimes, and specify the other competences of the Military Court.

⁶⁸ See for example, [IBHARI, Separating Law and Politics: Challenges to the Independence of Judges and Prosecutors in Egypt, IBA, February 2014, page 34.](#)



international standards.⁶⁹

2.4. Structure of the Egyptian Legal System

77. The modern Egyptian legal system was established in the 1870s and is modelled on the European civil law legal system and Islamic sharia. [Article 2](#) of the 2014 Constitution provides that Islamic sharia is the main source of legislation.⁷⁰

78. The Egyptian judicial system consists of two main branches: the ordinary courts of law for civil, commercial and criminal matters, and the administrative courts for administrative and public law matters. There are also a number of courts with specialized jurisdiction, including the Supreme Constitutional Court and Military Courts.

2.4.1. *The Ordinary Court System*

79. The principal legislation governing Egypt's ordinary courts is Judicial Authority Law No. 46 of 1972, as amended by Law No. 17 of 2007. There are four tiers within the ordinary court system: courts of summary jurisdiction, first instance courts, courts of appeals and a Court of Cassation.⁷¹ These courts have jurisdiction to examine matters submitted to them, in compliance with the law. These courts are competent to examine all litigation and crimes except those excepted by a special law provision. The Code of Civil and Commercial

⁶⁹ ECtHR, [2004] ECHR 82, *Martin v. United Kingdom*, Judgment, 19 February 2004; and HRC, Communication No. 1172/2003, *Abbassi v. Algeria*, 21 June 2007; HRC, Communication No. 1096/2002, *Kurbanova v. Tajikistan*, 6 November 2003. See also [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007](#).

⁷⁰ [Article 2 of Constitution of the Arab Republic of Egypt, 2014](#).

⁷¹ Judicial Authority Law No. 46 of 1972, Article 1.



Procedure and the Code of Criminal Procedure establish the rules of the courts' jurisdiction.⁷²

80. The Court of Cassation is located in Cairo and provides the final authority within the regular court system. It hears appeals based on issues of law and aims to guarantee the uniformity and consistency of the law.

81. The Chief Justice of the Court of Cassation is selected by the general assembly of the court from among the court's three most senior members. The Chief Justice of the Court of Cassation also serves as the President of the Supreme Judicial Council.⁷³

2.4.2. Egyptian Law - Judicial Authority Law No 46 of 1972

82. The Judicial Authority Law No. 46 of 1972, as amended by Law No. 17 of 2007 governs the Court of Cassation, Courts of Appeal, Courts of First Instance and Summary Courts, allows the executive a role in judicial appointments, transfers, inspections and the administration of justice, which impacts upon the courts' independence.⁷⁴

83. Under article 44(2) the President appoints the Chief Justice of the Court of Cassation, who is also head of the Supreme Judicial Council – the body charged with oversight of judicial affairs, judicial appointments, promotions, transfers and disciplinary proceedings.⁷⁵

⁷² Judicial Authority Law No. 46 of 1972, Article 15.

⁷³ Judicial Authority Law No. 46 of 1972, Article 77.

⁷⁴ Judicial Authority Law No. 46 of 1972, Article 1.

⁷⁵ Judicial Authority Law No. 46 of 1972 as amended by Law No. 142 of 2006 and Law No. 17 of 2007, Article 44(2).



84. Moreover, the Minister of Justice is responsible for administering and financing the court system and can appoint the Presidents of the High Courts from judges of the appeal court, after consultation with the Supreme Judicial Council and can transfer judges to another judicial or legal post.⁷⁶

85. The Minister of Justice is also given the right to assign judges to geographical posts around Egypt,⁷⁷ and is able to decide which judges are seconded to the Ministry of Justice, other government ministries, and to the disciplinary department (upon approval of by the Supreme Judicial Council) to investigate other judges accused of ethical violations.⁷⁸

86. Moreover, the Minister of Justice has the power to supervise judicial performance, to request the Prosecutor-General to initiate disciplinary proceedings against particular judges of the ordinary courts, and is responsible for enforcing removal decisions.⁷⁹ Under the Judicial Authority Law judges are prevented from appealing disciplinary rulings.⁸⁰ The Minister of Justice can also require the retirement of judges in certain circumstances.⁸¹

87. In contrast to the ordinary courts, the law regulating the Supreme Constitutional Court, for example, dictates that its members handle its disciplinary process, through the Court's General Assembly.

⁷⁶ Judicial Authority Law No. 46 of 1972, Article 9, 55-58 and 62.

⁷⁷ Judicial Authority Law No. 46 of 1972, Article 9 and 62.

⁷⁸ Judicial Authority Law No. 46 of 1972, Article 62 – 64.

⁷⁹ Judicial Authority Law No. 46 of 1972, Article 78, 93 – 94 and 99.

⁸⁰ Judicial Authority Law No. 46 of 1972, Article 107.

⁸¹ Judicial Authority Law No. 46 of 1972, Article 111.



88. In June 2013, the [International Bar Association Human Rights Institute's](#) fact-finding mission reported that judges were overworked, undertrained and inadequately remunerated. It reported that judges can deal with up to 300–400 cases per day, that they generally work without support and that there were consistent backlogs, limiting the judges' ability to dispense efficient justice.⁸²
89. The [UN Special Rapporteur on the Independence of Judges and Lawyers](#) has emphasised that, "the specific role of judges within the State structure confers upon the judiciary the obligation to provide for stringent entry exams for admission as judges and subsequently for a continuing scheme of legal education."⁸³ Undertraining can lead to a lack of independence and impartiality.
90. The IBAHRI has recommended introducing a bar examination for all members of the legal profession, and publicly administered tests for lawyers wishing to become prosecutors or judges; ending the involvement of the Ministry of Justice in the appointment of investigating judges and any role it may have in setting budgetary allocations relating to the judiciary.⁸⁴
91. Moreover, in practice, commentators have reported that following the disbanding of special emergency courts in Egypt, and their subsequent

⁸² [IBHARI, Separating Law and Politics: Challenges to the Independence of Judges and Prosecutors in Egypt, February 2014, pages 32 – 33.](#)

⁸³ [UN Human Rights Council, UN Docs A/HRC/14/26, Report of the Special Rapporteur on the independence of judges and lawyers, 9 April 2010 para. 36.](#)

⁸⁴ A/HRC/WG.6/20/EGY/3, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/23, 8 August 2014, para. 51.



[constitutional prohibition](#) in 2014,⁸⁵ that the [backlog](#) in the ordinary courts significantly increased, resulting in a diminished ability of the courts to dispense efficient justice, and the use of mass trials, for example, as a means by which to address the work load.⁸⁶

92. Nevertheless, the Court of Cassation has a reputation for a consistent and continuous commitment to the principles of the rule of law, fair trial and due process.⁸⁷ All death sentences automatically require a review by the Court of Cassation and it has overturned a number of high profile convictions and sentences on appeal from the lower courts, citing procedural mistakes by lower courts' judges.

93. One such well-known example is the Al-Jazeera English case, or "Marriott Cell" case. In that case three Al-Jazeera English journalists were charged and convicted with aiding or being a member of a terrorist group and harming Egypt's national interest by broadcasting false news. The Court of Cassation found the trial court's procedures and reasoning failed to meet Egyptian standards of justice and the evidence insufficient. The [Court of Cassation](#) overturned the judgment and sent the case for retrial.⁸⁸ On retrial the journalists were convicted

⁸⁵ See [Article 97 of Constitution of the Arab Republic of Egypt, 2014](#).

⁸⁶ [Risley, D., Middle Eastern Institute, Egypt's Judiciary: Obstructing or Assisting Reform?, 13 January 2016](#).

⁸⁷ [Hamad, M., When the Gavel Speaks, Judicial Politics in Modern Egypt, 2008, p. 232](#).

⁸⁸ [Egypt Justice, Al Jazeera English Journalists, 10 June 2015](#). See also [The Guardian, Six flaws in the case against three jailed al-Jazeera journalists, 24 June 2014](#). For other examples, see also, [Ahram Online, Egypt Court of Cassation orders retrial for 149 sentenced to death in Kerdasa police killings, 3 February 2016](#); [The New Arab, Egypt Court overturns Mohamed Badie death sentence, 11 February 2015](#); [Ahram Online, Egyptian Court overturns convictions of 77 Morsi-supporters on violence-related charges, 2 November 2015](#).



again, and whilst awaiting appeal, the President deported the Australian defendant and pardoned the other two defendants.

2.4.3. The Administrative Courts (State Council)

94. The administrative court system, the judicial section of the State Council, operates in parallel to the ordinary court system. The mandate and autonomy of the State Council is enshrined in [article 190](#) of the 2014 Constitution:

The State Council is an autonomous judicial body, and it shall have the exclusive jurisdiction to settle administrative disputes and disputes relevant to the execution of all its rulings. It shall have the jurisdiction over disciplinary suits and appeals and the exclusive jurisdiction to provide advice regarding legal issues to the administrative bodies determined by the law. It shall also review and draft bills and decrees of legislative nature, and shall review draft contracts to which the state or any other public authority is a party. The law shall determine its other jurisdictions.⁸⁹

95. The judicial section of the Council of State which includes the state commissioners' body, disciplinary courts, administrative courts, the court of administrative justice and the High Administrative Court is further regulated by Law No. 47 of 1972.

96. According to article 83 of Law No. 47 for 1972 the President of the Republic shall nominate the head of the State Council pursuant to a

⁸⁹ [Article 190 of Constitution of the Arab Republic of Egypt, 2014.](#)



presidential decree having consulted a special general assembly formed from the head of the State Council, his vices, deputies, consultants who have worked as consultants for two years.

97. In 2003 the Court of Cassation held that a decision by the Council of State could not be considered an independent judicial decision as required by the constitution – the Council of State was not an, ‘independent judicial organ’ as it was an [agent](#) of Executive power represented by the Minister of Justice.⁹⁰

98. However, in 2000, the [Supreme Constitutional Court](#) held that the Council of State was a judicial institution as there was no contradiction between, “the right to go to court, being a principal constitutional right, and its legislative organisation, provided the legislation does not consider this organisation a means to deny such right.”⁹¹

2.4.4. Courts of Extraordinary Jurisdiction

99. Under Egyptian Law there are a number of courts of extraordinary jurisdiction, some of which are discussed below.

2.4.5. The Supreme Constitutional Court

100. The Supreme Constitutional Court was established in 1969, was mandated under article 174 – 178 of the 1971 Constitution and was empowered by article 25 of the Supreme Constitutional Court’s Law No. 48 of 1979 to determine the constitutionality of laws and

⁹⁰ [State of the Judiciary Report, IFES, April 2004 citing Court of Cassation appeals no.949/2000 and no.959/2000](#)

⁹¹ [State of the Judiciary Report, IFES, April 2004 citing Supreme Constitutional Court case no.181 of 4 March 2000.](#)



regulations, decide on jurisdiction disputes between judicial bodies or authorities of judicial competence, decide on disputes that might take place as a result of enforcing two final contradictory rulings issued by two different judicial entities and interpret the laws issued by the Legislative Authority and the decrees issued by the Head of State in case of any divergence with respect to their implementation. Under articles 48 and 49 judgments and decisions of the Court were final and unreviewable, and bind public authorities and individuals. This mandate of judicial review is now enshrined in article 192 of the 2014 Constitution, and is set out above.

101. [Article 193](#) of the 2014 Constitution gives the Supreme Constitutional Court the autonomy to select its own members and how many should serve, which the President of the Republic appoints by decree.⁹²

102. This contrasts with Law No. 48 of 1979, which prior to its amendment by Law No. 48 of 2011 allowed the President the unfettered discretion to select the Supreme Constitutional Court's president, to choose the Supreme Constitutional Court's deputies, from a two lists of nominees provided by the Court's president and its general assembly, and to decide how many would serve.⁹³

103. In practice, the Supreme Constitutional Court had customarily selected its own justices, but the executive had the power to override this - for example, in 2001, in what was seen as a move to pack the

⁹² [Article 193 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁹³ [Risley, D., Middle Eastern Institute, Egypt's Judiciary: Obstructing or Assisting Reform?, 13 January 2016.](#)



court with sympathisers, President Mubarak appointed Fathi Nagib, the author of much of the legislation that had been struck down by the Supreme Constitutional Court at that time, as the president of the Supreme Constitutional Court. Nagib then nominated five new justices who were appointed by the President to the Court. The amendment in 2011 and subsequently enshrined in the 2014 Constitution prevents such executive interference.

104. The Supreme Constitutional Court has further institutional autonomy - the Court's general assembly sits as a disciplinary court and is competent to examine charges that one of its members has violated his or her responsibilities, prestige or a breach of duty.⁹⁴

105. The International Commission of Jurists reported in 2012 that the role of the Supreme Constitutional Court had been limited, in part because article 73 of the 1971 Constitution empowered the President "to ensure respect for the Constitution and rule of law," thus overlapping with the Supreme Constitutional Court's jurisdiction.⁹⁵

⁹⁴ Article 19 of Law No. 49 of 1979.

⁹⁵ The ICJ was also critical of the Supreme Constitutional Court's ruling that emergency and security courts were constitutional and "did not consider petitions on the constitutionality of transferring civilians to military courts" and of the delay in deciding upon some cases. See: [International Commission of Jurists, Egypt's new Constitution: A flawed process; uncertain outcomes](#), 2012 citing Mustafa, T., *The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt*, Cambridge University Press, 11 June 2007 p.232; Case No.1 of judicial year 15 decided on 30 January 1993, confirming the ability of the President to refer cases concerning civilians to military tribunals and Cases No.72 and 73 of Judicial Year 17, filed with the SCC on 8 November 1999 challenging the constitutionality of Article 6(2) of the Military Judiciary Law, No 25/1966 - neither case was decided by the SCC. Case No. 11 of Judicial Year 13, on whether judicial supervision of elections was required, was submitted to the SCC on 21 January 1991 and was not decided until 8 July 2000. However, international standards do not prohibit trials of civilians by military or special courts in exceptional circumstances, although the fair trial provisions of Article 14 of the ICCPR apply to all courts.



106. However, the judiciary – the Egyptian administrative courts and Supreme Constitutional Court in particular, had gained a reputation amongst scholars at this time for its independence, autonomy and respect for the rule of law in practice.

107. In 2008, Nathan Brown wrote:

Egyptian administrative courts and the Supreme Constitutional Court have become sites for individual and organized efforts to breathe life into Egypt's formal democratic practices and institutions. Political parties seeking to gain recognition, individuals seeking political rights, NGOs challenging restrictions, and activists seeking to eliminate unfair electoral procedures."...“It is clear that the judiciary is generally a respected institution with a strong inclination toward supporting the rule of law.”⁹⁶

108. Nathalie Bernard-Maugiron wrote:

[O]ne of the characteristic features of the Egyptian judiciary is its strength and activism in defense of democratic values.⁹⁷

See General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, UN HRC, 2007 & fn. 36 & 37 citing Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, art. 64 and general comment No. 31 (2004) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 11 and communication No. 1172/2003, *Madani v. Algeria*, para. 8.7.

⁹⁶ Brown, N. J., *Reigning in the Executive*, in *Judges and Political Reform in Egypt*, ed. Nathalie Bernard-Maugiron, The American University in Cairo Press, 2008, p. 135-36, 148.

⁹⁷ *Judges and Political Reform in Egypt*, ed. Nathalie Bernard-Maugiron, The American University in Cairo Press, 2008, p. 1.



109. Tamir Moustafa wrote that the Supreme Constitutional Court had substantial autonomy from executive control,” and that it had, “worked consistently to curtail executive powers, expand freedom of expression, and shield groups active in civil society from state domination... Opposition parties used the SCC to contest electoral laws and strict constraints on political activity, human rights groups used the SCC to strengthen civil and human rights safeguards, leftists initiated litigation aimed at blocking the regime’s privatization program, and even Islamists mobilized through the SCC to challenge the secular underpinnings of the state”.⁹⁸

110. Indeed, case law of Supreme Constitutional Court during the mid-1980s to the early 2000s indicates that not only does the Supreme Constitutional Court have a history of striking down laws to the detriment of the regime, but also that the executive had a reputation for respecting such judgments.

111. For example, the Supreme Constitutional Court struck down a provision of Law No. 33 of 1978 (Law for the Protection of the Homeland and Social Peace) which prevented prominent opposition activists from before the 1952 revolution from participating in an upcoming election. The Government had argued that the Supreme Constitutional Court had no jurisdiction over the law because it had been ratified by popular referendum, but the Supreme Constitutional

⁹⁸ Moustafa, *The Struggle for Constitutional Power: Law, Politics and Economic Development in Egypt*, CUP, 2007, p. 1.



Court held it to be an unconstitutional deprivation of political rights and freedom of speech.⁹⁹

112. In another case the Supreme Constitutional Court struck down legislation that prohibited the registration of the Nasserist Party because its founding members had publicly expressed their opposition to the peace treaty between Egypt and Israel. The Supreme Constitutional Court held the legislation violated the constitutional rights of freedom of expression, multi-party system and the democratic character of the state.¹⁰⁰

113. In 2012 the Supreme Constitutional Court held that Ahmed Shafik, the last Prime Minister to serve under President Mubarak before the January 2011 revolution, constitutionally could not be barred from running for President by reason of his prior political affiliation and government service.¹⁰¹

⁹⁹ Case No. 56, Judicial Year 6, issued June 21, 1986 [Official Gazette No. 27, July 3, 1986] See also Case No. 49, Judicial Year 6, issued April 4, 1987 [Official Gazette No. 16, April 16, 1987]: another provision of Law 33 of 1978 denied political rights and imposed retroactive punishment in violation of Article 66 and Article 187 of the Constitution. Case 59, Judicial Year 18, issued Feb. 1, 1997 [SCCDC, Vol. 8, p 286]: legislation excluding certain categories of citizens from joining political parties and participating in political activities violated the constitutional rights of a multi-party system and participating in public life; a referendum remained inferior in rank to the Constitution. See also: Case 37, Judicial Year 11, issued Feb. 6, 1993 [SCCDC, Vol. 5, Part 2, p 183]. The Court held that the limitation of seats for independent candidates in the elections to the People's Assembly was unconstitutional as the discriminatory factors outlined in Article 40 were indicative rather than comprehensive. Election arrangements could not discriminate on the basis of social or economic class, adoption of political or non-political views, or affiliation to a particular minority. In Case 2, Judicial Year 9, issued Feb. 1, 1992 [SCCDC, Vol. 5, Part 1, p 142], the Court held that legislation arbitrarily discriminating between individuals without objective foundation violated Article 8 and 40 of the Constitution.

¹⁰⁰ Case 44, Judicial Year 7, issued May 7, 1988 [SCCDC, Vol. 4, p 88],

¹⁰¹ Case 57, Judicial Year 34, issued June 14, 2012 [published in Official Gazette No. 24 [Subsequent A] on June 14, 2012].



114. Moreover, the Supreme Constitutional Court has delivered a number of decisions emphasising the importance of judicial independence as a binding constitutional principle and the necessity of maintaining a separation of powers between the executive and the judiciary.
115. In 1996 in a decision concerning the powers of a bankruptcy judge, the Supreme Constitutional Court stated that judicial independence refers to freedom from interference in judicial affairs by other powers and that judicial impartiality relates to the judge's own ability to adjudicate a case without any personal bias against the parties.
116. The Court confirmed that judicial independence is a fundamental principle embodied in the Egyptian Constitution and set out guidelines confirming that judges should be free to evaluate the facts of the dispute before them and construe the applicable law without pressure, that the executive must refrain from interfering with the rendering or enforcement of decisions and legislation must not contradict or undermine previous rulings, that judges have the right to defend their independence within the right of assembly, that judges must be independent from one another, that the assignment of cases is a purely internal matter, that disciplinary action must be based solely on clear and convincing evidence of an inability to perform, that judicial tenure be secured, that appointments are for long terms and



judges are selected objectively, on merit, and that the judiciary is consistently allocated sufficient financial resources by the State.¹⁰²

117. However, the independence of the judiciary, and in particular the Supreme Constitutional Court, came under attack during Morsi's presidency.

118. The Arab Centre for the Independence of the Judiciary and the Legal Profession (ACIJLP) published a report in 2013 entitled, "2012: the worst year for the judiciary in six decades." The report stated that the existence of the rule of law had been threatened, that the attempt at judicial reform by the government was, "an attempt to control the judicial institution, not repair it," and that 2012 was rife with prejudice towards the judiciary, including, "threats to judges and their right to life in order to prevent them from carrying out their duties."¹⁰³

119. On 8 July 2012, 8 days after taking the presidential oath, Morsi attempted to summon the People's Assembly, the lower house of Parliament, which had been dissolved by a Supreme Council of the Armed Forces on 15 June 2012 in accordance with the Supreme Constitutional Court verdict. Morsi's grounds were that the Court had only struck down the electoral law, but that other actors, such as the Court of Cassation, or the parliament itself should decide on how the ruling should be implemented. This contravened [international](#)

¹⁰² Case 34, Judicial Year 16, issued June 15, 1996 [published in Official Gazette No. 25, 27 June 1996.]

¹⁰³ Daily News Egypt, 2012: worst year for the judiciary in six decades, A report published by the Arab Centre for the Independence of the Judiciary and the Legal Profession criticizes civilians and the government for undermining the judiciary, 6 March 2013 accessed at <http://www.dailynewsegyp.com/2013/03/06/2012-worst-year-for-judiciary-in-six-decades/>



[standards](#), as the executive is required to respect and abide by the decisions of the judiciary even when it does not agree with them.¹⁰⁴ However, on [11 July 2012](#), following a Supreme Constitutional Court emergency meeting in which it insisted that its ruling was final and binding, Morsi abided by the ruling dissolving the House.¹⁰⁵

120. But on 22 November 2012, Morsi promulgated a controversial interim “[constitutional declaration](#)” which removed executive decisions from judicial oversight.¹⁰⁶ It made presidential acts since he took office on 30 June 2012, until the constitution was approved and a new People’s Assembly was elected:

[F]inal and binding and [they] cannot be appealed by any way or to any entity. Nor shall they be suspended or cancelled and all lawsuits related to them and brought before any judicial body against these decisions are annulled.¹⁰⁷

121. Moreover, the declaration [revoked](#) the power of the Supreme Constitutional Court to declare Parliament or the constitutional drafting committee unconstitutional and dissolve them.¹⁰⁸ And it changed the [terms of appointment](#) of the Prosecutor General,

¹⁰⁴ [Basic Principles on the Independence of the Judiciary, 1985, Principles 1 and 4.](#)

¹⁰⁵ [USA Today, Egypt’s top court affirms ruling to disband parliament, 9 July 2012.](#)

¹⁰⁶ [Presidential Decree No 28 of 2012, 22 November 2012, unofficial English translation.](#)

¹⁰⁷ [Presidential Decree No 28 of 2012, 22 November 2012 Decree, unofficial English translation, Article II.](#)

¹⁰⁸ [Presidential Decree No 28 of 2012, 22 November 2012 Decree, unofficial English translation, Article V.](#)



retroactively and with immediate effect, so that Morsi could appoint Talaat Abdullah to replace Abdel Meguid Mahmoud.¹⁰⁹

122. The Constitutional Declaration was thus perceived as a direct attack on the independence of the judiciary, and in particular upon the jurisdiction of the Supreme Constitutional Court, especially given that the Supreme Constitutional Court had shortly been [expected](#) to give judgment on several of the challenges to the Constituent Assembly's constitutionality.¹¹⁰

123. The actions of the judiciary following the Constitutional Declaration are evidence of the fact that the declaration was perceived as an attack on the judiciary. The Court of Cassation held a general assembly in which members voted 270 to 19 to suspend work in response to the decree. The Court of Cassation was joined in the strike by Egypt's eight appeals courts in Cairo, Alexandria, Tanta, Mansoura, Ismailia, Beni Suef, Assiut and Qena. The country's 26 primary courts, the courts of limited jurisdiction and most prosecution offices, also went on strike.¹¹¹

124. The Supreme Judicial Council called the Constitutional Declaration an, "[unprecedented attack on judicial independence](#)" and the Judge's Club held an extraordinary general assembly to consider

¹⁰⁹ [Presidential Decree No 28 of 2012, 22 November 2012, unofficial English translation, Article III.](#)

¹¹⁰ [The Telegraph, Mohammed Morsi meets with judges to defuse mounting Egypt anger, 26 November 2012.](#)

¹¹¹ Daily News Egypt, Timeline of Morsi and the Judiciary: One year in power, 29 June 2013, accessed at <http://www.dailynewsegypt.com/2013/06/29/timeline-of-morsi-and-the-judiciary-one-year-in-power/>



their response to the declaration that they considered overstepped their judicial jurisdiction and independence.¹¹²

125. On 30 November 2012, two days after the Constituent Assembly published its draft constitution, Islamist demonstrators reportedly surrounded the Supreme Constitutional Court preventing the judges from entering their building. The Supreme Constitutional Court had been scheduled to rule on the constitutionality of the Constituent Assembly (which had been established by the People's Assembly, previously ruled unconstitutional and dissolved in June 2012) and upon the upper house of parliament, the Shura Council. The judges issued a [statement](#) calling it, "the blackest day in the history of the Egyptian judiciary" and announcing "the suspension of court sessions until the time when they can continue their message and rulings in cases without any psychological and material pressure."¹¹³

126. The Constitution was ultimately adopted on 26 December 2012, and included article 176, which reduced the number of judges in the Supreme Constitutional Court from 18 to 11, removing most of its junior members.

127. In what was regarded as a further attack on the independence of the judiciary, in April - May 2013 the Shura Council considered a new judicial law that included reducing the mandatory judicial retirement age from 70 to 60. If enacted, [the legislation](#) would have removed all but one of the remaining Supreme Constitutional Court justices, the

¹¹² [Ahram Online, Egypt's judges divided over Morsi's decrees, 4 November 2012.](#)

¹¹³ [BBC News, Egypt court halts work amid Islamist 'pressure', 2 December 2012.](#)



entire Supreme Judicial Council, and the entire senior leadership of the judiciary.¹¹⁴ Moreover, prior its dissolution, the [People's Assembly](#) had been rumoured to have been debating eradicating the Supreme Constitutional Court all together, and transferring its powers to the Court of Cassation.¹¹⁵

128. Furthermore, throughout this period the judiciary, and the Supreme Constitutional Court in particular, was subjected to public criticism, a factor that is recognised as inhibiting the judiciary's ability to carry out its professional duties freely, independently and impartially.

129. On 14 December 2012, for example, Essam Al-Haddad, Assistant to the President on Foreign Relations released a statement describing the Supreme Constitutional Court as an "anti-revolutionary force", its dissolution of parliament as "dubious", and the constitutional declaration as aiming to "facilitate consensus by immunising these decisions from intervention by the Supreme Constitutional Court."

130. The Supreme Constitutional Court responded by issuing a statement on 17 December 2012 accusing the presidency of "abuse, insult and slander" and aiming to "undermine the reputation of this

¹¹⁴ [Risley, D., Middle Eastern Institute, Egypt's Judiciary: Obstructing or Assisting Reform?, 13 January 2016.](#)

¹¹⁵ [Aziz, S., 19 No. 3 Hum. Rts. Brief 1 \(2012\), Egypt's Protracted Revolution, 8 August 2014.](#)



court internationally...without giving one piece of truthful evidence to support his allegations and claims.”¹¹⁶

131. On 23 December 2012, the head of the Judges’ Club, [Judge Ahmad Al-Zind](#), was physically attacked as he left the club’s premises in Cairo.¹¹⁷ In April 2013 former Muslim Brotherhood guide, Mehdi Akef was reported as stating that 3,500 judges would soon be dismissed by parliament. Also in [April 2013](#), Muslim Brotherhood crowds gathered outside the High Court in Cairo in April to demand “the purging of the judiciary” – considered by some commentators to be a strategic move aimed at pushing through “ikhwanising the judiciary” with the judicial authority law amendments.¹¹⁸

132. Despite these moves to limit the independence of the Supreme Constitutional Court, it continued to rule on the electoral framework, the constitution and the emergency laws in a manner that indicates that it still saw itself as the arbiter of constitutional issues, and the executive respected those rulings. For example, on 2 June 2013 the Supreme Constitutional Court released [three judgments](#), one overturning the electoral law for the Shura Council – the upper house of parliament, although it found that the chamber could continue in session until the lower house of parliament was elected and met for the first time, respecting the 2012 Constitution, one overturning the law

¹¹⁶ Daily News Egypt, SCC accuses presidency of lying, 17 December 2012, accessed at <http://www.dailynewsegypt.com/2012/12/17/scc-accuses-presidency-of-lying/>

¹¹⁷ [Ahram Online, Head of Egypt's Judges Club assaulted, injured, 24 December 2012.](#)

¹¹⁸ [Al Monitor, Brotherhood demands Judicial Purge in Egypt, 21 April 2013.](#) See also [Al Monitor, Eight Questions on ‘purging’ of Egypt’s Judiciary, 24 April 2013.](#)



governing the constituent assembly, and one overturning a provision of the country's emergency law.¹¹⁹

133. On 1 March 2015 the Supreme Constitutional Court ruled that the Elections Constituency Division Law was unconstitutional and on the 7 March 2015 that the House of Representatives law was unconstitutional. The court ordered boundaries of electoral constituencies in 13 governorates to be redrawn. As a result the Higher Electoral Commission said the parliamentary elections scheduled for 21 March 2015 would be put on hold. A 15 – member judicial and legislative committee amended the laws in April 2015 and the amendments were ratified by President Sisi on 9 July 2015. Polls were held between [October – December 2015](#).¹²⁰

2.4.6. Military Courts

134. As discussed in section 3.4 above, Military Courts are governed by the Military Code of Justice (Law No. 25 of 1966) as amended by Law No. 138 of 2010, Law No. 1 of 2013 on the participation of the armed forces in maintaining security and protecting vital facilities of the state and Law No. 136 of 2014 on protecting and securing public and vital facilities.
135. Prior to amendments to the Military Judiciary Law in 2007 and 2014 rulings were issued by one court, without appeal. Now the

¹¹⁹ [Brown, N., Egypt: A Constitutional Court in an Unconstitutional Setting, 23 October 2013.](#)

¹²⁰ [Ahram Online, Egypt parliamentary elections postponed as constituencies' law ruled unconstitutional, 1 March 2015.](#) [Ahram Online, Egypt's Sisi approves new parliamentary election law, 9 July 2015.](#) [BBC News, Egypt Parliament Elections to be held in October and November, 30 August 2015.](#)



military judiciary consists of the Supreme Military Court of Appeals, the Military Court for Felonies, the Military Court of Appeals for Misdemeanours, and the Military Court for Misdemeanours. All military court rulings can be appealed before the Supreme Military Court of Appeals.

136. Under international law the right to be tried by an independent and impartial tribunal remains, “an absolute right that may suffer no exception”,¹²¹ and further:

[T]rials of civilians by military or special courts are permissible where they are exceptional, where they are limited to cases where the State party can show that resorting to such trials is [necessary](#) and justified by objective and serious reasons, and where, with regard to the specific class of individuals and offences at issue, the regular civilian courts are unable to undertake the trials.¹²²

137. On October 27 2014, following the killing of dozens of soldiers in the Sinai Peninsula by armed extremists President Sisi decreed Law No. 136 of 2014 for the Securing and Protection of Public and Vital Facilities, which placed all “public and vital facilities” under military

¹²¹ UNHRC, Communication No 263/1987, CCPR/C/46/D/263/1987, *González del Río v Peru*, UN Doc (1992), and see also UNHRC, UN Doc CCPR/C/21/Rev.1/Add.11, CCPR General Comment No 29: Article 4: Derogations during a State of Emergency, 31 August 2001, para 11.^[1]

¹²² [UN HRC, CCPR/C/GC/34, General comment No. 34 Article 19: Freedoms of opinion and expression, 11-29 July 2011, footnotes 36 and 37](#) citing Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, art. 64 and general comment No. 31 (2004) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 11 and communication No. 1172/2003, *Madani v. Algeria*, para. 8.7.



jurisdiction for two years, specifically including electricity stations, gas pipelines, oil wells, railroads, road networks and bridges. The law, which has reportedly increased the number of civilians tried by military courts to over [7,000](#) since the end of 2014,¹²³ was introduced for the [protection of civilians](#) following increase in threats to security situation in Egypt.¹²⁴

138. Moreover, some commentators have explained these numbers by observing firstly, that action had to be taken to mitigate the backlog in the ordinary courts, and the consequent impact on fair trial rights, and secondly, that Egypt is currently subject to [threats to national security and terrorism](#).¹²⁵ Others have noted that military prosecutions of civilians is not a new practice, citing 11,879 civilians prosecuted by military courts between [28 January 2011 and 29 August 2011](#).¹²⁶

139. Special security courts had originated under Egypt's Emergency law (Law No. 162 of 1958).¹²⁷ The President of the Republic had had the power to alter the composition of the special security courts and appoint military judges to the panel, and had the power to refer civilians accused of crimes under the Penal Code or the Emergency Law to these courts. These courts had no right of appeal, could impose

¹²³ [HRW, Egypt: 7,400 Civilians Tried in Military Courts, 13 April 2016.](#)

¹²⁴ [Ahram Online, New temporary law allows Egypt's army to protect vital sites, 27 October 2014.](#)

¹²⁵ [Risley, D., Middle Eastern Institute, Egypt's Judiciary: Obstructing or Assisting Reform?, 13 January 2016.](#)

¹²⁶ [HRW, Egypt: Unprecedented Expansion of Military Courts, 17 November 2014.](#)

¹²⁷ Under Article 2(1): Declaration of a state of emergency and declaration of its end are issued by the President of the Republic, and the decision to announce the state of emergency should include the following: (1) A statement declaring the state of emergency and announcing its reasons; (2) The borders of the areas that it includes; (3) The date from which its operation begins.



the death penalty and pursuant to articles 15 and 15 of the Emergency Law, the President had broad powers to reduce, cancel or suspend the sentence or to order a retrial.

140. A practical consequence to the disbanding, and subsequent constitutional prohibition of the special security courts (which used expedited procedures) by article 97 of the 2014 Constitution, following the end of emergency rule in 2012, has been to significantly add to the backlog of cases (and correspondingly [long periods in pretrial detention and detention pending appeal](#)), and the consequent use of mass trials and in some cases, procedural and evidential short cuts in the ordinary courts.¹²⁸

141. On 29 June 2015, terrorists killed the prosecutor general, [Hisham Barakat](#), with a car bomb that targeted his motorcade in Cairo, reportedly also injuring nine persons, including two drivers and five members of the security forces.¹²⁹ On June 30 2015, at Prosecutor General Hisham Barakat's funeral, [President Sisi](#) promised to, "to implement the law and justice in the fastest possible time."¹³⁰ As discussed below, this resulted in the ratification of a new counterterrorism law in August 2015 which included at article 53, the

¹²⁸ [Risley, D., Middle Eastern Institute, Egypt's Judiciary: Obstructing or Assisting Reform?, 13 January 2016.](#)

¹²⁹ [U.S. Department of State, 2015 Human Rights Reports: Egypt, 13 April 2016.](#)

¹³⁰ [HRW, Egypt: Top Prosecutor's Killing a New Risk for Rule of Law, 30 June 2015.](#)



power to take “[appropriate measures to protect the general order and security](#)” to confront terrorism.¹³¹

142. In the context of the Universal Periodic Review, that Egypt participated in 2014, the Office of the High Commissioner for Human Rights prepared its “stakeholder report” in which it compiled materials from NGOs.¹³² With respect to the judiciary, report mainly focused on the jurisdiction of the military justice system, rather than the independence of the judiciary, although a joint submission submitted by No Military Trials for Civilians stated that military justice did not meet the minimum standards for neutrality or independence from the executive authority.¹³³

143. The other document prepared by the Office of the High Commissioner for Human Rights for the Universal Periodic Review was the “compilation” of UN materials.¹³⁴

144. It is noteworthy that under the heading “C. Administration of justice, including impunity, and the rule of law,” there were no

¹³¹ [U.S. Department of State, 2015 Human Rights Reports: Egypt, 13 April 2016](#) reported that terrorist groups had conducted deadly attacks on government, civilian and security targets throughout the country in 2015

¹³² “Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/23, 8 August 2014, (A/HRC/WG.6/20/EGY/3)

¹³³ A/HRC/WG.6/20/EGY/3, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/23, 8 August 2014, para. 53

¹³⁴ A/HRC/WG.6/20/EGY/2, Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21”, 18 August 2014.



allegations of a lack of independent and impartiality within the judiciary. Criticisms were focused on fair trial rights.

145. In December 2014 the Report of the Working Group on the Universal Periodic Review that Egypt participated in was published. The two recommendations that concerned the judicial system focused on the jurisdiction of the military justice system, and did not directly concern the independence of the judiciary.¹³⁵

2.5. Conclusion

146. This analysis has outlined the structure of the ordinary courts, the administrative courts, the supreme constitutional court and the military courts in Egypt, and it has outlined the provisions separating the courts from the executive in the context of the constitution, the domestic legal provisions and the international laws and standards to which Egypt is bound. It has considered the developments, particularly in and as a result of the 2014 Constitution, to the institutional protections for the judiciary. It has considered, in particular, the developments with respect to the autonomy of the Supreme Constitutional Court, the judicial independence of the Military Courts and the prohibition of exceptional courts, which protects the jurisdictional independence of the ordinary courts.

147. This chapter has also observed the pressures faced by different branches of the judiciary in practice – through appointments, tenure,

¹³⁵ HRC, A/HRC/28/16, Report of the Working Group on the Universal Periodic Review, 24 December 2013.



discipline, attempts to amend the laws and through public criticism, threats or violence.

148. The Egyptian Judiciary has, for the most part shown resilience where these attacks have occurred, particularly in the Supreme Constitutional Court, where the judiciary has autonomy, exclusive jurisdiction, power to select its membership, manage its affairs, and discipline its members. Its decisions and the acceptance of those decisions by the executive, even if detrimental to the regime, indicate its independence. The Ordinary Court system enjoys less autonomy, with the executive having a role in appointments, security of tenure, administering and financing the courts and discipline. However, the appeals mechanisms in the ordinary courts have worked effectively to overturn convictions on appeal from the lower courts, thus enhancing independence within the institution.



Chapter III

FAIRNESS OF TRIALS



3.1. Introduction

149. The right to a fair trial and to equality before the courts is considered a key element of human rights protection and is a procedural means to [safeguard the rule of law](#).¹³⁶ The aim of the right is to ensure the proper [administration of justice](#).¹³⁷

150. As a set of procedural guarantees, the right to a fair trial also protects individuals from the unlawful deprivation or curtailment of other more [substantive human rights and freedoms](#).¹³⁸ These [rights include](#) the right to life, the right to liberty of the person, the right not to subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right to an effective remedy, the right to a trial within a reasonable time, an alien's right not to be expelled or deported without due process, a journalist's right to freedom of expression, and the right to non-discrimination.¹³⁹

151. This chapter will outline the rules going to fairness of trials within the Egyptian legal system, contained within the [Egyptian](#)

¹³⁶ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 2.](#)

¹³⁷ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 2.](#)

¹³⁸ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, paras 58-65.](#)

¹³⁹ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, paras 58-65.](#) See also articles 2(3) right to an effective remedy, article 6 right to life, article 9(3) prohibition on unduly delaying trials, article 13 due process rights for aliens facing expulsion or deportation, article 19 the right to freedom of expression and article 2 the right to non-discrimination of [UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966.](#)



[Constitution](#)¹⁴⁰ and the [Egyptian Code of Criminal Procedure](#)¹⁴¹, the [Egyptian Penal Code](#),¹⁴² the [Advocates Law](#)¹⁴³ and the [Judicial Authority Law](#).¹⁴⁴

152. It will consider the right to equality before the law and courts, the specific minimum procedural guarantees that are different aspects of the right to a fair trial as well as considering due process in the context of military courts where all measures must [comply with international human rights obligations](#).¹⁴⁵

153. The right to a fair trial on a criminal charge is considered to start running not “only upon the formal lodging of a charge but rather on the date on which State activities substantially affect the situation of the person concerned,”¹⁴⁶ and fair trial guarantees must be observed from the moment of arrest or from when the investigation against the accused commences until the criminal proceedings, including any appeal, have been completed.

154. This chapter will consider whether the manner in which those fair trial guarantees have been implemented in practice is consistent

¹⁴⁰ [Constitution of the Arab Republic of Egypt, 2014.](#)

¹⁴¹ [Egyptian Criminal Procedure Code.](#)

¹⁴² [Egypt Penal Code, Law No. 58 of 1937](#)

¹⁴³ [Advocates Law, Law No 17 of 1983 \[for excerpts, unofficial translation, see Annex A, Justice at a Crossroads: The Legal Profession and the Rule of Law in the New Egypt, IBAHRI, November 2011.](#)

¹⁴⁴ [Judicial Authority Law, Law No 46 of 1972 \[for excerpts, unofficial translation, see Annex C, Justice at a Crossroads: The Legal Profession and the Rule of Law in the New Egypt, IBAHRI, November 2011.](#)

¹⁴⁵ [Right to a Fair Trial and Due Process in the Context of Countering Terrorism, UN Counter-Terrorism Implementation Task Force, 2014, p. 4](#)

¹⁴⁶ Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary (2nd rev. ed.) (N.P. Engle: 2005).



with those international laws and standards.¹⁴⁷ To do this, this chapter will analyse a number of key trials that have been the subject of media attention since 2014.

3.2. International Standards to which Egypt is bound

155. As a core factor in the administration of justice, the right to a fair trial is regulated in numerous international treaties and soft-law provisions.¹⁴⁸ In turn, Egypt has committed itself to a number of such international treaties and conventions, which safeguard the minimum requirements of the absolute right to fair trial.

156. In particular, as a [state party](#) to the International Covenant on Civil and Political Rights (ICCPR),¹⁴⁹ Egypt is bound by Article 14, which sets out a series of specific rights which are required in criminal proceedings to ensure the proper administration of justice.¹⁵⁰ These specific minimum guarantees must be respected by States regardless of their legal traditions and domestic law, and are different aspects of the [right to a fair trial](#):¹⁵¹ (i) the presumption of innocence; (ii) the right to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (iii) the

¹⁴⁷ This chapter will not focus on pre-trial rights, including the right to liberty, the rights and safeguards during questioning and detention and the right to freedom from torture and ill-treatment will be considered in detail in chapter 3 concerning arrest and detention. The independence and impartiality of the judiciary, a requirement for a fair trial, was the subject of the chapter 1.

¹⁴⁸ This chapter will only intend to provide overview of international standards.

¹⁴⁹ Egypt ratified the ICCPR in 1982 see [UN OHCHR, Status of Ratification of 18 International Human Rights Treaties](#).

¹⁵⁰ Whilst Article 14 of the ICCPR, applies to civil proceedings as well, the focus of this paper is on criminal proceedings only.

¹⁵¹ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 4.](#)



right to adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (iv) the right to be tried without undue delay; (v) the right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (vi) the right to examine or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (vii) the right to have the free assistance of an interpreter if he cannot understand or speak the language used in court; (viii) the right not to be compelled to testify against himself or to confess guilt; (ix) the right for his conviction and sentence to be reviewed by a higher tribunal according to law; (x) the right to compensation for miscarriages of justice; and (xi) the right not to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of the country.

157. These rights are also echoed in [articles 7 - 12](#) in the Universal Declaration of Human Rights,¹⁵² as well [as article 7 and articles 5, 6 and 26](#) of the African Charter on Human and Peoples' Rights.¹⁵³

¹⁵² [UN General Assembly, Resolution 217A, Universal Declaration of Human Rights, 10 December 1948.](#)

¹⁵³ Egypt became state party to the African Charter in 1984 see [African Commission on Human and Peoples' Rights, Ratification Table: African Charter on Human and Peoples' Rights.](#) Additional relevant rules are contained within the following human rights



158. Further guidelines applicable to Egypt are set out in various soft-law instruments including the [UN Human Rights Committee's General Comment](#) on the right to a fair trial, which stands as an authoritative interpretation of the meaning and application of article 14 of the ICCPR.¹⁵⁴

159. As set out below, these minimum guarantees provide a backdrop for an accused's right to a fair trial before the Egyptian judiciary. They are absolute and during a state of emergency, may not be subject to derogation where this would circumvent the [protection of non-derogable rights](#).¹⁵⁵ The fundamental principles of a fair trial must be respected at all times and the provisions of article 14 apply to all courts and tribunals [whether ordinary or specialised, civilian or military](#).¹⁵⁶

instruments to which Egypt is a party: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Elimination of all forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention on the Rights of Persons with Disabilities (CRPD); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).

¹⁵⁴ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007](#). Further guidelines applicable to Egypt are set out in the African Commission on Human and Peoples' Rights Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa dated ADD 2003, the Guidelines on the Role of Prosecutors,¹⁵⁴ the Basic Principles on the Role of Lawyers, which aims to ensure that states respect the role and independence of lawyers in particular when representing those deprived of their liberty and in criminal proceedings,¹⁵⁴ the Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,¹⁵⁴ and the Basic Principles on the Independence of the Judiciary.¹⁵⁴

¹⁵⁵ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, paras 6 and 59](#) and [General Comment 29 \(States of Emergency\), UN Doc CCPR/C/21/Rev.1/Add.11 \(2001\), paras. 7 and 15](#).

¹⁵⁶ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, paras 6 and 22](#).



3.3. Fairness of Trials – Egyptian Framework

160. In 2014, Egypt introduced a new constitution, which was approved by a [large majority](#) in Egypt,¹⁵⁷ and was viewed as strengthening the [military, the police and the judiciary](#).¹⁵⁸

161. In contrast to the [2012 Constitution](#) introduced under the presidency of Mohamed Morsi,¹⁵⁹ the 2014 Constitution expressly sought to provide domestic adherence to international obligations. Article 93 of the 2014 Constitution provides:

[T]he State shall be bound by international human rights agreements, covenants and conventions ratified by Egypt, and which shall have the force of law after publication in accordance with the prescribed conditions.

162. As a consequence, Egypt has sought to provide domestic recognition of its international obligations concerning human rights, including the absolute right to a fair trial.

3.4. Equality before the Courts and Tribunals

163. The right to equality before courts and tribunals guarantees equal access to the courts and tribunals (including access to remedies and reparations) and ensures that the parties to the proceedings in question are treated without any discrimination. Distinctions that are not based on law and cannot be justified on objective and reasonable

¹⁵⁷ [BBC News, Egypt referendum: '98% back new constitution', 19 January 2014.](#)

¹⁵⁸ [Kingsley, P., The Guardian, Egypt's new constitution gets 98% 'yes' vote, 18 January 2014.](#)

¹⁵⁹ [Constitution of the Arab Republic of Egypt, 2012.](#)



grounds are prohibited. The expression “equality of arms”, which does not appear explicitly in article 14 of the ICCPR, is considered to be a component of equality in proceedings. It means that the same procedural rights must be available to both parties. Similar cases should be dealt with in similar proceedings. [Objective and reasonable grounds](#) must be provided to justify exceptional criminal procedures or specially constituted courts for certain categories of cases.¹⁶⁰

164. Equality before the courts and equality of arms also requires a [strong prosecutorial authority](#) to investigate and prosecute cases with independence and impartiality, so that prosecutorial discretion as to which cases to pursue is exercised fairly.¹⁶¹

165. Under Egyptian law, equality before the law is guaranteed under [article 53](#) of the 2014 constitution.¹⁶² The [Judicial Authority Law](#) further provides for a minimum level of prosecutorial independence and impartiality, and sets out the rights, duties and qualifications for public prosecutors.¹⁶³

¹⁶⁰ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 8.](#)

¹⁶¹ See for example, [Council of Europe, Opinion No 12 \(2009\) of the Consultative Council of European Judges and Opinion No 4 \(2009\) of the Consultative Council of European Prosecutors, “On the relations between Judges and Prosecutors in a Democratic Society” \(the “Bordeaux Declaration”\), para. 10: “The independence of the public prosecution service constitutes an indispensable corollary to the independence of the judiciary. The role of the prosecutor in asserting and vindicating human rights, both of suspects, accused persons and victims, can best be carried out where the prosecutor is independent in decision-making from the executive and the legislature and where the distinct role of judges and prosecutors is correctly observed. In a democracy based on the rule of law, it is the law that provides the basis for prosecution policy.”](#)

¹⁶² [Article 53 of Constitution of the Arab Republic of Egypt, 2014.](#)

¹⁶³ Judicial Authority Law, Law No 46 of 1972, Arts. 67, 72, 73, 75, 130 [for excerpts, unofficial translation, see [Annex C, Justice at a Crossroads: The Legal Profession and the Rule of Law in](#)



166. Moreover, the [Advocates Law](#), which sets out the rights and duties of lawyers, can be said to seek to ensure equality of arms, by guaranteeing, for example: the individual and professional independence of lawyers, their entitlement to be treated by Courts with due respect, their duty to defend efficiently the interest with which he or she has been charged and to exert ultimate efforts and care in so doing, their duty to provide legal aid, and by providing for a Bar Association to ensure the proper performance of the legal profession.¹⁶⁴

167. However, there is at least a perception that prosecutors in Egypt have not always [exercised their discretion](#) as to which cases to pursue fairly and equally, in particular, by not giving due attention to the prosecution of crimes committed by public officials.¹⁶⁵ Amnesty International and Human Rights Watch, for example have been critical that no individual or governmental body has been held accountable for deaths of civilians during the 2013 dispersals of the sit-ins at Rabaa al-Adawiya and Nahda Squares despite the National Council for Human Rights report in 2014 finding that the police “[sometimes failed to maintain self-restraint and sometimes were not proportional](#)”.¹⁶⁶

[the New Egypt](#), IBAHRI, November 2011. See also [Separating Law and Politics: Challenges to the Independence of Judges and Prosecutors in Egypt](#), IBAHRI, February 2014.

¹⁶⁴ Advocates Law, Law No 17 of 1983 [for excerpts, unofficial translation, see [Annex A](#), Justice at a Crossroads: The Legal Profession and the Rule of Law in the New Egypt, IBAHRI, November 2011, paras. 1, 49, 63, 64

¹⁶⁵ [OCHR, 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, Guidelines 12 & 13](#). See also: [OCHR, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers](#), Ch. 4 Independence and Impartiality of Judges, Prosecutors and Lawyers, p. 116.

¹⁶⁶ [U.S. Department of State, 2015 Human Rights Reports: Egypt, 13 April 2016](#). See also, [HRW, All According to Plan, 2014](#).



168. However, such criticism fails to take into account a number of investigations conducted into the dispersal of protestors supporting former President Morsi. For example, on 21 December 2013, interim President Mansour issued a decree for the establishment of an [independent fact finding mission](#) to be headed by Dr. Fouad Abdel-Moneim Riad.¹⁶⁷ As part of its mandate, the commission was expressly tasked with [investigating events](#), which occurred in connection with the ousting of former President Morsi.¹⁶⁸

169. Moreover, there have also been prosecutions of members of the security force for the commission of crimes during the period following the ousting of Mohamed Morsi. For example, in March 2014, state prosecutors secured convictions against the [deputy chief of Heliopolis police station](#) and three lower-ranking officers for their involvement in the death of 37 detainees in August 2013.¹⁶⁹ The detainees had been arrested during their protest against the removal of former President Morsi and had died of asphyxiation in an overcrowded [police van after officers fired tear gas](#) inside it.¹⁷⁰ Although the sentences of the police officers were reduced following [re-trial](#),¹⁷¹ the investigation of security officials depicts the

¹⁶⁷ See [9 Bedford Row, The Egyptian Revolution against the Muslim Brotherhood 2013, 10 December 2015](#) and <http://www.madamasr.com/news/interior-ministry-presents-evidence-rabea-dispersal-june-30-fact-finding-committee>

¹⁶⁸ See [9 Bedford Row, The Egyptian Revolution against the Muslim Brotherhood 2013, 10 December 2015](#).

¹⁶⁹ See for example, [Kirkpatrick, D., New York Times, Egyptian Police Officer Gets 10 Years for Detainees' Deaths, 18 March 2014](#).

¹⁷⁰ [Kirkpatrick, D., New York Times, Egyptian Police Officer Gets 10 Years for Detainees' Deaths, 18 March 2014](#).

¹⁷¹ See for example, [Reuters, Egypt police colonel gets five years jail at re-trial over deaths of 37 prisoners, 13 August 2015](#).



willingness of state prosecutors to conduct independent investigations, which do not follow the [institutional narrative](#) provided by the officers, and to seek convictions of high ranking police officers.¹⁷²

170. Similarly, on 11 June 2015, prosecutors secured the conviction of Central Security Forces officer [Yassin Mohamed Hatem Saleheddine](#), for shooting and killing a female protester on 24 January 2015 during a protest commemorating the 2011 revolution.¹⁷³

171. More recently, Egyptian authorities have undertaken a number of legislative reforms, including amendments to the [Police Law](#), in order to address the serious issue of civilian deaths being committed by police officers.¹⁷⁴ Whilst the effect of the amendments will of course rely on strict application of the statutory provisions, the changes do represent a concern to [protect the dignity](#) of everyday citizens and to pressure police officers to perform their duties and put a stop to their violations.¹⁷⁵

3.5. Fair hearing

172. Fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive. A hearing is not fair if, for instance, the defendant in criminal proceedings is faced with the expression of a [hostile attitude](#) from the public or support for one party in the

¹⁷² [BBC News, Egypt police convicted over detainee tear-gas deaths, 18 March 2014.](#)

¹⁷³ See for example, [Vice News, Egyptian Police Lieutenant Sentenced to 15 Years for Shooting Peaceful Protester, 12 June 2015.](#)

¹⁷⁴ [Mostafa, A., Al-Monitor, Egypt seeks to crack down on killings by police, 9 October 2016.](#)

¹⁷⁵ [Mostafa, A., Al-Monitor, Egypt seeks to crack down on killings by police, 9 October 2016.](#)



courtroom that is tolerated by the court, thereby impinging on the right to defence.¹⁷⁶

173. Within Egyptian law, [article 96](#) of the 2014 Constitution explicitly provides for “a fair legal trial.”¹⁷⁷ However, in practice, Egypt has been criticised for failing to ensure the fair hearing absent from influence in several recent high profile cases, such as the Al Jazeera English case, also known as “the Marriott cell case”.

174. In that case three journalists, Australian Peter Greste, Canadian Mohamed Famy and Egyptian Baher Mohamed were arrested in December 2013 and later charged with 17 others, 11 of whom were tried *in absentia*, with promoting and giving support to the Muslim Brotherhood, and producing false news that [harmed Egypt’s reputation and security](#).¹⁷⁸

175. Critics have pointed to the fact that a recording of the journalists’ arrest was apparently replayed on television backed by the soundtrack, “[Thor: The Dark World](#),” whilst during the trial the prosecutors used verses from the Quran to describe the activities of the journalists thereby demonizing them.¹⁷⁹ In the judgment, in June 2014, the journalists were [convicted and sentenced](#) to seven years, with Baher Mohammed sentenced to an additional three years for

¹⁷⁶ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 25.](#)

¹⁷⁷ [Article 96 of Constitution of the Arab Republic of Egypt, 2014.](#)

¹⁷⁸ [Clooney, A., Huffington Post, The Anatomy of an unfair trial, 18 August 2014.](#)

See also [The Guardian, Al-Jazeera journalists jailed for airing 'false news', Egyptian court ruling says, 6 September 2015;](#) [Amnesty International, Dark day for media freedom as Al Jazeera journalists convicted, 23 June 2014.](#)

¹⁷⁹ [Clooney, A., Huffington Post, The Anatomy of an unfair trial, 18 August 2014.](#)



possession of a bullet shell.¹⁸⁰ The judges [echoed the prosecutors' language](#), finding that "Satan joined [the journalists] in the exploitation of this media activity to direct it against this country."¹⁸¹

176. However, the conviction was overturned by the Court of Cassation in January 2015 and a [retrial](#) ordered, with the appeals court criticising the trial court for failing to meet Egyptian standards of justice on a number of levels, focusing on the trial court's weak and contradictory reasoning, and its reliance on confessions without properly investigating claims that they had been taken under coercion.¹⁸² Any undue influence in the judicial process was subsequently addressed by the Court of Cassation.

3.6. Public hearing

177. All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Courts have the power to exclude all or part of the public for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the

¹⁸⁰ [Amnesty International, Dark day for media freedom as Al Jazeera journalists convicted, 23 June 2014.](#)

¹⁸¹ [Clooney, A., Huffington Post, The Anatomy of an unfair trial, 18 August 2014.](#)

¹⁸² [Al Jazeera English Case, Court of Cassation, The Circuit Criminal Court, Court Number 26806 of the 86th judicial year, unofficial English translation.](#) Following the journalists' reconviction and sentencing to three years imprisonment in August 2015, before a second appeal could take place President Sisi pardoned the journalists in September 2015.



interests of justice. The judgment, including the essential findings, evidence and legal reasoning must be made [public](#), except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.¹⁸³

178. This requirement is echoed by [article 187](#) of the 2014 Egyptian Constitution which provides that:

Court sessions shall be public, unless the court decides on its secrecy to safeguard public order or public morals. In all cases, court judgments shall be pronounced in publicly held sessions.¹⁸⁴

179. [Article 268](#) of the Egypt Criminal Procedure Code likewise provides that:

The court hearing must be public; however, the court may, in consideration of public order and observation of morals, order the case to be heard in a secret hearing, wholly or partially, or to prevent specific groups from attending the hearing.¹⁸⁵

180. In practice, the [U.S. Department of State](#) has noted that, “Civilian criminal and misdemeanour trials usually are public,”¹⁸⁶ and has thus not considered public hearings to be a particular problem in

¹⁸³ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, paras 28-29.](#)

See also, ECtHR, (1983) 6 EHRR 195, *Axen v. Federal Republic of Germany*, Judgment, 8 December 1983, para. 25.

¹⁸⁴ [Article 187 of Constitution of the Arab Republic of Egypt, 2014.](#)

¹⁸⁵ [Article 268 of the Egyptian Criminal Procedure Code.](#)

¹⁸⁶ [U.S. Department of State, 2015 Human Rights Reports: Egypt, April 13, 2016.](#)



Egypt. However, the U.S. Department of State has, in contrast, observed that military courts are not open to the public, and thus their trials have been less transparent and more difficult to monitor. [Public access](#) to information about military trials is more limited as judges may issue restraint orders to prevent media from covering court cases considered to be sensitive on national security grounds.¹⁸⁷

181. Although this in reference to proceedings before Egyptian military courts, the U.S. faces the same difficulties with regard to [lack of transparency in its military courts](#).¹⁸⁸ Indeed, given the nature of proceedings before military courts and the involvement of matters which touch upon [national security](#), many states suffer from similar transparency issues with regard to military court proceedings.¹⁸⁹

3.7. Presumption of Innocence

182. Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the

¹⁸⁷ [U.S. Department of State, 2015 Human Rights Reports: Egypt, April 13, 2016](#). See also A/HRC/WG.6/20/EGY/3, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/23, 8 August 2014, ("Stakeholder report").

¹⁸⁸ [Guckert, J., Jurist, The Man Behind the Curtain: Mandating Transparency in the Military Judicial System - Part I, 16 September 2014](#); [Gebauer, M., Spiegel Online, The 9/11 Prosecutor's Quest for Transparency 23 October 2012](#); and [RT, Child sex offenders largest group of inmates in military prisons – report, 18 November 2015](#).

¹⁸⁹ [Norton-Taylor, R. and Evans, R., The Guardian, Ministry of Defence agrees to more openness on courts martial, 5 December 2011](#).



accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. That is, if there is reasonable doubt, the accused must be acquitted. It is a duty for all public authorities to refrain from prejudging the outcome of a trial. Defendants should not normally be shackled or kept in cages during the trial or otherwise presented to the court in a manner indicating that they may be dangerous criminals. The media should avoid news coverage [undermining](#) the presumption of innocence.¹⁹⁰

183. The presumption of innocence is provided for at [article 96](#) of the 2014 Constitution which states that “[t]he accused person is presumed innocent until proven guilty in a fair legal trial in which the right to defend himself is guaranteed.”¹⁹¹ Further guarantees are provided for in [articles 270 and 304](#) of the Egypt Criminal Procedure Code.¹⁹²

184. In practice, however, Egypt has been subject to some criticism for failures to guarantee the presumption of innocence. For example, in the Al Jazeera English case, the parading of journalists in prison uniforms in a [cage](#) during the course of the trial compromised the presumption of innocence.¹⁹³ The European Court of Human Rights, for example, has held that such treatment undermines the presumption of innocence.¹⁹⁴

¹⁹⁰ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 30.](#)

¹⁹¹ [Article 96 of Constitution of the Arab Republic of Egypt, 2014.](#)

¹⁹² [Articles 270 and 304 of the Egyptian Criminal Procedure Code.](#)

¹⁹³ [Clooney, A., Huffington Post, The Anatomy of an unfair trial, 8 October 2014.](#)

¹⁹⁴ ECtHR, App No. 1704/06, Ramishvili and Kokhreidze v. Georgia, Judgment, 27 January 2009; ECtHR, App No. 14352/04, Jiga v. Romania, Judgment, 16 March 2010.



185. The [use of cages during trial proceedings](#) is, again, not unique to Egypt with cages still in use in Russia, Moldova, Uzbekistan, Armenia, Kuwait, Iraq and Egypt, as well as very occasionally for especially violent criminals in Spain, Italy, France and Germany.¹⁹⁵ Cages are also used, albeit on rare occasions, in the [United States](#).¹⁹⁶ More recently, secure docks have also been installed in modern courtrooms in a number of states including the [United Kingdom](#).¹⁹⁷

186. The original rationale for the use of cages was for fear that criminal defendants would [attack or intimidate witnesses or judges](#).¹⁹⁸ This remains a significant issue in Egypt whereby a number of judges have been subject to attack both in and out of the courtroom, with [3 judges shot dead](#) hours after Mohamed Morsi was issued with a death sentence.¹⁹⁹ Earlier this year, [Islamic State -Sinai Peninsula](#) issued a call urging its followers to attack judges throughout Egypt.²⁰⁰

¹⁹⁵ [Neuman, S., NPR, Behind Bars: A Brief History Of The Defendant's Cage, 4 August 2011](#) and [Herszenhorn, D., New York Times, Presumed Innocent, but Caged in Court, 18 November 2013](#).

¹⁹⁶ [Neuman, S., NPR, Behind Bars: A Brief History Of The Defendant's Cage, 4 August 2011](#).

¹⁹⁷ [Justice, In The Dock – Reassessing the use of docks in criminal trials, 2015; Herszenhorn, D., New York Times, Presumed Innocent, but Caged in Court, 18 November 2013](#).

¹⁹⁸ [Neuman, S., NPR, Behind Bars: A Brief History Of The Defendant's Cage, 4 August 2011](#).

¹⁹⁹ [Dearden, L., Independent, Egyptian judges shot dead in Sinai hours after former president Mohamed Morsi sentenced to death, 17 May 2015](#). See also [RT, Deadly explosions at hotel hosting Egyptian judges in Arish, 24 November 2015](#).

²⁰⁰ [Georgy, M. and Kalin, S., Reuters, Islamic State's Egypt affiliate urges attacks on judges: recording, 20 May 2015](#).



3.8. Rights of a Person charged with a criminal offence

3.8.1. *Right to be informed of the charge*

187. All persons charged with a criminal offence have a right to be informed promptly and in detail in a language which they understand of the nature and cause of criminal charges brought against them. Notice of the law and the alleged general facts on which the charge is based must be given as soon as the person concerned is formally charged with a criminal offence. In cases of trials *in absentia*, all due steps must be taken to inform accused persons of the charges and to notify them of the proceedings.²⁰¹

188. Although the 2014 Constitution does not explicitly provide for this right, [article 54](#), in part, does provide for immediate notification of the reasons for detention.²⁰² This is further supplemented by [articles 123, 132 and 139](#) of the Egyptian Code of Criminal Procedure provide for an accused person to be immediately notified of the charges against him: on his first attendance for an investigation; if the accused person is arrested outside of the jurisdiction of the investigating court, by the Public Prosecution in the area where the arrest was made; any person arrested or temporarily detained.²⁰³

²⁰¹ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 31.](#)

²⁰² [Article 54 of Constitution of the Arab Republic of Egypt, 2014.](#)

²⁰³ [Articles 123, 132 and 139 of the Egyptian Criminal Procedure Code.](#)



189. In practice, the [U.S. Department of State](#) has noted that, “authorities usually inform [defendants] promptly and in detail of charges against them.”²⁰⁴

3.8.2. Right to adequate time and facilities

190. Accused persons must have [adequate time and facilities](#) for the preparation of their defence and to communicate with counsel of their own choosing.²⁰⁵

191. There is an obligation to grant reasonable requests for adjournment, in particular, when the accused is charged with a serious criminal offence and additional time for preparation of the defence is needed. ‘Adequate time’ depends on the circumstances of the case whilst ‘adequate facilities’ must include access to documents and other evidence including all [materials](#) that the prosecution plans to offer in court against the accused or that are exculpatory.²⁰⁶

192. The principle of adequate time and facilities implies a presumption that the accused’s lawyer has [unrestricted and confidential access](#) to any client held in pre-trial detention in order to discuss all elements of the case.²⁰⁷

193. Although the 2014 Constitution does not explicitly guarantee

²⁰⁴ [U.S. Department of State, 2015 Human Rights Reports: Egypt, 13 April 2016.](#)

²⁰⁵ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 32.](#)

²⁰⁶ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 32.](#)

²⁰⁷ See for example, Article 8 of the Basic Principles on the Role of Lawyers. See also [Mole, N., Harby, C., The Right to a Fair Trial, Human Rights Handbooks, No. 3, Council of Europe, 2006, page 60.](#)



the right to adequate time and facilities to prepare a defence or the right to communicate with counsel during trial, it should be inferred as being guaranteed under the [article 96](#) provision as well as [article 98](#) which provides for the right of defence either in person or by proxy.²⁰⁸

194. Moreover, [article 54](#) of the 2014 Constitution provides, in part, that:

Every person whose freedom is restricted ... shall be immediately enabled to contact his/her relatives and lawyer

[...]

Investigation may not start with the person unless his/her lawyer is present A lawyer shall be seconded for persons who do not have one. Necessary assistance shall be rendered to people with disability according to procedures prescribed by Law

[...]

[I]t is not permissible to present an accused for trial in crimes that may be punishable by imprisonment unless a lawyer is present by virtue of a power of attorney from the accused or by secondment by the court.²⁰⁹

²⁰⁸ [Articles 96 and 98 of Constitution of the Arab Republic of Egypt, 2014.](#)

²⁰⁹ [Article 54 of Constitution of the Arab Republic of Egypt, 2014.](#)



195. Although the right to communicate with counsel in private and confidence is not specifically set out in the Constitution, [article 57](#) states in part:

The right to privacy may not be violated, shall be protected and may not be infringed upon. Postal, telegraphic and electronic correspondences, telephone calls, and other means of communication are inviolable, and their confidentiality is guaranteed. They may not be confiscated, revealed or monitored except by virtue of a reasoned judicial order, for a definite period, and only in the cases defined by Law.²¹⁰

196. In the Egypt Criminal Procedure Code, some provision is made for “adequate time” in specific circumstances. [Article 233](#) provides that where an accused has been summoned to appear before the court:

If the accused appears before the court and requests adjournment of the hearing to prepare his defence, the court shall set the date as specified in the first paragraph.²¹¹

197. Under [article 308](#), where a court changes the description or otherwise amends the charge:

²¹⁰ [Article 57 of Constitution of the Arab Republic of Egypt, 2014.](#)

²¹¹ [Article 233 of the Egyptian Criminal Procedure Code.](#)



[T]he court must grant the accused time to prepare his defence according to a new description or amendment of the charge, if the defence so requests.²¹²

198. Under [article 334](#) where an accused person has requested the rectification of a summons or that any omission therein be fulfilled, he or she can request an adjournment of the hearing to prepare his defence before the commencement of the hearing the case, and the court shall grant him such his request.²¹³

199. Similarly, in the Criminal Procedure Code, some provision is made for “adequate facilities”. [Article 77](#), for example, allows for attendance at investigation procedures and entitles litigants to inspect registered documents of such procedures and [article 214](#) allows for the defence counsel to apply for an adjournment to examine the case file at the court registry.²¹⁴ The Egypt Criminal Procedure Code also makes some provision for the right to communicate with counsel in accordance with [articles 124 and 139](#).²¹⁵

200. Moreover, under [article 53](#) of the Advocates Law, a lawyer who is authorised by the Prosecution to visit a detained person at prison may visit such person at any time and meet him or her in private in

²¹² [Article 308 of the Egyptian Criminal Procedure Code.](#)

²¹³ [Article 334 of the Egyptian Criminal Procedure Code.](#)

²¹⁴ [Articles 77 and 214 of the Egyptian Criminal Procedure Code.](#)

²¹⁵ [Articles 124 and 139 of the Egyptian Criminal Procedure Code.](#) Article 124 provides: In cases other than flagrante delicto and urgency out of fear of loss of evidence, no investigator in a crime may interrogate a suspect or confront said with other suspects or witnesses unless the relevant lawyer, if available, is present. Article 139 provides: Any person arrested or placed in temporary detention shall be...entitled to notify someone and to have an attorney.



decent surroundings in prison.²¹⁶ [Articles 65 and 79](#) of the Advocates Law seeks to ensure clients can communicate in confidence with their lawyers.²¹⁷

201. However, in practice, Egypt has recently faced criticisms for the denial of adequate time and facilities in several high profile cases. For example, in November 2013, Amnesty International reported that former president Mohammed Morsi had been denied access to his lawyers whilst being interrogated and investigated and had been held virtually incommunicado in a secret location since his detention on 3 July. Morsi's lawyers obtained access to the full case file, some 7000 pages, 5 days before the proposed trial date, only on [payment](#) of 15 000 EGP.²¹⁸ However, in light of these failings, the Court of Cassation, subsequently [overturned](#) the conviction secured against Morsi in April 2015 in relation to deadly clashes outside the Ittihadiya presidential palace in eastern Cairo in 2012, in November 2016.²¹⁹

²¹⁶ Advocates Law, Law No 17 of 1983 [for excerpts, unofficial translation, see [Annex A, Justice at a Crossroads: The Legal Profession and the Rule of Law in the New Egypt, IBAHRI, November 2011](#)].

²¹⁷ Article 65 provides: A lawyer shall not give evidence or facts or information obtained by such lawyer by reason of his/her profession if requested not to do so by the party that divulged such information unless the [divulging] of the information to the lawyer was with the intent to commit a felony or misdemeanour. Article 79 provides: A lawyer shall retain information divulged to him or her by the client unless requested by the client to release it in the interests of the defence of the case, Advocates Law, Law No 17 of 1983 [for excerpts, unofficial translation, see [Annex A, Justice at a Crossroads: The Legal Profession and the Rule of Law in the New Egypt, IBAHRI, November 2011](#)].

²¹⁸ [Amnesty International, Egypt, Morsi must be brought to court and granted access to lawyer, 3 November 2013](#).

²¹⁹ [Middle East Observer, Egypt's Highest Court Overturns Morsi's Death Sentence, Upholds Release of Mubarak's Sons, 17 November 2016](#).



3.8.3. *Right to be tried without undue delay*

202. The right of the accused to be tried without undue delay ensures that a defendant is not deprived of his liberty longer than necessary, is not kept in a state of uncertainty about his fate, and serves the interests of justice. What is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities. In cases where the accused is denied bail by the court, they must be tried as expeditiously as possible. This guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the [final judgment on appeal](#).²²⁰

203. The 2014 Constitution safeguards this right to be tried without undue trial in accordance with [article 97](#).²²¹ Further time lines are provided for in [article 54](#) of the 2014 Constitution,²²² as well as [articles 1 and 396](#) of the Criminal Procedure Code.²²³

204. In practice, there appears to tension between ensuring a trial without undue delay, and other fair trial rights, such as the right to time and facilities to prepare a defence and the right to examine

²²⁰ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, paras 27 and 35.](#)

²²¹ [Article 97 of Constitution of the Arab Republic of Egypt, 2014.](#)

²²² [Article 54 of Constitution of the Arab Republic of Egypt, 2014](#) which provides: “Every person whose freedom is restricted shall...be brought before the investigation authority within twenty four (24) hours as of the time of restricting his/her freedom.”

²²³ [Articles 1 and 396 of the Egyptian Criminal Procedure Code.](#) Article 1 provides: “no criminal law suit may be abandoned, suspended or delayed except in the cases provided for by law”. Article 396 provides: “the absence of an accused may not result in the delay of the judgment on the case with regard to other co-accused”.



witnesses.

205. In particular critics have focused on the length of pre-trial detention in Egypt, with reports indicating that at least 1,464 people are held in Egyptian prisons pending trial for periods that have exceeded the legal limit prescribed under Egyptian law.²²⁴ However, Egyptian authorities have sought to address this issue and a number of [amendments](#) to the Criminal Procedure Code have been implemented and/or considered, including for example, proposals to place the right to call witnesses in the hands of the court which have been weighed up against the impact on the defence right to examine witnesses.²²⁵ These proposed amendments are discussed in further detail below, on the right to examine witnesses.

3.8.4. Right to be tried in his or her presence

206. Accused persons are entitled to be present during their trial. The necessary steps must be taken to summon accused persons in a timely manner and to inform them beforehand about the date and place of their trial and to request their attendance. Proceedings in the [absence of the accused](#) may in some circumstances be permissible in the interest of the proper administration of justice, when accused persons, although informed of the proceedings sufficiently in advance, decline

²²⁴ <http://eipr.org/en/press/2016/05/replacement-emergency-law-pretrial-detention-political-punishment>

²²⁵ See, for example: [Global Legal Monitor, Egypt: Council of Ministers Approves New Amendment to Code of Criminal Procedure, 25 February 2015.](#)



to exercise their right to be present.²²⁶

207. The 2014 Egyptian Constitution guarantees, under [article 96 and 98](#), that an accused person has the right to defend himself in a fair legal trial either in person or by proxy.²²⁷

208. Under Egypt's Criminal Procedure Code, [articles 237 – 242](#) make provision for the appearance of litigants in court. A litigant accused of a misdemeanour punishable with imprisonment with immediate effect must appear in person before the court, whilst for other misdemeanours and petty offences, an attorney may be appointed without prejudice to the right of the court to order the accused to appear in person.²²⁸

209. Under [article 270](#), where a defendant causes a disturbance in the courtroom while his case is being heard that necessitates his removal, in such a case, proceedings shall continue until such time that the hearing can be conducted once again in the presence of the accused, and the court must inform him of the procedures that took place in his absence.²²⁹

210. At Morsi's initial appearance in court, at the start of his first trial in November 2013, it was reported that there "[was bedlam](#)", "a melee", "chaos" and "pandemonium" such that the trial was forced to be adjourned twice, with Morsi making four outbursts, his co-defendants

²²⁶ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 36.](#)

²²⁷ [Articles 96 and 98 of Constitution of the Arab Republic of Egypt, 2014.](#)

²²⁸ [Article 237-242 of the Egyptian Criminal Procedure Code.](#)

²²⁹ [Article 270 of the Egyptian Criminal Procedure Code.](#)



chanting, local journalists shouting and clambering over court stalls, and scuffles between lawyers.²³⁰ Subsequent to this hearing, the defendants were enclosed in what was described as a “soundproof glass cage fitted with a microphone controlled by the judge.” The use of the cage has been [criticised](#) for preventing the defendants from speaking to their lawyers, and at times preventing them from hearing the judge.²³¹ However, it also limited deliberate disruptions to the court process, and thus enabled the defendants to be present at their trial.

211. *In absentia* convictions and sentencing in Egypt have also been subject to criticism. Where a defendant fails to appear for trial the court will proceed summarily to enter a conviction, without consideration of the merits and pass sentence, which will almost always be the statutorily allowed maximum, including the death penalty.²³²

212. Human rights law allows a criminal trial in the absence of the accused, in certain exceptional circumstances, if the authorities have acted diligently but not been able to notify the relevant person of the hearing.²³³ The Human Rights Committee has stated that in such

²³⁰ [The Guardian, “I am the president of the republic” – chaos in court as Morsi stands trial, 4 November 2013.](#)

²³¹ [The Guardian, Mohamed Morsi defiant in face of jailbreak and conspiracy charges, 28 January 2014.](#) See also [The Guardian, Mohamed Morsi lawyers walk out of court in cage protest, 16 February 2014.](#)

²³² For further information see chapter 6 with regard to the death penalty.

²³³ ECtHR, (1994) 18 EHRR 130, *Poitrimol v. France*, Judgment, 23 November 1993.



circumstances [strict observance](#) of the rights of the defence is all the more necessary.²³⁴

213. In practice, Egypt has particularly been subject to criticism for the mass death sentences following *in absentia* proceedings in the recent mass trials cases, which took place in the Sixth Chamber of the Criminal Court in Minya.

214. In the [Matay case](#), 527 people were sentenced to death following a mass trial in March 2014 for the murder of the Deputy Head of Matay Police Station and other charges.²³⁵ Of the 527 defendants, only 69 were detained when the case was referred to the court by the public prosecution and 147 were in [custody](#) at the end of April 2014, when the sentences were confirmed.²³⁶

215. Similarly, in April 2014, UN High Commissioner for Human Rights, Navi Pillay, “strongly condemned” the imposition of the death penalty on 683 individuals, including Mohammed Badie, Supreme Guide of the Muslim Brotherhood, following mass trials in the Sixth Chamber of the Criminal Court in Minya lasting [100 minutes](#).²³⁷ The precise charges are unclear, but are related to killing a policeman and breaking into Adwa police station in Minya on [14 August 2013](#).²³⁸ It

²³⁴ [HRC, CCPR General Comment No. 13: Article 14 \(Administration of Justice\) Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, 13 April 1984, para. 11.](#)

²³⁵ [Al Jazeera, Egyptian Court sentences 683 people to death, 29 April 2014.](#)

²³⁶ [Cairo Institute for Human Rights, Al-Minya Mass Death Penalty: Wasted Justice and Mockery of Defendants Rights, 30 April 2014.](#)

²³⁷ [Clooney, A., Huffington Post, The Anatomy of an unfair trial, 18 October 2014, reporting the length of trial as 100 minutes.](#)

²³⁸ [Mass imposition of the death penalty in Egypt outrageous: Pillay, OHCHR, 29 April 2014.](#) See also Human Rights Council Working Group on the Periodic Review, Compilation



was reported that only about [70 of the 683](#) individuals were in custody.²³⁹ Of the 183 whose death sentences were confirmed, 147 had been tried *in absentia*.²⁴⁰

216. However, this practice has been explained as giving the [greatest discretion](#) as to sentencing to the court conducting the trial at a later date with defendant present, once the *in absentia* conviction and sentence have been vacated.²⁴¹ A conviction and sentence *in absentia* may be vacated following the defendant's surrender to court under [articles 395 and 401](#) of the Criminal Procedure code.²⁴²

3.8.5. Right to defend oneself

217. All accused of a criminal charge have the right to defend themselves in person or through legal counsel of their own choosing and to be informed of this right. Persons assisted by a lawyer have the right to [instruct](#) their lawyer on the conduct of their case, within the limits of professional responsibility, and to testify on their own behalf.²⁴³

218. The [interests of justice](#) may, in the case of a specific trial, require

prepared by the Office of the UN High Commissioner for Human Rights, Egypt, 27 October – 7 November 2014, A/HRC/WG.6/20/EGY/2.

²³⁹ [Cairo Institute for Human Rights, Al-Minya Mass Death Penalty: Wasted Justice and Mockery of Defendants Rights, 30 April 2014.](#)

²⁴⁰ 606 of the 683 and 398 of the 527 were tried *in absentia*, see [Al Jazeera, Egyptian Court sentences 683 people to death, 29 April 2014.](#)

²⁴¹ [Risley, D., In Absentia Convictions: Legal Placeholders, 20 June 2015.](#)

²⁴² [Articles 395 and 401 of the Egyptian Criminal Procedure Code.](#)

²⁴³ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 37. See also, Basic Principles on the Role of Lawyers, adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders, Cuba, 27 August – 7 September 1990.](#)



the assignment of a lawyer against the wishes of the accused, particularly in cases of persons substantially and persistently obstructing the proper conduct of trial, or facing a grave charge but being unable to act in their own interests, or where this is necessary to protect vulnerable witnesses from further distress or intimidation if they were to be questioned by the accused.²⁴⁴

219. Legal assistance must be assigned [without payment](#) by the accused if they do not have sufficient means to pay for it and the interests of justice so require, which will always be the case for trials involving capital punishment.²⁴⁵ Such representation must be [practical](#) and effective, and not theoretical and illusory, and a State may be responsible if the failure to provide effective representation [is manifest or sufficiently brought to their attention](#) in some other way.²⁴⁶

220. As described above, the Egyptian Constitution guarantees the right to defend oneself in accordance with articles 96 and 98.

221. Moreover, under [article 54](#) of the Constitution:

Investigation may not start with the person unless his/her lawyer is present. A lawyer shall be seconded for persons

²⁴⁴ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 37.](#)

²⁴⁵ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 38.](#) See also, [Basic Principles on the Role of Lawyers, adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders, Cuba, 27 August – 7 September 1990.](#)

²⁴⁶ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 38.](#) See also, ECtHR, Application No. 6694/74, Artico v. Italy, Judgment, 30 April 1980, para. 33 and ECtHR, Application No. 9783/82, Kamasinski v. Austria, Judgment, 19 December 1989, para. 65.



who do not have one. Necessary assistance shall be rendered to people with disability according to procedures prescribed by Law

[...]

In all events, it is not permissible to present an accused for trial in crimes that may be punishable by imprisonment unless a lawyer is present by virtue of a power of attorney from the accused or by secondment by the court.²⁴⁷

222. The Egyptian Constitution further guarantees the independence of the legal profession, beyond the article 98 guarantee, under [article 198](#):

The legal profession is a free profession which participates with the Judicial Authority in the establishment of justice and the rule of law, and ensures the right to defence. It shall be practised by independent attorneys, and attorneys of public authorities, public sector companies and public enterprise sector companies. All attorneys shall have, while performing their duties to uphold the right to defence before the courts, the guarantees and protection granted to them by the law. Such rights shall also be granted to them before investigation and inquiry authorities. Except in cases of

²⁴⁷ [Article 54 of Constitution of the Arab Republic of Egypt, 2014.](#)



flagrante delicto, the arrest or detention of attorneys while exercising their right to defence shall be prohibited. The foregoing shall be determined by the law.²⁴⁸

223. Further guarantees are provided by the [Advocates Law](#), which sets out the rights and duties of lawyers.²⁴⁹ Article 1, for example, decrees the independence of the legal profession, and individual lawyers, whilst article 62 requires lawyers to abide by the ethics, integrity and honesty required when performing their duties. Under [article 64](#) lawyers must provide legal aid to citizens and others unable to bear the costs of such legal services.²⁵⁰

224. In practice, critics have voiced concern over the fact that trials have continued in the absence of lawyers. For example, in the Adwa mass trial case, despite the fact that in capital punishment cases a lawyer's behaviour cannot be incompatible with the interests of justice, it was reported that the defendants' lawyers [boycotted](#) the first hearing in protest of the Matay case but that the judge heard testimony from witnesses and questioned some of the defendants before adjourning the case to the 28 April 2014, when the judge said a verdict would be given.²⁵¹ However, both the Adwa and Matay case were subsequently

²⁴⁸ [Article 198 of Constitution of the Arab Republic of Egypt, 2014.](#)

²⁴⁹ Advocates Law, Law No 17 of 1983 Part 1, Chapter 1 & 2, [for excerpts, unofficial translation, see [Annex A, Justice at a Crossroads: The Legal Profession and the Rule of Law in the New Egypt, IBAHRI, November 2011.](#)

²⁵⁰ Advocates Law, Law No 17 of 1983 Part 1, Chapter 1 & 2, [for excerpts, unofficial translation, see [Annex A, Justice at a Crossroads: The Legal Profession and the Rule of Law in the New Egypt, IBAHRI, November 2011, Article 1 & 64.](#)

²⁵¹ [BBC News, Mass Egypt Death Sentences 'breach international law', 25 March 2014.](#) See also, for example: [Cairo Institute for Human Rights Studies, Al-Minya Mass Death Penalty: Wasted Justice and Mockery of Defendants Rights, 30 April 2014.](#)



overturned by the Court of Cassation in light of these breaches to fair trial rights.²⁵²

3.8.6. *Right to examine witnesses*

225. Accused persons have the right to examine, or have examined, the witnesses against them and to obtain the attendance and examination of relevant witnesses on their behalf under the same conditions as witnesses against them, in accordance with the principle of equality of arms. This guarantee is important for ensuring an [effective defence](#).²⁵³

226. Although the 2014 Constitution does not explicitly set out this right, it can be inferred that it forms part of the [article 96](#) provision set out above, particularly as the same article also provides that the State shall provide protection to victims, witnesses, accused and informants as necessary and in accordance with the law.²⁵⁴

227. Currently under [article 277](#) of the Criminal Procedure Code, witnesses may willingly attend a hearing to present information related to the case or attend upon the request of litigants.²⁵⁵ Witnesses who [fail to appear](#) after being summonsed may be issued with a fine,²⁵⁶ and if the testimony is deemed necessary, the case adjourned to re-summon the witness, who, under article 280, may have an order for

²⁵² See also chapter 6 on the death penalty for further discussion. See also Court of Cassation Judgment, Case No. 300 of 2014, 11 February 2015 and Memorandum from Public Prosecutor, Case No. 300 of 2014, Adwa Case.

²⁵³ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 39.](#)

²⁵⁴ [Article 96 of Constitution of the Arab Republic of Egypt, 2014.](#)

²⁵⁵ [Article 277 of the Egyptian Criminal Procedure Code.](#)

²⁵⁶ [Article 279 of the Egyptian Criminal Procedure Code.](#)



arrest issued against him if he then fails to appear. Under [article 281](#), the litigants may examine the witness with questions they deem necessary in person or through their counsel at the witnesses whereabouts if needed.²⁵⁷ The court may also decide that testimony given in the preliminary investigation be [read out](#) if the attendance of the witness is not possible for any reason, or if the accused or his counsel so accepts.²⁵⁸

228. On 18 February 2015, the Egyptian cabinet approved amendments that had been drafted by the Supreme Committee for Legislative Reform to articles 277 and 289 of the Code of Criminal Procedure, to ensure [access to prompt justice](#) without prejudice to the rights of the litigants.²⁵⁹ The changes would put all matters concerned with calling or hearing witnesses into “[the hand of the court](#)”,²⁶⁰ and the court would be granted the authority to disregard the testimony of any witnesses in a trial at the [judge’s discretion](#).²⁶¹

229. However, the Al Shorouk newspaper, reported on 7 March 2015 that the proposed amendments had been sent to the State Council for review, and on 14 March 2015, reported that the State Council had [criticized](#) the proposed changes for violating fair trial principles, holding that hearing from witnesses was part and parcel of any judicial

²⁵⁷ [Article 281 of the Egyptian Criminal Procedure Code.](#)

²⁵⁸ [Article 289 of the Egyptian Criminal Procedure Code.](#)

²⁵⁹ [Egypt: Law Changes Would Threaten Fair Trials, Human Rights Watch, 22 March 2015.](#)

²⁶⁰ [Egypt: Law Changes Would Threaten Fair Trials, Human Rights Watch, 22 March 2015.](#)

²⁶¹ [Global Legal Monitor, Egypt Council of Ministers Approves New Amendment to Code of Criminal Procedure, 25 February 2015.](#)



investigation.²⁶²

230. Further reports indicate that following review by the State Council in December 2015 and January 2016, the amendments had been returned to the cabinet for [further review](#), due to their unconstitutionality, for failing to respect the accused's right to examine witnesses,²⁶³ thereby demonstrating Egypt's active consideration of balancing various fair trial rights of an accused.

3.8.7. *Right to an interpreter*

231. The accused has the right to have the free assistance of an [interpreter](#) if they cannot understand or speak the language used in court, further ensuring fairness and equality of arms in criminal proceedings.²⁶⁴

232. Although the 2014 Constitution does not explicitly provide for this right, it can be inferred as required under the provisions of [article 53](#) the State shall take necessary measures for eliminating all forms of discrimination, which includes language.²⁶⁵ Moreover, the services of an interpreter are necessary to fully implement the provisions of article 54, which provides for the right to be notified of charges, and [article 55](#) which requires that every person who is either arrested, detained, or

²⁶² [HRW, Egypt: Law Changes Would Threaten Fair Trials, 22 March 2015.](#)

²⁶³ [DN Egypt, Al Zind's First TV interview: What went wrong?, 3 February 2016.](#)

²⁶⁴ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 40.](#)

²⁶⁵ [Article 53 of Constitution of the Arab Republic of Egypt, 2014.](#)



his freedom is restricted shall be treated in a manner that maintains his dignity.²⁶⁶

233. Although not set out explicitly in the Criminal Procedure Code, in practice an interpreter is normally [appointed](#) by a Prosecutor to translate for an accused person during questioning and if the accused needs to be questioned by the Court, an official interpreter from the Ministry of Justice would normally be appointed, without out charge to the accused.²⁶⁷

3.8.8. Right not to be compelled to testify or to confess

234. The accused has a right to remain silent and not to contribute to incriminating himself.²⁶⁸ The right not to incriminate oneself is closely linked to the presumption of innocence and is primarily concerned with respecting the will of an accused person to remain silent.²⁶⁹ There can be no direct or indirect physical or undue psychological pressure from the investigating authorities on the accused with a view to obtaining a [confession of guilt](#).²⁷⁰

235. The accused's right not to be compelled to testify against oneself or to confess guilt is protected under [article 55](#) of the Constitution:

²⁶⁶ [Article 55 of Constitution of the Arab Republic of Egypt, 2014.](#)

²⁶⁷ See for example, [Foreign and Commonwealth Office, UK government, Egypt Prisoners Pack, 20 March 2013.](#)

²⁶⁸ ECtHR, (1993) 16 EHRR 297, Funke v. France, Judgment, 25 February 1993, para. 44.

²⁶⁹ ECtHR, (1996) 23 EHRR 313, Saunders v. the United Kingdom, Judgment, 17 December 1996, paras. 68 – 69.

²⁷⁰ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 41.](#)



Every person who is either arrested, detained, or his freedom is restricted shall be treated in a manner that maintains his dignity. He/she may not be tortured, intimidated, coerced, or physically or morally harmed; and may not be seized or detained except in places designated for that purpose, which shall be adequate on human and health levels. The State shall cater for the needs of people with disability.

Violating any of the aforementioned is a crime punished by Law.

An accused has the right to remain silent. Every statement proved to be made by a detainee under any of the foregoing actions, or threat thereof, shall be disregarded and not be relied upon.²⁷¹

236. The right not to be compelled to testify against oneself or to confess guilt can also be inferred from [article 96](#) of the 2014 Constitution.²⁷²

237. Moreover, [article 274](#) of the Criminal Procedure Code provides that, the accused may not be examined unless his consent is given.²⁷³

238. In practice, the Court of Cassation in the Al Jazeera English Appeal set out the standards for determining voluntariness: a confession is not considered to be voluntary, “if and when it is given

²⁷¹ [Article 55 of Constitution of the Arab Republic of Egypt, 2014.](#)

²⁷² [Article 96 of Constitution of the Arab Republic of Egypt, 2014.](#)

²⁷³ [Article 274 of the Egyptian Criminal Procedure Code.](#)



under pressure or threats, no matter the amount. The law says that the court must examine the connection between the confession and the alleged compulsion.” Before relying on the [confession](#), “the court should prove with strong legal justification that the confessions were not coerced.”²⁷⁴

239. The Court of Cassation went on to criticise the first trial court in the Al Jazeera English case for relying, in the conviction, on the confessions of three defendants obtained during the Prosecutor General’s investigation, which the defendants asserted had occurred under physical and medical compulsion. The court had ordered, on 31 March 2014, that the defendants be examined by a medical examiner, as requested by the defence. However, the court had “rushed the ruling before receiving the report from the medical examiner, and the court relied in its verdict on evidence from the confessions.” The Court of Cassation found that the court’s ruling was thus inadequate in its reasoning and for violating the rights of the defence, and granted the [appeal](#) for this, amongst other reasons thereby upholding fair trial rights guaranteed to an accused.²⁷⁵

3.8.9. *Right to review*

240. Anyone convicted of a crime shall have the right to have their conviction and sentence [reviewed](#) substantively by a higher tribunal according to law, both on the basis of sufficiency of the evidence and of

²⁷⁴ [Al Jazeera English Case](#), Court of Cassation, The Circuit Criminal Court, Court Number 26806 of the 86th judicial year, unofficial English translation.

²⁷⁵ [Al Jazeera English Case](#), Court of Cassation, The Circuit Criminal Court, Court Number 26806 of the 86th judicial year, unofficial English translation.



the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case.²⁷⁶ The right of appeal is of particular importance in [death penalty](#) cases.²⁷⁷

241. A full retrial or a ‘hearing’ is not required as long as the tribunal carrying out the review can look at the factual dimensions of the case. If domestic law provides for further instances of appeal, the convicted person must have [effective access](#) to each of them.²⁷⁸

242. Where a conviction is imposed by an appeal court or a court of final instance following acquittal by a lower court it must be [reviewable](#) by a higher court.²⁷⁹

243. In the exercise of his or her right of appeal effectively the convicted person is entitled to have access to [reasoned, written judgment](#) of the trial court, to other necessary documents, and to an appeal without undue delay.²⁸⁰

244. The right to review is protected by [article 96](#) of the 2014 Constitution which provides in part,

The law shall regulate the appeal of judgments passed on felonies.

²⁷⁶ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 45.](#)

²⁷⁷ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 51.](#)

²⁷⁸ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 48.](#)

²⁷⁹ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 47.](#)

²⁸⁰ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 49.](#)



It is prohibited to immunize any administrative act or decision from judicial review.²⁸¹

245. [Article 97](#) guarantees the accessibility of judicature for litigants and rapid adjudication on cases and prohibits the immunization of any administrative act or decision from judicial review.²⁸² [Article 240](#) of the Constitution further guarantees that “the State shall ensure providing financial and human resources necessary to appealing the judgments issued by criminal courts on felonies within 10 years from the date on which this Constitution comes into effect. The foregoing shall be regulated by Law.”²⁸³

246. To assess the fairness of criminal proceedings, each case must be examined on its [merits as a whole](#), including appeals where breaches of standards during the trial may be corrected.²⁸⁴ This is important and in practice one commentator has observed that the Court of Cassation has “fairly consistently [reversed](#) injudicious rulings on appeal,” but that these have been underreported.²⁸⁵

247. Indeed, the Court of Cassation’s judgment in the Al Jazeera English case provides a recent example of an appeal correcting breaches of standards during the trial. In that case, the [Court of](#)

²⁸¹ [Article 96 of Constitution of the Arab Republic of Egypt, 2014.](#)

²⁸² [Article 97 of Constitution of the Arab Republic of Egypt, 2014.](#)

²⁸³ [Article 240 of Constitution of the Arab Republic of Egypt, 2014.](#)

²⁸⁴ [Fair Trial Manual, Second Edition, Amnesty International, 2014.](#)

²⁸⁵ [Risley, D., Middle East Institute, Egypt’s Judiciary: Obstructing or Assisting Reform?, 13 January 2016.](#) See also [Egypt Justice, Another Example of Reversal by Egypt’s Court of Cassation of Mass Convictions of Morsi Supporters, 2 November 2015](#) citing [Ahram Online, Egyptian court overturns convictions of 77 Morsi-supporters on violence-related charges, 2 November 2015.](#)



[Cassation criticised the trial court](#) for failing to meet Egyptian standards of justice on a number of levels, including the failure of the court to cite sufficient evidence to sustain the defendants' convictions, of being weak in its reasoning and contradictory, and for relying on confessions without properly investigating claims that they had been taken under coercion.²⁸⁶

248. Furthermore, as described above, in the Matay mass trial involving 527 defendants, in January 2015, the Court of Cassation ordered a [retrial](#) for the 37 defendants sentenced to death.²⁸⁷ The Prosecutor General had appealed the lower court's decision as a "[representative of] the society ... to ensure proper dispensation of justice, strict compliance with the law and with standard judicial principles and rules that are in full conformity with all international human rights instruments that Egypt adheres to," based on "apparent flaws", including (1) the violation of the accused persons' rights to a defence given the fact that the state failed to facilitate defence counsel for them and that a request for the direct examination of witnesses was not satisfied and (2) The court failed to ascertain the age of one of the accused persons who had not yet attained the age of eighteen and who in accordance with the Juvenile Act, was not supposed to have the

²⁸⁶ [Al Jazeera English Case](#), Court of Cassation, The Circuit Criminal Court, Court Number 26806 of the 86th judicial year, unofficial English translation. Following the journalists' reconviction and sentencing to three years imprisonment in August 2015, before a second appeal could take place President Sisi finally pardoned the journalists in September 2015, see also: "[Al-Jazeera case: Egypt president says pardons 'discussed'](#)", BBC News, 20 November 2014.

²⁸⁷ [Al Jazeera, Egypt court orders retrial of 152 Brotherhood members, 24 January 2015.](#)



death penalty imposed on him because of his age.²⁸⁸

249. With respect military courts, prior to amendments to the Military Judiciary Law in 2007 and 2014 rulings were issued by one court, without appeal. Now, however, following the amendments of Law No. 16 of 2007, the Military Judiciary Law governing the military court system grants defendants in the military court system the right to appeal up to the Supreme Military Court of Appeals and the president must certify sentences by military courts. In particular, [article 5](#) of Law No. 16 of 2007 provides for all procedures and regulations as set out in Law No. 57 of 1959, which concerns before the Court of Cassation, applies to all those tried before the military courts thereby safeguarding the rights of civilians applicable within ordinary court system.²⁸⁹ Moreover, in accordance with [article 5](#) of Law No. 16 of 2007, the Supreme Military Court is also responsible for addressing requests for revision of final judgments akin to revisions procedures set out in the Criminal Procedure Code.²⁹⁰

3.8.10. Right to compensation for miscarriages of justice

250. Persons who have been convicted of a criminal offence by a final decision and have suffered punishment as a consequence of such conviction, have a right to compensation within a reasonable period of time if their conviction has been reversed or they have been pardoned on the ground that a new or newly discovered fact shows conclusively

²⁸⁸ ACHPR, Communication 467/14 – Ahmed Ismael and 528 others v. the Arab Republic of Egypt, Adopted at the 18th Extraordinary Session of the African Commission on Human and Peoples’ Rights held from 26 July to 8 August, 2015 in Nairobi, Kenya.

²⁸⁹ Law No. 16 of 2007, amendments to Military Code Law No. 25 of 1966.

²⁹⁰ Law No. 16 of 2007, amendments to Military Code Law No. 25 of 1966.



that there has been a miscarriage of justice. [No compensation](#) is due if the conviction is set aside upon appeal, before the judgment becomes final, or by a pardon that is humanitarian or discretionary in nature, or motivated by considerations of equity, rather than because of a miscarriage of justice.²⁹¹

251. Under [article 54](#) of the 2014 Constitution, the law shall regulate “the cases in which damages are due on the state to compensate a person for such temporary detention or for serving punishment thereafter cancelled pursuant to a final judgment reversing the judgment by virtue of which such punishment was imposed.”²⁹²

252. Moreover, under [article 99](#) of the 2014 Constitution, an affected party has the right to bring direct criminal action for,

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

The State shall guarantee fair compensation for the victims of such violations. The National Council for Human Rights may file a complaint with the Public Prosecution of any violation of these rights, and it may intervene in the civil lawsuit in favour

²⁹¹ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 52.](#)

²⁹² [Article 54 of Constitution of the Arab Republic of Egypt, 2014.](#)



of the affected party at its request. All of the foregoing is to be applied in the manner set forth by Law.²⁹³

3.8.11. Right not to be tried or punished again – *Ne bis in Idem*

253. No one shall be liable to be tried or punished again for an offence of which they have already been finally convicted or acquitted in accordance with the law and penal procedure of each country embodies the principle of *ne bis in idem*. This provision prohibits bringing a person, once convicted or acquitted of a certain offence, either before the same court again or before another tribunal again for the same offence; thus, for instance, someone acquitted by a civilian court cannot be tried again for the same offence by a [military or special tribunal](#).²⁹⁴

254. The prohibition is not at issue if a higher court quashes a conviction and orders a retrial. Furthermore, it does not prohibit the resumption of a criminal trial justified by [exceptional circumstances](#), such as the discovery of evidence which was not available or known at the time of the acquittal.²⁹⁵

255. The principle of *ne bis in idem* is implied by the Rule of Law Articles in the Egyptian Constitution, as a necessary guarantee to ensure other fair trial rights. It is also implied by articles in the Egyptian Penal Code, [article 4](#) of which provides, for example, in part:

²⁹³ [Article 99 of Constitution of the Arab Republic of Egypt, 2014.](#)

²⁹⁴ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 54.](#)

²⁹⁵ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 56.](#)



[Popular action] shall not be brought against a person who establishes that the foreign courts have acquitted him/her from the charge levelled against him/her, or have passed a final judgment against him/her, and he/she fulfilled his/her penalty.²⁹⁶

3.9. Military Courts

256. Whilst the Egyptian judiciary, through its statutory provisions and jurisprudence of the Court of Cassation, safeguards the minimum guarantees of a right to a fair trial as set out in article 14 of the ICCPR, there remains concern as to whether such rights are afforded to those individuals tried before the Military Judiciary.

257. In particular, international due process standards, to which Egypt is bound, prohibit the limitation or modification of fair trial guarantees because of the military character of the court, and require that trials of civilians by military courts should be exceptional, whilst the [African Commission on Human and Peoples' Rights](#) has held that civilians have a right not to be tried by military courts.²⁹⁷

258. In *Martin v UK*, a case concerning the son of a corporal serving in the British Army in Germany who had been tried by a court-martial on a charge of murder, the European Court of Human Rights interpreted the “exceptional” situations in which civilians could be tried before military courts, highlighting the need for states to provide

²⁹⁶ [Egypt Penal Code, Law No. 58 of 1937](#)

²⁹⁷ [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, para. 22; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003.](#)



“compelling reasons justifying such a situation, and if so only on a clear and foreseeable legal basis. The existence of such reasons must be substantiated in each specific case”.²⁹⁸ The facts in *Martin v UK* meant that the House of Lords, initially seized of the case in domestic proceedings, was satisfied that in the applicant’s particular case there were “sound practical reasons” militating in favour of a trial by court-martial in Germany.²⁹⁹ This is echoed by the jurisprudence of the Human Rights Committee, which states that trials of civilians by military or special courts must be [exceptional](#), necessary and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.³⁰⁰

259. In accordance with its international obligations, [article 97](#) of the 2014 Egyptian Constitution provides that no person may be tried except before the ordinary judge and that exceptional courts are prohibited.³⁰¹ The inclusion of 2014 marked a significant shift from previous years in which any crime punishable under the Penal Code or any other law could be transferred to the military judiciary upon declaration of a state of emergency³⁰² - a state of emergency was in

²⁹⁸ ECtHR, [2004] ECHR 82, *Martin v. United Kingdom*, Judgment, 19 February 2004.

²⁹⁹ ECtHR, [2004] ECHR 82, *Martin v. United Kingdom*, Judgment, 19 February 2004.

³⁰⁰ HRC, Communication No. 1172/2003, *Abbassi v. Algeria*, 21 June 2007; HRC, Communication No. 1096/2002, *Kurbanova v. Tajikistan*, 6 November 2003. See also [UN HRC, CCPR/C/GC/32, General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007](#).

³⁰¹ [Article 97 of Constitution of the Arab Republic of Egypt, 2014](#).

³⁰² See Article 6 of Law No. 25 of 1966, Military Code of Justice.



effect throughout the rule of former president Hosni Mubarak expiring only in [May 2012](#).³⁰³

260. However, despite the inclusion of article 97, by comparison [article 204](#) of the 2014 Constitution does provide for specific circumstances whereby civilians may be tried before a military court, namely:

No civilian shall face trial before the Military Court, except for crimes that constitute a direct assault against military facilities or camps of the Armed Forces, or their equivalents, against military zones or border zones determined as military zones, against the Armed Forces' equipment, vehicles, weapons, ammunition, documents, military secrets, or its public funds, or against military factories; crimes pertaining to military service; or crimes that constitute a direct assault against the officers or personnel of the Armed Forces by reason of performing their duties. The Law shall define all such crimes, and specify the other competences of the Military Court.³⁰⁴

261. This provision builds upon [article 198](#) of the 2012 Constitution, as approved by former President Morsi, which stated that civilians could undergo military trials for “crimes that harm the Armed

³⁰³ See for example, [The Telegraph, Egypt's state of emergency ends after 31 years, 31 May 2012](#).

³⁰⁴ [Article 204 of Constitution of the Arab Republic of Egypt, 2014](#). For further discussion on the independence of military tribunals see chapter 2.



Forces.”³⁰⁵ The amendments in article 97 of the 2014 Constitution were intended to provide increased specificity and clarity to article 198 of the 2012 Constitution and thereby restricting number of civilians tried before military courts.

262. However, in practice, Egypt has faced criticism for the number of civilians tried before military courts - it is reported that since November 2014, [over 7,000 civilians](#) have been tried before the military judiciary.³⁰⁶ The increase followed the introduction of [Law No. 136 of 2014](#), for the Securing and Protection of Public and Vital Facilities, which placed all “public and vital facilities” under military jurisdiction for two years, specifically including electricity stations, gas pipelines, oil wells, railroads, road networks and bridges.³⁰⁷

263. The reasons underlying the introduction of Law No. 136 of 2014 were two-fold. First, it was part of Egypt's efforts to [protect civilians](#) and ensure that they are supplied with vital services as well as protect state facilities and public properties.³⁰⁸ This was in response to the [increase in terror attacks](#) aimed at the energy sector in Egypt, particularly in the Sinai region.³⁰⁹

264. Second, Law No. 136 of 2014 was intended to assist with processing the backlog of cases before ordinary courts which had led to

³⁰⁵ [Article 198 of Constitution of the Arab Republic of Egypt, 2012.](#)

³⁰⁶ [Aziz, S., Cairo Review, The Expanding Jurisdiction of Egypt's Military Courts, 13 October 2016.](#)

³⁰⁷ [Law No. 136 of 2014, for the Securing and Protection of Public and Vital Facilities](#)

³⁰⁸ [Ahram Online, New temporary law allows Egypt's army to protect vital sites, 27 October 2014.](#)

³⁰⁹ [Egypt Oil and Gas Web Portal, The Growing Threats to Security in Egypt's Oil and Gas Sector, August 2014.](#)



even [longer litigation delays](#), typically measured in years, and correspondingly long periods in criminal cases of pre-trial detention and incarceration pending appeals.³¹⁰ These delays were primarily caused due to the fact that following the end of emergency rule, cases which ordinarily would have been processed in the old emergency court system went to the common court system, which was already struggling under a [crushing case backlog](#).³¹¹ The magnitude of the difficulties faced by the common court system in dealing with such a large volume of politically charged and time-sensitive cases naturally resulted in [flawed trials and lengthy delays](#). It therefore came as no surprise that Egyptian authorities turned to the alternative of the military court system, particularly in relation to [genuine national security cases](#).³¹²

265. The increase in genuine national security cases also had a significant impact on the ordinary legal system. In the wake of the civil unrest after the 2011 revolution coupled with a [rapidly deteriorating security situation](#) in parts of Egypt, the common court system was faced with a sudden influx of cases to process.³¹³ In particular, these cases often concerned a number of accused alleged to belong to, or associated with a terrorist organisation or cell. For example, following an 18 month investigation, Egypt's public prosecutor recently

³¹⁰ [Risley, D., Middle East Institute, Egypt's Judiciary: Obstructing or Assisting Reform, January 2016.](#)

³¹¹ [Risley, D., Middle East Institute, Egypt's Judiciary: Obstructing or Assisting Reform, January 2016.](#)

³¹² [Risley, D., Middle East Institute, Egypt's Judiciary: Obstructing or Assisting Reform, January 2016.](#)

³¹³ [Risley, D., Middle East Institute, Egypt's Judiciary: Obstructing or Assisting Reform, January 2016.](#)



transferred 292 alleged Islamic State-Sinai Peninsula members before the military judiciary, accused of belonging to [22 terrorist cells and carrying out 19 attacks](#) in total including the assassination of three judges who were overseeing a parliamentary election and planning to assassinate President Sisi.³¹⁴

266. The figures recorded for the number of civilians tried before military courts in Egypt is further inflated by the fact that these trials include a number of accused tried *in absentia*. For example, in the above-mentioned example, of the 292 suspects, only [half](#) are actually in custody and being tried before a military court.³¹⁵

267. However, the nature of military proceedings does mean that a number of fair trial rights are not afforded to civilians tried by a military judge. This is largely due to the fact that military proceedings in Egypt do not follow the Egyptian Criminal Procedure Code,³¹⁶ although notably, constitutional rights, including those which provide for fair trial rights, are applicable as the [principal source of legislation](#) within Egypt.³¹⁷

268. Egypt remains therefore at a cross road in which it must deal with its overburdened judicial system with the reality of an increase in number of prosecutions of terrorist cells. However, even if it considers

³¹⁴ [Reuters, Egypt refers militants charged in Sisi death plot to military judiciary, 21 November 2016.](#)

³¹⁵ [Reuters, Egypt refers militants charged in Sisi death plot to military judiciary, 21 November 2016.](#)

³¹⁶ Bassiouni, M., CUP, *Chronicles of the Egyptian Revolution and its Aftermath: 2011–2016*, 2016.

³¹⁷ [Preamble of Constitution of the Arab Republic of Egypt, 2014.](#)



the military court option to be the most suitable venue at this time, it must ensure that due process is afforded to all civilians.

3.10. Conclusion

269. Assessing the fairness of criminal proceedings is complex – each case must be examined on its merits and as a whole. A flaw does not necessarily taint the whole proceedings. Moreover, the fairness of the criminal proceedings depends on the [entire conduct of the proceedings](#), including appeals, where breaches of standards during the trial may be corrected.³¹⁸

270. This chapter has analysed the right to a fair trial and equality before the courts, which is a key element of human rights protection and a procedural means to safeguarding the rule of law. It has done so by outlining the rules going to fairness of trials within the Egyptian legal system and their consistency with Egypt's international human rights obligations and it has considered the manner in which those guarantees have been implemented in practice.

271. Whilst this chapter has considered a number of high profile trials which have been the subject of particular criticism for breaches of fair trial rights, it also seems that the Court of Cassation has acted to quash convictions and order retrials where there have been substantial breaches of fair trial standards. In the Al Jazeera English case the Court of Cassation was critical of the trial court for [failing to meet Egyptian standards of justice](#) on a number of levels, including the failure of the

³¹⁸ [Amnesty International, Fair Trial Manual, Second Edition, 2014.](#)



court to cite sufficient evidence to sustain the defendants' convictions, of being weak in its reasoning and contradictory, and for relying on confessions without properly investigating claims that they had been taken under coercion.³¹⁹ Moreover, one commentator has observed that whilst mass convictions have received much media attention, that there have also been [several under-reported mass acquittals](#).³²⁰

272. However, this undoubtedly places strain upon the Court of Cassation as well as ordinary courts who have to process any re-trial arising from breaches of fair trial rights. This should not necessarily result in the referral of civilian cases before military courts.

³¹⁹ [Al Jazeera English Case](#), Court of Cassation, The Circuit Criminal Court, Court Number 26806 of the 86th judicial year, unofficial English translation. Following the journalists' reconviction and sentencing to three years imprisonment in August 2015, before a second appeal could take place President Sisi finally pardoned the journalists in September 2015, see also: [BBC News, Al-Jazeera case: Egypt president says pardons 'discussed', 20 November 2014](#).

³²⁰ [Egypt Justice, Mass acquittals, Collected Cases, 10 June 2015](#).



Chapter IV

ARREST AND DETENTION



4.1. Introduction

273. In the last two years, Egypt has faced unprecedented allegations from the international community and Non-Governmental Organisations (“NGOs”) of mass and arbitrary arrests, enforced disappearances, of failing to comply with due process during arrest, and criticisms in relation to the conditions of pre-trial detention and torture in custody. This chapter will examine the State’s response and actions being taken by Egypt in relation to each of the allegations in turn and the context of the impact of unprecedented levels of terrorism in Egypt, including the emergence of [Islamic State-Sinai Peninsula](#) in mid-2015³²¹ with ISIS Sinai Province continuing its terrorist campaign throughout 2015 and 2016.

4.2. Allegations of Mass and Arbitrary Arrests

274. In recent years, significant allegations have been made by a number of NGOs of [mass and arbitrary arrests](#) in Egypt.³²² These allegations must be examined however within the context of both the legal protections that exist in Egypt against arbitrariness of arrest and the unprecedented levels of terrorism that have in some circumstances led to the arrest of several hundred individuals.

³²¹ [US State Department, Bureau Of Counterterrorism And Countering Violent Extremism, Country Reports on Terrorism – Middle East and North Africa, 2015](#). See also [9 Bedford Row, The Egyptian Experience of the Muslim Brotherhood in Power 2012-2013, 3 June 2015](#).

³²² [Amnesty International, Egypt: Rampant torture, arbitrary arrests and detentions signal catastrophic decline in human rights one year after ousting of Morsi, 3 July 2014](#). See also, [Egyptian Observatory for Rights and Freedoms, NGO Report on Egypt Human Rights Violations in First Quarter of 2015, 2015](#); and [Front Line Defenders, Egypt – Wave of arbitrary arrests against several human rights defenders, 27 April 2016](#).



275. This section will set out the legal framework in brief and examine two examples of mass arrest in Egypt in order to assess whether or not such criticisms of arbitrariness are in fact legitimate.

4.3. Applicable Law on Arrest

4.3.1. *Definition of Arbitrary Arrest*

276. The concept of arbitrary arrest applies to both the law under which a person is arrested and to the application of the law. An arrest or detention may be arbitrary if the law is arbitrary or if the actions of a criminal justice actor are arbitrary. The term arbitrary has been interpreted as meaning an arrest or detention that includes elements of inappropriateness, injustice, and a lack of predictability and due process of law.³²³

4.3.2. *International and Regional Treaties and Declarations*

277. Egypt was one of the first states to be involved in the drafting of the Universal Declaration of Human Rights (UDHR) and fully promotes all fundamental human rights as provided within the declaration, including [article 9](#), which provides that “No one shall be subjected to arbitrary arrest, detention or exile.”³²⁴

278. Egypt’s recognition of universal rights, including the right to

³²³ United Nations HRC case of Albert Womah Mukong v. Cameron, UN document CCPR/C/51/D/458/1991 [1994], para 9.8.

³²⁴ [UN General Assembly, Resolution 217A, Universal Declaration of Human Rights, 10 December 1948.](#)



liberty and security of person, is also reflected in article 9 of the International Covenant on Civil and Political Rights (ICCPR) to which Egypt became a state party in [1982](#).³²⁵ [Article 9 \(1\)](#) of the ICCPR provides that:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.³²⁶

279. As part of its commitment to the protection of fundamental freedoms, Egypt also became a state party to the [African Charter on Human and People's Rights](#) (African Charter) in 1984,³²⁷ thereby recognizing the protections provided for in [article 6](#):

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.³²⁸

280. The protection against arbitrary arrest and detention is also contained in [article 14](#) of the Arab Charter on Human Rights (Arab Charter) which provides as follows:

³²⁵ [UN OHCHR, Status of Ratification of 18 International Human Rights Treaties.](#)

³²⁶ [UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966.](#)

³²⁷ [African Commission on Human and Peoples' Rights, Ratification Table: African Charter on Human and Peoples' Rights.](#)

³²⁸ [Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 \(1982\), African \(Banjul\) Charter On Human And Peoples' Rights, 27 June 1981.](#)



Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.³²⁹

281. Although Egypt has yet to ratify the Arab Charter, it is a signatory party and has been relied upon by the [Egyptian judiciary](#).³³⁰
282. Having signed and ratified the core international and regional conventions, Egypt has pledged to take positive steps to protect the full scope of the protections against arbitrary arrest.

4.3.3. *Egypt's Islamic sharia on Arrest*

283. As a state which [observes Islamic sharia](#),³³¹ provisions concerning the prohibition on arbitrary arrest are also informative as to Egypt's legal obligations nationally. As a member state of the Organisation of the Islamic Conference (OIC), Egypt signed the Cairo Declaration on Human Rights in Islam in 1990. This declaration affirms Islamic sharia as its sole source. [Article 20](#) provides as follows:

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, or to exile or to punish him.³³²

284. Whilst not binding on Egypt, provisions within the OIC's Cairo

³²⁹ [League of Arab States, 12 Int'l Hum. Rts. Rep. 893 \(2005\), Arab Charter on Human Rights, May 22, 2004, Article 14\(1\).](#)

³³⁰ [Mattar, M., Harvard Human Rights Journal / Vol. 26, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, 2013.](#)

³³¹ [Article 2 and preamble, Constitution of the Arab Republic of Egypt, 2014.](#)

³³² [Organisation of the Islamic Conference, A/CONF.157/PC/62/Add.18 \(1993\), Cairo Declaration on Human Rights in Islam, 5 August 1990, article 20.](#)



Declaration seek to complement pre-existing universal principles on the prohibition against arbitrary arrest.

4.3.4. *Egypt's Constitution of 2014*

285. Following the adoption of a new Constitution in 2014, Egypt sought to ensure that its international, regional and religious obligations were adhered to, with the preamble expressly affirming the principles of Islamic sharia as the principle source of legislation as well as recognizing its [commitment and approval of the UDHR](#).³³³ The 2014 Constitution sets out [Egypt's commitment](#) to the “agreements, covenants, and international conventions of human rights that were ratified by Egypt”.³³⁴

286. In particular, [articles 54 and 56](#) of the 2014 Constitution provide for protection against arbitrary arrest and place detainees under judicial supervision.³³⁵ Pursuant to [article 59](#), the 2014 Constitution

³³³ [Article 2 and preamble, Constitution of the Arab Republic of Egypt, 2014](#). See also Egyptian Supreme Constitutional Court, Appeal No. 7, Judicial Year No. 8, 15 May 1993. See also Asmaa Ali v. President, Prime Minister, Egyptian Supreme Constitutional Court, Appeal No. 6, Constitutional Judicial Year No. 9, 18 March 1995; Atef Ibrahim v. Prime Minister, Minister of Justice, Egyptian Supreme Constitutional Court, Appeal No. 4, Constitutional Judicial Year No. 15, 6 July 1996. Whilst the Supreme Constitutional Court was interpreting article 2 of the Constitution of the Arab Republic of Egypt 1971, the core provision is reflected in article 2 of the Constitution of the Arab Republic of Egypt 2014.

³³⁴ [Article 93, Constitution of the Arab Republic of Egypt, 2014](#).

³³⁵ [Articles 54, and 56\(2\), Constitution of the Arab Republic of Egypt, 2014](#). Article 54 provides: Personal freedom is a natural right, shall be protected and may not be infringed upon. Except for the case of being caught in flagrante delicto, it is not permissible to arrest, search, detain, or restrict the freedom of anyone in any way except by virtue of a reasoned judicial order that was required in the context of an investigation. Every person whose freedom is restricted shall be immediately notified of the reasons therefore; shall be informed of his/her rights in writing; shall be immediately enabled to contact his/her relatives and lawyer; and shall be brought before the investigation authority within twenty-four (24) hours as of the time of restricting his/her freedom. Article 56(2) provides: Prisons and places of



further provides for the right to security of a person in accordance with international standards.³³⁶

287. The rights and freedoms of citizens are absolute and in accordance with [article 92](#) of the 2014 Constitution, remain non-suspendable and non-derogable.³³⁷

288. Moreover, [article 99](#) of the Constitution provides that “Any violation of personal freedom, of the sacrosanct nature of the private life of citizens, or of any other public rights and freedoms guaranteed by the Constitution and the law, constitutes a criminal offence and criminal and civil actions brought in respect thereof shall not be statute-barred. The victim shall have the right to bring a direct criminal action.”³³⁸ Anyone deprived unlawfully of his or her liberty has the right to bring a direct action before a criminal court against the person responsible and is likewise entitled to institute civil proceedings. The Constitution explicitly stipulates that neither civil nor criminal proceedings in respect of acts of unlawful detention are statute-barred.

4.3.5. *Egypt’s Criminal Procedure Code*

289. For further specifics, Egypt’s Criminal Procedure Code contains detailed provisions on arrest and detention. In order to provide an overview of the applicable domestic standards, the most significant of

detention shall be subject to judicial supervision and acts which are incompatible with human dignity or which endanger human health shall be prohibited therein.

³³⁶ [Article 59, Constitution of the Arab Republic of Egypt, 2014.](#) Article 59 provides: Everyone has the right to security of person. The State shall ensure security and peace of mind for its citizens and all persons residing in its territory

³³⁷ [Article 92, Constitution of the Arab Republic of Egypt, 2014.](#)

³³⁸ [Article 99, Constitution of the Arab Republic of Egypt, 2014.](#)



these provisions are set out herein.

290. [Article 36](#) of the Criminal Procedure Code (Act No. 150 of 1950, promulgated on 3 September 1950 and published in the Official Gazette on 15 October 1951) provides that “The criminal investigation officer shall immediately hear the statements of the arrested suspect who, if he fails to establish his innocence, shall be brought before the office of the competent public prosecutor within 24 hours. The office of the public prosecutor shall question him within 24 hours, after which it shall order either his remand in custody or his release.”³³⁹

291. Under the terms of [article 40](#) of the Criminal Procedure Code, “No one shall be arrested or detained except by order of the legally competent authorities. Any person who is arrested or detained shall be treated in a manner conducive to the preservation of his human dignity and shall not be subjected to physical or mental harm.”³⁴⁰

292. Under [article 42](#), “Members of the Department of Public Prosecutions and presidents and vice-presidents of courts of first instance shall be empowered to inspect the public and central prisons situated within their areas of jurisdiction in order to ascertain that no one is being detained unlawfully. They shall have the right to examine prison records and arrest and detention orders, take copies thereof, contact any detainee and hear any complaint that he might wish to submit to them. The prison governors and staff shall provide them with any assistance needed to obtain the information that they

³³⁹ [Article 36 of the Egyptian Criminal Procedure Code.](#)

³⁴⁰ [Article 40 of the Egyptian Criminal Procedure Code.](#)



request.”³⁴¹

293. Under [article 43](#), “Every prisoner shall be entitled to submit a written or verbal complaint to a prison officer, at any time, and request that he transmit it to the office of the public prosecutor. The officer shall receive and immediately transmit it after entering it in the prison complaints register. Anyone who comes to know that a person is being detained unlawfully or in a place not designated for such purpose shall notify a member of the office of the public prosecutor who, on receipt of such notification, shall go immediately to the place in which the person is being held where he shall investigate the matter, order the release of the person if he is being detained unlawfully, and draw up a report thereon.”³⁴² Under this provision, anyone who comes to know that a person is being detained unlawfully has the right to notify the authorities. Furthermore, under article 43, an official from the office of the public prosecutor has an obligation to go immediately to the place of detention and take the legally prescribed measures, including release of the victim and prosecution of the culprit on the charge of unlawful detention. There is no time limit for the submission of an application for release for unlawful detention.

294. It is noteworthy that in the judicial year 2014/2015, the Supreme Administrative Court assigned its first division to hear appeals relating to public rights and freedoms, including unlawful detention.³⁴³

³⁴¹ [Article 42 of the Egyptian Criminal Procedure Code.](#)

³⁴² [Article 43 of the Egyptian Criminal Procedure Code.](#)

³⁴³ Law No. 94 of 2015, Anti-Terrorism Law.



4.3.6. *Egypt's Civil Code*

295. With regard to compensation for unlawful detention, article 163 of the Egyptian Civil Code³⁴⁴ stipulates “Any culpable act that causes damage to another person shall render the perpetrator liable to payment of compensation.” Accordingly, pursuant to this provision, anyone who is detained unlawfully has the right to claim compensation from the person responsible for his or her detention or from the State.

4.4. **Domestic Anti-Terrorism Law: Law on Combatting Terrorism 2015**

296. In August 2015, Egypt's President Sisi approved a new anti-terror law aimed at strengthening the country's efforts in combatting a rising terror insurgency.³⁴⁵ The enactment of the Law on Combatting Terrorism is in line with calls from the [UN Security Council](#) requiring member states to take steps to combat terrorism.³⁴⁶ This new law seeks to provide definitions and further clarity to the meaning of “terrorist group”, “terrorist” and “terrorist crime” aimed at strengthening the country's efforts in combating a rising terror insurgency.³⁴⁷

297. [Article 40](#) of the Law on Combatting Terrorism permits law enforcement agents to detain suspects in terrorism cases without a warrant for up to 24 hours for the purposes of questioning and interrogation. The Public Prosecutor or the relevant investigating

³⁴⁴ Act No. 131 of 1948 promulgated on 16 July 1948 and published in the Official Gazette on 29 July 1948.

³⁴⁵ Official Gazette – No. 33(bis) issued on 15 August 2015.

³⁴⁶ [UN Security Council, S/RES/1624\(2005\), Resolution 1624 of 2005, preamble.](#)

³⁴⁷ [Law No. 94 of 2015 – Anti-Terrorism Law, 15 August 2015.](#)



authority may order the extension of custody once for a period not exceeding seven days. Such an order must be reasoned and made by at least an Attorney General or equivalent. Pursuant to article 41, law enforcement officers shall inform the person held in custody in accordance with article 40 of the reasons of arrest. He shall have the right to call and inform a family member of his choice and seek a lawyer, without prejudice to the interests of evidence-collection.

298. The aim of this legislation is to enhance the stability and security of Egypt following a series of devastating terrorist attacks against government officials, police and army personnel.

4.5. Case Study – ‘Mass and Arbitrary Arrests’ in Egypt

299. In assessing allegations of mass and arbitrary arrest, it is crucial that the precise context of the large-scale arrests are fully considered and understood against the backdrop of the severe and on-going security challenges faced by Egypt in recent years. This section addresses two such allegations.

4.5.1. *Arrest of 600 Individuals – April 2015, Sinai Region*

300. Members of the international community and several NGOs have condemned Egypt for what they describe as [sweeping mass arrests](#) of civilians by security forces as of mid-2015.³⁴⁸ In May 2015, President Sisi confirmed that mass arrests had indeed taken place, with [600 individuals](#) arrested in April 2015 in the Sinai Peninsula.³⁴⁹ NGO's

³⁴⁸ See for example, [Amnesty International, Generation Jail, June 2015.](#)

³⁴⁹ [Mostafa, M., Daily News Egypt, 600 terrorists arrested in April: Al-Sisi, 13 May 2015.](#)



criticised these arrests, expressing [concern](#) as to the correctness of these figures released by the Egyptian authorities and the legal nature of these arrests.³⁵⁰

301. According to President Sisi, the 600 individuals were arrested as part of the State's response to illicit extremist activity in Egypt's lawless Sinai region. The State's actions were explained by the President in his [national address](#)³⁵¹ and that the high number of arrests reflected, "the magnitude of the challenges we face" as "62 defendants [were caught] with explosives and ammunition" and "122 explosive bombs" were confiscated.

302. The President explained that state resources were used extensively during this operation to identify terrorist forces and revealed a network of illicit tunnels used by extremists in the neighbouring Hamas-controlled Palestinian territories.³⁵² These tunnels were used to smuggle weapons and wage attacks in both Egyptian and Israeli territory. The area of the Sinai has been described as the "[most ambitious Isis franchise outside Syria or Iraq](#)."³⁵³ These arrests must therefore be set in the context of the extreme security threat that Egypt was tackling at this time and continues to face.

³⁵⁰ [Mostafa, M., Daily News Egypt, 600 terrorists arrested in April: Al-Sisi, 13 May 2015.](#)

³⁵¹ [Kredo, A., Daily Beacon, Egypt Arrests 600 Terrorists in April, 19 May 2015.](#)

³⁵² See for example, [Fishman, A., Ynetnews, Egypt discovers enormous tunnels coming from Gaza, 11 March 2016](#) and [Feferman, D., The Tower, Your Complete Guide to Hamas' Network of Terror Tunnels, April 2016](#). See also: [Fouad, A., Al Monitor, Egypt discovers record-length smuggling tunnel, 17 April 2015](#); [Okbi, Y., Jerusalem Post, ISIS terrorist snuck into Gaza Strip through Hamas tunnels, Israel says, 13 May 2016](#).

³⁵³ [Graham-Harrison, E., The Guardian, How Sinai became a magnet for terror, 8 November 2015.](#)



303. Some months earlier, in October 2014, after coordinated attacks by militants killed more than 30 soldiers, President Sisi declared a three-month state of emergency in the north and centre of the Sinai Peninsula.

304. It was only one month later, in November 2014, that the region's most prominent militant faction, [Ansar Beit al-Maqdis](#), declared its loyalty to the Islamist State, the extremist group based in Syria and Iraq.³⁵⁴

305. In January 2015, Egyptian security forces had suffered one of the bloodiest days in their peacetime history. At least [32 people](#) were killed in a series of attacks on soldiers and police in north-east Sinai, where the government had been struggling to contain an 18-month insurgency by militants linked to Isis.³⁵⁵

306. On 29th June 2015, the [Prosecutor General Hisham Barakat](#) was killed in a car bomb, which was subsequently linked to the Muslim Brotherhood.³⁵⁶

307. In July 2015, Isis fighters killed dozens of [soldiers](#) as they attacked multiple military checkpoints and attempted for the first time

³⁵⁴ [The Guardian, Egypt declares state of emergency in Sinai after checkpoint bombing, 25 October 2014.](#)

³⁵⁵ [Kingsley, P. and Abdo, M., The Guardian, At least 32 killed in Egypt as militants attack army and police targets in Sinai, 30 January 2015.](#)

³⁵⁶ [The Guardian, Muslim Brotherhood conspired with Hamas to kill prosecutor, Egypt claims, 6 March 2016.](#) See also [Farid, S., Al Arabiya, Why was Egypt's prosecutor-general assassinated?, 30 June 2015](#) and [Cunningham, E. and Habib, H., Washington Post, Cairo blast kills top prosecutor, raising fears about militant reach in Egypt, 29 June 2015.](#)



to control a small pocket of territory in the Sinai desert.³⁵⁷

308. Only 7 months later, in November 2015, a group known as “Isis Sinai Province” admitted responsibility for the downing of a Russian Metrojet flight from Sharm el-Sheikh, as it came down over the Sinai Peninsula with the loss of all lives on board. The previous year, Sinai Province expanded its operations from the northern heartlands of the insurgency to the tourist resorts of the south, with a bus bombing that killed three Korean Christians and their driver. Beyond Sinai, cells in mainland Egypt [bombed police headquarters in Cairo and Mansoura](#), and tried to assassinate the interior minister.³⁵⁸

309. It is clear from these examples that the ISIS-Sinai Peninsula is the most [active militant group](#) within Egypt – carrying out dozens of deadly attacks which kill scores of soldiers, police officers and civilians.³⁵⁹ In light of Egypt’s location and the ease in which ISIS members can travel throughout the region, Egypt’s arrests of ISIS members has been welcomed both domestically and internationally,³⁶⁰ and echoes [similar action](#) taken by nearby states.³⁶¹

³⁵⁷ [Kingsley, P., The Guardian, Attacks on Egyptian checkpoints signal escalation in Isis capabilities, 1 July 2015.](#)

³⁵⁸ [Graham-Harrison, E., The Guardian, How Sinai became a magnet for terror, 8 November 2015.](#) See also, [Reuters, Egyptian judge who tried Mursi survives assassination attempt, 4 November 2016](#) and more recently, [Michaelson, R., The Guardian, Egypt: three days of mourning declared after 25 people killed in Cairo bomb, 11 December 2016.](#)

³⁵⁹ See, for example, [Stoffel, D., CBC News, ISIS in Egypt: The struggle for the Sinai Peninsula, 19 June 2016](#) and [Stanford University, The Islamic State – Sinai Province, 28 February 2016.](#)

³⁶⁰ [Arutz Sheva, Egypt Arrests Recruiters for ISIS, 6 October 2014.](#) See also, [BICOM, Egypt arrests hundreds of ISIS-linked operatives over al-Sisi assassination plots, 21 November 2016.](#)

³⁶¹ [Abdel Razak, S., Asharq Al-Awsat, Scores of ISIS Affiliates Arrested during Security Campaigns in Turkey, 12 November 2016.](#) See also [Bacchi, U., International Business Times, Turkey mass arrests: 251 'terrorists' linked to Isis and Kurdish militants rounded-up, 24 July](#)



4.5.2. *Arrest of 100 Individuals –April 2016 in Cairo, Alexandria, the Nile Delta and Upper Egypt*

310. On 25 April 2016, political activists sought to organise mass demonstrations in Tahrir Square, described as the [epi-centre](#) of the 2011 uprising,³⁶² as well as across Egypt to demonstrate against the transfer of sovereignty of the [Tiran and Sanafir islands](#) to Saudi Arabia.³⁶³ These mass protests were intended to follow similar protests organised on [15 April 2016](#),³⁶⁴ in which [thousands of protesters](#) had already taken to the streets in order to demonstrate against the maritime borders' demarcation agreement between Egypt and Saudi Arabia.³⁶⁵
311. Before the protests took place on 25 April, around [100 individuals](#) were arrested by security forces across the country during the late hours of 24 April and early morning of 25 April 2016.³⁶⁶ These arrests have been subject to criticism and allegations that they were part of attempts by the security forces to [stifle plans](#) for mass

[2015; Salem, H., Vice News, Saudi Arabia Claims Mass Arrest of Islamic State Militants, 28 April 2015; BBC News, Saudi Arabia 'arrests 93 members of Islamic State cells', 28 April 2015.](#)

³⁶² [Michael, M. and Rohan, B., AP, Egyptian police stifle plans for mass protest over islands, 25 April 2016.](#)

³⁶³ [El-Fekki, A., Daily News Egypt, Nationwide security raids ahead of 25 April protests, 22 April 2016.](#)

³⁶⁴ [Samaan, M., The Telegraph, Egypt: thousands protest against Sisi's decision to give islands to Saudi Arabia, 15 April 2016](#) and [Ahram Online, Egyptian police arrest tens of people ahead of calls for April 25 protests, 22 April 2016.](#)

³⁶⁵ [Ahram Online, Egyptian police arrest tens of people ahead of calls for April 25 protests, 22 April 2016.](#)

³⁶⁶ [Michael, M. and Rohan, B., AP, Egyptian police stifle plans for mass protest over islands, 25 April 2016.](#)



demonstrations against the government.³⁶⁷

312. However, the mass protests were more than demonstrations concerning political deals of the State. They were accompanied by calls to defeat President Sisi by the [Muslim Brotherhood](#), a recognised terrorist organisation.³⁶⁸ In particular, the Muslim Brotherhood issued a statement on 24 April 2016, prior to the mass demonstration, invoking hostile language against Israel and warning that “the Egyptian government would be willing to return control of the Sinai Peninsula to the ‘[Zionist enemy](#)’”.³⁶⁹ This statement was not made in the abstract but rather coincided with the 34th anniversary of [Sinai Liberation Day](#), which saw the Sinai Peninsula returned to Egyptian control after it was captured by Israel during the 1967 Six-Day War.³⁷⁰

313. Moreover, the statement echoed previous [calls for violence](#) by the Muslim Brotherhood which led to the mass sit-ins and subsequent violence in and around Tahrir Square in August 2013.³⁷¹

314. Therefore, noting both the date and scheduled location for the

³⁶⁷ [Michael, M. and Rohan, B., AP, Egyptian police stifle plans for mass protest over islands, 25 April 2016.](#)

³⁶⁸ [Middle East Eye, Egypt mobilises security forces as Brotherhood calls for mass protests, 26 April 2016.](#) See also, [The New Arab, Egyptians hold mass protests against Saudi islands deal, 15 April 2016.](#)

³⁶⁹ See [Ikhwanweb, Muslim Brotherhood Statement on Sinai Liberation Day Calling for Protests on April 25th, 24 April 2016.](#) See also, [Middle East Eye, Egypt mobilises security forces as Brotherhood calls for mass protests, 26 April 2016;](#) [Aswat Masriya, Muslim Brotherhood, April 6 movement to protest Red Sea Islands transfer, 14 April 2016](#) and [Ikhwanweb, Muslim Brotherhood Statement on Egyptian Islands Court Ruling, 24 June 2016.](#)

³⁷⁰ [Ikhwanweb, Muslim Brotherhood Statement on Sinai Liberation Day Calling for Protests on April 25th, 24 April 2016](#) and [Middle East Eye, Egypt mobilises security forces as Brotherhood calls for mass protests, 26 April 2016.](#)

³⁷¹ See [9 Bedford Row, The Egyptian Revolution against the Muslim Brotherhood 2013, 10 December 2015.](#)



organised demonstrations on 25 April 2016, it is apparent that the mass demonstrations, which were organised without the consent of state authorities contrary to [Egyptian protests laws](#),³⁷² were a potential threat to public order and national security. The arrests prior to the demonstrations, as well as the [increase in police presence](#) in and around Tahrir Square,³⁷³ was a means to prevent and [protect](#) against violence.³⁷⁴ It was not, as alleged, a means to quell anti-government sentiment because: (i) similar demonstrations had already taken place on 15 April 2016; and (ii) the majority of those arrested were [released within hours](#), describing their arrests as depressing but not cruel.³⁷⁵ Those who were not released immediately were detained in relation to the commission of further crimes. For example, Malek Adly, the human rights lawyer, was arrested on 19 April 2016 following evidence (i) associating him to the Muslim Brotherhood and other extremist groups; (ii) calls for public disorder and (iii) drunk and disorderly conduct.³⁷⁶ Adly was subsequently released on 25 August 2016 on conditional bail.³⁷⁷

315. The proactive decisions of the security forces, including

³⁷² [Article 8 of Law No. 107 of 2013.](#)

³⁷³ [Michael, M. and Rohan, B., AP, Egyptian police stifle plans for mass protest over islands, 25 April 2016](#) and [Middle East Eye, Egypt mobilises security forces as Brotherhood calls for mass protests, 26 April 2016.](#)

³⁷⁴ [Middle East Eye, Egypt mobilises security forces as Brotherhood calls for mass protests, 26 April 2016.](#)

³⁷⁵ [Ahram Online, Egyptian police arrest tens of people ahead of calls for April 25 protests, 22 April 2016.](#) See also, [Michael, M. and Rohan, B., US News, Massive Egyptian security crackdown stifles protests against el-Sissi, 25 April 2016.](#)

³⁷⁶ Case No. 4017/2016, Notice in relation to the accused, Malek Mustafa Adly Mustafa, 2016.

³⁷⁷ Case No. 4017/2016, Notice in relation to the accused, Malek Mustafa Adly Mustafa, 2016.



[warnings](#) to protestors not to incite chaos,³⁷⁸ were supported by ordinary residents who [feared another round of unrest](#) after years of turmoil.³⁷⁹

316. Moreover, the tactics employed by the security forces, including use of mass arrests, is no different to the means employed by governments across the globe. For example, on 11 April 2016, US authorities arrested [400 protesters](#) during organised demonstrations in the capital, Washington D.C, in relation to corruption of 'big money' in US politics.³⁸⁰ More recently, US authorities also arrested [141 individuals](#) in North Dakota as part on-going police efforts to thwart demonstrations to prevent construction of the controversial oil pipeline.³⁸¹

317. More notably, in Turkey, following an attempted coup in mid-July 2016 which echo calls made by the Muslim Brotherhood against President Sisi in Egypt, over [40,000 individuals](#) were arrested within a month of the failed coup.³⁸²

³⁷⁸ [Middle East Eye, Egypt mobilises security forces as Brotherhood calls for mass protests, 26 April 2016.](#)

³⁷⁹ [Michael, M. and Rohan, B., AP, Egyptian police stifle plans for mass protest over islands, 25 April 2016.](#)

³⁸⁰ [Weil, M., Washington Post, More than 400 arrested at the Capitol during protest against 'big money', 11 April 2016.](#)

³⁸¹ [Levin, S. et al., The Guardian, North Dakota pipeline: 141 arrests as protesters pushed back from site, 28 October 2016.](#)

³⁸² [Reuters, Turkey has detained 40,000 people in crackdown since coup, PM says, 17 August 2016.](#)



4.6. Enforced Disappearance

4.6.1. Allegations of Enforced Disappearance in Egypt

318. In the past few years, Egypt has faced growing condemnation both nationally and internationally over increasing numbers of enforced disappearances.

319. In its 2015-2016 report, Egypt's state-affiliated National Council for Human Rights (NCHR) called on Egypt to reveal the whereabouts of 276 individuals cited in cases of enforced disappearance.³⁸³ In a press conference in July 2016, the NCHR head, Mohamed Fayek, described the enforced disappearance problem as having worsened during the past year and described it as a "[crime against humanity](#)".³⁸⁴

320. In 2016, [Amnesty International](#) accused the Egyptian authorities of repeatedly denying that enforced disappearances exist in the country and has alleged that "enforced disappearance has become a key instrument of state policy in Egypt...with counter-terrorism being used as an excuse to abduct, interrogate and torture people who challenge the authorities."³⁸⁵ Amnesty stated in its report that "Local NGOs allege that an average of [three to four people](#) are abducted and arbitrarily subjected to enforced disappearance each day,³⁸⁶ and that there was a trend in Egypt where "hundreds of students, political

³⁸³ National Council for Human Rights, Report for years 2015 to 2016, July 2016.

³⁸⁴ [Aswat Masriya, Enforced Disappearance issue worsened over past year –NCHR, 3 July 2016.](#)

³⁸⁵ [Amnesty International, Egypt: Hundreds disappeared and tortured amid wave of brutal repression, 13 July 2016.](#) For the report see [Amnesty International, Egypt: 'Officially, you do not exist' – Disappeared and tortured in the name of counter-terrorism, 13 July 2016.](#)

³⁸⁶ [Amnesty International, Egypt: 'Officially, you do not exist' – Disappeared and tortured in the name of counter-terrorism, 13 July 2016.](#)



activists, including children...vanish without trace at the hands of the state.” [Human Rights Watch](#) has also made similar allegations.³⁸⁷

4.6.2. *Applicable Law*

321. Enforced disappearance is defined in [the International Convention for the Protection of all Persons from Enforced Disappearance](#) as:

[...] the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.³⁸⁸

322. While Egypt has neither signed nor ratified the International Convention for the Protection of all Persons from Enforced Disappearance, Egypt has both international and domestic legal provisions in place to protect the rights of individuals that are violated by an act of enforced disappearance. These rights relate to the right to the security and dignity of person,³⁸⁹ the right not be subjected to

³⁸⁷ [HRW, Egypt: Dozens detained secretly, 20 July 2015.](#)

³⁸⁸ [Article 2 of UN General Assembly, Resolution 61/177, International Convention for the Protection of All Persons from Enforced Disappearance, 12 January 2007.](#)

³⁸⁹ [Article 3 of UN General Assembly, Resolution 217A, Universal Declaration of Human Rights, 10 December 1948; Article 9 of UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966; Article 6 of Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 \(1982\), African \(Banjul\) Charter On Human And Peoples' Rights, 27 June 1981; Articles 51, 59 and preamble of Constitution of the Arab Republic of Egypt, 2014.](#)



torture or other cruel, inhuman or degrading treatment or punishment,³⁹⁰ the right to humane conditions of detention,³⁹¹ the right to a fair trial,³⁹² the right to family life³⁹³ and the right to life.³⁹⁴

4.6.3. Ministry of Interior's Response to the Allegations of Enforced Disappearance

➤ *National Council for Human Rights*

323. Egypt's Ministry of Interior has responded in detail to the allegations that have been made by the NCHR about enforced disappearance in "The Comment of the Ministry of Interior on The

³⁹⁰ [Article 5 of UN General Assembly, Resolution 217A, Universal Declaration of Human Rights, 10 December 1948; Article 7 of UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966; Article 2 of UN General Assembly, Resolution 39/46, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984; Article 5 of Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 \(1982\), African \(Banjul\) Charter On Human And Peoples' Rights, 27 June 1981; Articles 52 and 55 of Constitution of the Arab Republic of Egypt, 2014.](#)

³⁹¹ [Article 10 of UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966; Article 56 of Constitution of the Arab Republic of Egypt, 2014.](#)

³⁹² [Article 10 of UN General Assembly, Resolution 217A, Universal Declaration of Human Rights, 10 December 1948; Article 14 of UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966; Article 7 of Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 \(1982\), African \(Banjul\) Charter On Human And Peoples' Rights, 27 June 1981; Articles 96-98 of Constitution of the Arab Republic of Egypt, 2014.](#)

³⁹³ [Articles 12 and 16 of UN General Assembly, Resolution 217A, Universal Declaration of Human Rights, 10 December 1948; Articles 17 and 23 of UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966; Article 18 of Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 \(1982\), African \(Banjul\) Charter On Human And Peoples' Rights, 27 June 1981; Article 10 of Constitution of the Arab Republic of Egypt, 2014.](#)

³⁹⁴ [Article 3 of UN General Assembly, Resolution 217A, Universal Declaration of Human Rights, 10 December 1948; Article 6 of UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966; Article 4 of Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 \(1982\), African \(Banjul\) Charter On Human And Peoples' Rights, 27 June 1981.](#)



Remarks of the Eleventh Annual Report of The National Council of Human Rights, 2015-2016” (MOI Report).³⁹⁵

324. The MOI Report states that the NCHR in fact referred 266 reports of disappearances to the Ministry since March 2016.³⁹⁶ The Ministry stated in its response that it was able to clarify the situation in relation to 238 of these individuals, who were either in prison pursuant to a “General Prosecution” resolution and then released, or who were still in prison awaiting trial. The Ministry stated that it was not able to provide information in relation to 44 of the individuals who had never been arrested by the police.³⁹⁷

325. In liaison with the NCHR, the Ministry advised the Council that it was probable that those unaccounted for had probably disappeared to “join terrorist organizations in Sinai, or travelled to fight in Libya, Syria or Iraq.”³⁹⁸ This is consistent with official figures which provide that, as of January 2015, over [600 Egyptians](#) had left the country and recruited by ISIS in Iraq or Syria.³⁹⁹ Unofficial figures place the count at [1000 recruits](#) leaving Egypt to join ISIS.⁴⁰⁰ The number of individuals who have left home to join ISIS in Sinai Peninsula is reported to be

³⁹⁵ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.33.

³⁹⁶ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.33.

³⁹⁷ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.33.

³⁹⁸ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.33.

³⁹⁹ [The Soufan Group, Foreign Fighters - An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq, December 2015.](#)

⁴⁰⁰ [The Soufan Group, Foreign Fighters - An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq, December 2015.](#)



around [1000 – 1500](#) as of May 2016.⁴⁰¹

326. In addressing the allegations made by the NCHR in relation to enforced disappearance, the Ministry took several measures, which included the following:

- A working group was formed that includes Ministry-competent bodies to investigate claims of forced disappearance especially those emanating from the NCHR with the aim of responding immediately to them.
- The Human Rights Sector of the Ministry was appointed as a point of contact to the NCHR to receive the relevant complaints and co-ordinate with relevant bodies within the Ministry and respond to them.
- The Ministry sought to also respond to and investigate other cases brought to their attention by the Egyptian Organisation for Human Rights (40 complaints, 18 responded to, 22 remain under investigation); National Council for Childhood and Motherhood (2 complaints, 2 under investigation) and Miscellaneous other sources (15 complaints, 9 responded to and 6 under investigation). In total, the number of complaints received by the Ministry up to 25th July 2016 amounted to 409 in total, 314 of which have been responded to (83.3%), while 68 cases remain under investigation (at the time of the MOI

⁴⁰¹ [BBC News, Sinai Province: Egypt's most dangerous group, 12 May 2016.](#)



Report).⁴⁰²

327. The MOI Report explains that the rise of the claims of enforced disappearance coincided with the rise of terrorist attacks in Egypt. The Ministry observed in its report that the majority of complaints related to terrorists who have been arrested and referred on to the competent prosecutor for investigation. The MOI Report also refers to efforts by the Muslim Brotherhood to make unfounded and mistaken claims of enforced disappearance in an attempt to raise the matter as a crime against humanity before the International Criminal Court.⁴⁰³ The report states that some individuals have disappeared and are suspected to have joined terrorist organisations or have fled the country through the borders to escape pursuit from the Egyptian security agencies. Others have died and are unidentifiable due to the circumstances in which they died.⁴⁰⁴

328. In conclusion, the Egyptian Ministry of Interior has sought to address and further investigate each instance of enforced disappearance that has been brought to its attention by the bodies as outlined above, which should be perceived as positive and effective measures undertaken by the country. Such measures outlined in the MOI Report also reveal a serious attempt on the part of Egypt to comply with its international obligations set out in universal

⁴⁰² Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at pp. 34-35.

⁴⁰³ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.36.

⁴⁰⁴ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.38.



instruments such as the [ICCPR](#) namely, “to respect and ensure enjoyment by all individuals within its territory [...] the substantive ICCPR rights”.⁴⁰⁵

➤ *Amnesty International*

329. In July 2016, Egypt’s foreign affairs minister responded to the publication of [Amnesty International’s report](#)⁴⁰⁶ on enforced disappearances. The Minister described the report as “[not impartial and motivated by political stances](#).”⁴⁰⁷

330. The Minister also stated that Amnesty has “a special interest in tarnishing Egypt’s image,” and that it relies “[solely on sources that express one side of the story](#), and persons and entities that are hostile towards the Egyptian state.”⁴⁰⁸ The Ministry accused Amnesty of having neglected “[actions taken by the judiciary](#) regarding the addressed cases in accordance with the explicit principles and provisions of the Egyptian constitution and law.”⁴⁰⁹

331. Four months earlier in March 2016, the Egyptian Minister of Interior Magdy Abdel Ghaffar stated that Egypt had [zero](#) forced disappearance cases, in response to claims by several human rights

⁴⁰⁵ [Articles 2\(1\) and 9, UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966.](#)

⁴⁰⁶ [Amnesty International, Egypt: ‘Officially, you do not exist’ – Disappeared and tortured in the name of counter-terrorism, 13 July 2016.](#)

⁴⁰⁷ [Ahram Online, Egypt slams Amnesty’s allegations of torture and enforced disappearance, 13 July 2016.](#)

⁴⁰⁸ [Ahram Online, Egypt slams Amnesty’s allegations of torture and enforced disappearance, 13 July 2016.](#)

⁴⁰⁹ [Ahram Online, Egypt slams Amnesty’s allegations of torture and enforced disappearance, 13 July 2016.](#)



institutions.⁴¹⁰ Abdel Ghaffar claimed that these institutions were working in concert with the Muslim Brotherhood to spread rumours to terrorise citizens and to hinder the Interior Ministry in its task of securing the country. He explained that the Ministry of Interior worked with NCHR to form committees that investigate all complaints and reports of enforced disappearances. He also intimated that some of those who have gone missing might have [illegally immigrated](#) to Syria or Iraq to join the “Islamic State” (IS) without informing their families.⁴¹¹

332. Criticism of Amnesty International’s apparent [political bias](#) is not unique to Egypt and has recently been raised by a number of and state actors who question the organisation’s methodology and credibility.⁴¹² Regardless of whether the organisation is aware of the particular bias of information it receives and subsequently disseminates, its reports are [not designed to be evidentiary](#), and do not present conclusive findings on the commission of alleged crimes,⁴¹³ including enforced disappearances. Thus, the weight that should be

⁴¹⁰ [El-Sheikh, S., Daily News Egypt, 1,411 forced disappearances in the first 10 months of 2015: Human rights entities, 3 November 2015.](#)

⁴¹¹ [Ezzidin, T., Daily News Egypt, Minister of Interior claims there are no enforced disappearances in Egypt, 6 March 2016.](#) See also [Trager, E., Washington Institute, The Flow of Islamist Fighters From Egypt to Syria, and the Sisi Government's Crackdown, 17 September 2016.](#)

⁴¹² [NGO Monitor, Amnesty International: Failed Methodology, Corruption, and Anti-Israel Bias, 23 February 2015.](#) See also [Robbins, J., Observer, Human Rights Watch and Amnesty International Have a Problem With Israel, 17 June 2016;](#) [Annis, R., Global Research, Amnesty International and Human Rights Biased Report on Eastern Ukraine, Accomplices to War Crimes, 19 August 2016.](#)

⁴¹³ See for example, [ICC, Prosecutor v. Mbarushimana, ICC-01/04-01/10-465-Red, Decision on Confirmation of Charges, 16 December 2011, par. 78](#) and [ICC, Prosecutor v. Gbagbo, ICC-02/11-01/11-432, Decision adjourning the hearing on the confirmation of charges pursuant to article 61\(7\)\(c\)\(i\) of the Rome Statute, 3 June 2013, par. 29.](#)



given to their reports should not, in principle, be determinative of said allegations.

4.7. Detention

4.7.1. Allegations Concerning Poor Conditions in Prisons

333. Significant allegations have been made both nationally and internationally in respect of prison conditions in Egypt. These criticisms relate to a number of issues including [overcrowding](#) in prisons and police stations,⁴¹⁴ [poor sanitary conditions and poor medical services](#).⁴¹⁵ There have also been reports of [deaths in custody](#), both in prisons and police stations.⁴¹⁶

4.7.2. International and domestic standards

334. The international norms regarding prison conditions are set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners, which were updated and renamed the “[Nelson Mandela Rules](#)” by the UN General Assembly in December 2015.⁴¹⁷ Although not binding, the Nelson Mandela Rules were voted in unanimously by the General Assembly, including Egypt, and constitute a [primary](#)

⁴¹⁴ [Ahram Online, Egypt's NCHR highlights human rights violations in jails, calls for govt action, 3 July 2016](#). See also [Dawoud, K., Atlantic Council, NCHR pushes for prison visits amid complaints, reports of torture, 18 February 2016](#).

⁴¹⁵ [ANHRI, There is room for everyone – Egyptian prisons before and after January revolution, 5 September 2016](#).

⁴¹⁶ [Fanack Chronicle, Egypt's Official Human Rights Body Demands Prison Visits Amid Deteriorating Detention Conditions, 24 March 2016](#).

⁴¹⁷ [UN General Assembly, UN-Doc A/Res/70/175, Standard Minimum Rules for the Treatment of Prisoners, 17 December 2015](#) replacing [UN, Standard Minimum Rules for the Treatment of Prisoners, 1957 and 1977](#).



[source](#) of standards relating to the treatment of prisoners.⁴¹⁸

335. For example, with regard to prison accommodation and overcrowding of cells, [rule 12](#) of the Nelson Mandela Rules stipulates “[w]here sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.”⁴¹⁹

336. Similarly, with regard to sanitary conditions in prisons, [rules 13 to 17](#) provide for adequate sanitary conditions and standards so as to meet all requirements of health.⁴²⁰ This also includes provision of health care services and prompt access to medical attention in urgent cases.⁴²¹

337. Egypt’s 2014 Constitution seeks to implement the basic principles of the Nelson Mandela Rules and places prisons and detention centres subject to judicial oversight so that all that which violates the dignity of the person and or endangers his health is [forbidden](#).⁴²²

338. Egypt’s Prisons Law and Prison Regulations also provide a

⁴¹⁸ [UN News Centre, UN - international experts urge countries to apply 'Nelson Mandela Rules' in prisons, 18 July 2016.](#)

⁴¹⁹ [UN General Assembly, UN-Doc A/Res/70/175, Standard Minimum Rules for the Treatment of Prisoners, 17 December 2015](#)

⁴²⁰ [UN General Assembly, UN-Doc A/Res/70/175, Standard Minimum Rules for the Treatment of Prisoners, 17 December 2015](#)

⁴²¹ Rules 24 to 35 [UN General Assembly, UN-Doc A/Res/70/175, Standard Minimum Rules for the Treatment of Prisoners, 17 December 2015](#)

⁴²² Arab Republic of Egypt, Constitution 2014, Article 56.



minimum standard of treatment of prisoners within Egypt's penal system. For example, [Law No. 396 of 1956](#) provides a number of rules regarding, *inter alia*, the type and size of accommodation for each prisoner as well as access to medical treatment and supervision.⁴²³ Similar provisions regarding access to medical treatment are also provided for in the [Minister of Interior Decree 81/1959](#) on the treatment and living conditions of prisoners, which also grants a number of basic material items to be given to each prisoner including: "a bed, a mattress, a bed sheet, a pillow, two pillow cases, one woolen blanket during summer or two during winter, a mat, a bowl, two plates, an aluminum spoon, and a comb for women".⁴²⁴

4.7.3. Pre-2011 prison conditions

339. Allegations regarding the standard of prison conditions in Egypt are not recent or unique to the current Egyptian administration. In [1993](#), Human Rights Watch issued its report on the state of Egyptian prison conditions, describing them as a part of "filthy system" with rampant overcrowding and sanitary conditions in blatant violation of international standards.⁴²⁵ Indeed, Human Rights Watch stated that as of 1993, it had appeared that conditions in Egypt's prison system had changed little [over the past half a century](#).⁴²⁶

⁴²³ [Law No. 396 of 1956, Concerning the Organization of Prisons and its Regulations Incorporating the Latest Amendments, 29 December 1956.](#)

⁴²⁴ Minister of Interior Decree 81/1959 on the treatment and living conditions of prisoners. See also, [Omar, A., Daily News Egypt, EIPR releases damning report on health conditions in Egyptian prisons, 17 June 2014.](#)

⁴²⁵ [Human Rights Watch, Prison Conditions in Egypt, January 1993.](#) See also [Human Rights Watch, Prison Conditions in Egypt, February 1995.](#)

⁴²⁶ [Human Rights Watch, Prison Conditions in Egypt, January 1993.](#)



340. The same comments regarding Egypt's prison conditions were repeated a decade later with Freedom House describing the conditions as [abysmal in 2005](#),⁴²⁷ followed by US State Department comments that prison conditions in Egypt remained [poor even as recently as 2011](#).⁴²⁸ In particular, the [US State Department](#) commented on the overcrowding and lack of medical care, proper hygiene, food, clean water, and proper ventilation as well as widespread tuberculosis in prisons.⁴²⁹

341. The state of prisons in Egypt has failed to meet international standards for over 60 years with the issue now inherited by current Egyptian authorities. It is in this context in which current efforts to reform and improve prison conditions in Egypt must be assessed.

*4.7.4. Ministry of Interior's Response to Allegations of
Overcrowding and the Provision of Sanitary and Medical Services*

342. In relation to the problem of overcrowding in Egypt's prisons and police stations, the Ministry of the Interior has taken a number of significant steps to try to alleviate this situation and improve conditions quickly. These steps have included expanding and developing police stations, police centres and units, checkpoints, and prisons. The entities under improvement or construction are set out in

⁴²⁷ [Freedom House, Countries at a crossroads, Egypt, 2005.](#)

⁴²⁸ [US State Department, Bureau Of Democracy Human Rights and Labor, 2010 Country Report Egypt, 8 April 2011.](#)

⁴²⁹ [US State Department, Bureau Of Democracy Human Rights and Labor, 2010 Country Report Egypt, 8 April 2011.](#)



detail in the MOI Report.⁴³⁰ The report also details the responsibilities of the 'securities chiefs' in relation to coordinating the suitability of land for the development of further prisons, and their responsibility for reviewing on a daily basis the number of detainees at police stations and central prisons in order to ensure that where necessary, transfers of prisoners are made to other police stations or prisons to lessen the impact of current levels of overcrowding.⁴³¹

343. The MOI Report also sets out a number of 'legal controls and care rules (health, social, humanitarian) to be applied to those detained at police stations, centres and central prisons.⁴³² A number of books and instructions on the rules of detention and transfer of those accused, convicted, and/or detained at the police stations and centres have been circulated which provide for the following:

- Ensuring that detention rooms at the stations and centres are all provided with water closets;
- Reviewing the standard and quality of the transfer vehicles to ensure proper ventilation for those being transported to prison or detention facilities;
- Allowing detainees to bring additional food into police stations and centres;

⁴³⁰ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p. 41.

⁴³¹ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.54.

⁴³² Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p. 54.



- Ensuring that the chiefs of police and centres are responsible for accepting complaints from prisoners, either orally or in writing, and documenting them in the complaint registry and subsequently reporting them to the general prosecution or the competent authorities as the case requires
- Ensuring that no-one is sent to a place of detention at either a police station or a centre without a written order signed by the competent authority and sealed with the State's symbol, and ensuring instant discharge after the determined period.
- Coordination with the Health Affairs Directorate at the governorate at the jurisdiction zone and the health inspector, to inspect the central detention rooms and prisons twice a week. The inspector shall monitor all health procedures that guarantee the safety and health of the detainees and prisons. The inspector also performs the medical check-up on the detainees and prisoners;
- Ensuring the performance of medical check-ups on new prisoners;
- Co-ordination with the health directorate which the police station or centre belongs to in order to ensure inspection of the detention rooms at the central prisons twice a week to clean the rooms and spray them in order to kill germs and eliminate disease.
- Ensuring adequate ventilation and provision of fans in the



central prison and adequate power supply;

- Ensuring that prisoners are allowed to attend the physical fitness training in the morning and afternoons.
- Ensuring that the social care needs of the prisoners are met. Ensuring the availability of an Imam at the prisons, police stations and centres.

344. The MOI Report demonstrates the extensive efforts taken by the Ministry to address the dire standards of prisons within Egypt which have been neglected for over 60 years.

4.7.5. Deaths in Custody

345. The number of deaths of Egyptians whilst in government custody has been subject to international criticism by various NGO's, including [Human Rights Watch](#), which, in 2014 expressed its concerns that many detainees appear to have died due to overcrowding and poor prison conditions whilst some appear to have died after being tortured or physically abused.⁴³³

346. The number of deaths of detainees whilst in custody was also subject to criticism by the NCHR which identified 9 specific complaints in respect of deaths in custody in 2015.⁴³⁴ The deaths appear to have been caused either by torture or beatings whilst in custody or as a

⁴³³ [HRW, Egypt: Rash of Deaths in Custody, 21 January 2015.](#)

⁴³⁴ NCHR, Eleventh Annual Report 2015-2016, July 2016. See also Daily News Egypt,



result of poor health or drug abuse.⁴³⁵

347. All 9 complaints have been acknowledged and addressed by either the Ministry of Defence and/or Ministry of Interior.⁴³⁶ This is also in line with criminal investigations and prosecutions being brought against police officers involved in torturing or beating detainees. For example, in July 2016, the [Qena Criminal Court](#) sentenced six policemen to up to seven years in prison over the death of a detainee in the southern city of Luxor as well as ordering the Ministry of Interior to award 1.5 million Egyptian pounds (\$170,000) in compensation to the victim's family.⁴³⁷

348. Efforts by the government to improve prison conditions and to investigate the number of deaths of detainees whilst in its custody are reflective of the government's commitment to seriously address this matter.

4.8. Torture in Prison

349. Significant allegations have been made in recent years about the use of [torture](#) in prison and detention facilities.⁴³⁸

⁴³⁵ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.65.

⁴³⁶ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.65.

⁴³⁷ [AP, Egyptian police sentenced over death of detainee, 12 July 2016.](#)

⁴³⁸ [NCHR, Submission Of the National Council for Human Rights To the Universal Periodic Review Mechanism. October 2014.](#) See also, [Cairo Institute for Human Rights, Torture in Egypt and Abu Ghreib, 11 July 2014.](#)



4.8.1. *International Law on Prohibition against Torture*

350. Egypt is a state party to the [ICCPR](#),⁴³⁹ The [Geneva Conventions and Additional Protocols](#),⁴⁴⁰ and the United Nations Convention Against Torture (UNCAT),⁴⁴¹ all of which prohibit the use of torture. Torture is also prohibited by Article 20 of the Cairo Declaration of Human Rights, which also states that torture is not “permitted to promulgate emergency laws that would provide executive authorities for such actions.” No exceptions or derogations are permitted.

4.8.2. *Domestic Law on Prohibition against Torture*

351. In addition to Egypt’s international obligations to eradicate torture, Article 52 of the Egyptian Constitution provides that “all forms of torture are a crime with no statute of limitations.”

352. The [penal code](#) of Egypt prohibits a public official from participating in torture.⁴⁴²

⁴³⁹ Article 7 of the ICCPR prohibits torture, cruel and inhuman or degrading treatment of punishment see [UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966](#).

⁴⁴⁰ See [Articles 3, 13, 14 and 17 of Geneva Convention III](#) see ICRC, [Geneva Convention. Relative To The Treatment Of Prisoners Of War Of 12 August 1949](#), 12 August 1949.

⁴⁴¹ UNCAT was incorporated into Egyptian law in July 1986 by Republican Decision No.54 of 1986.

⁴⁴² Article 126 of the Penal Code: “Any public official/civil servant or public employee who orders torturing a suspect or does the torturing personally, in order to force him/her to confess, shall be punished with hard labor, or imprisonment for a period of three to ten years. If the tortured victim dies, the penalty as prescribed for deliberate murder shall be inflicted”. See [Law No. 58 of 1937, Egyptian Penal Code](#).



4.8.3. Ministry of Interior's Response to Allegations of Torture in Prisons

353. The MOI Report states that the NCHR has alleged that “the torture of the accused persons in still continuous especially at the initial centres”.⁴⁴³ The Ministry acknowledges in its report that torture is “still very common despite all the procedures taken to mitigate it at the judicial and political levels.”⁴⁴⁴ The Report explains that the Ministry of the Interior has put into circulation numerous books and instructions to guarantee the proper treatments of detainees at the police stations and centres. This guidance includes the following:

- The Ministry of the Interior has “confirmed that no coercive procedures will be taken (such as maltreatment or torture) and considers them as punishable procedures in all its forms and whoever commits once of them will be questioned at the criminal and civilian levels.”⁴⁴⁵
- The Ministry confirms the necessity to receive all reports and complaints from citizens to the police stations and centres regarding incidents of torture or beating leading to death and legal procedures shall be taken in those cases;⁴⁴⁶

⁴⁴³ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.59.

⁴⁴⁴ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at pp.59-60.

⁴⁴⁵ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.60.

⁴⁴⁶ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.60.



- The Ministry confirms the necessity for all police staff to adhere to constitutional and legal principles when treating prisoners pending trial;⁴⁴⁷
- All police staff who commit “unrighteous acts” are referred to be referred to the general prosecution according to penal law and investigated;⁴⁴⁸
- The Ministry confirmed the instigation of further training courses for all officers who are newly joining those units working on criminal investigation.⁴⁴⁹
- The Ministry of Defence has “prepared a training programme to qualify the new graduates and the programme was expanded to include practical training in the field of public security at the criminal investigation and evidence institute.”⁴⁵⁰

354. The Ministry of Interior has clearly invested funds and resources in an attempt to eradicate and prevent the occurrence of further abuses within its prison system. This is part of the government’s wider efforts to address individual allegations of torture and mistreatment of prisoners as referred to by the NCHR.⁴⁵¹

⁴⁴⁷ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.60.

⁴⁴⁸ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.61.

⁴⁴⁹ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.62.

⁴⁵⁰ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.62.

⁴⁵¹ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016 at p.72.



4.9. Conclusion

355. Whilst the Egyptian penal system is subject to a number of allegations and criticism it is apparent from recent efforts that Egyptian authorities are attempting to address such issues in a responsible and efficient manner.

356. This is despite the fact that the magnitude of these issues have been in steady decline for the past 60 years and moreover, have come within sharp focus in light of the complex internal security situation currently threatening Egypt.

357. Whilst it may take some time before Egypt attains the required goals, its efforts thus far call for regional and international support.



Chapter V

FREEDOM OF EXPRESSION AND THE INDEPENDENCE OF THE MEDIA



5.1. Introduction

358. In its country report on the freedom of the press in 2016, Freedom House classified Egypt as '[Not Free](#)'.⁴⁵² In reaching this conclusion, the independent watchdog cited to the introduction of a new counter terrorism law in August 2015 as well the arrest and detention of journalists, including reporters from the Al-Jazeera channel.⁴⁵³

359. The protection of freedom of expression and the independence of the press is a fundamental tool in any democratic state, which allows for healthy political debate to be conducted. However, it is not an absolute protection and may be subject to restrictions when this is justified by security interests and public order, amongst other grounds. The European Court of Human Rights has regularly insisted that although freedom of expression is subject to exceptions, these must be construed strictly and the need for any restrictions must be established convincingly.⁴⁵⁴

360. This report provides a snapshot of the statutory and practical application of the right to freedom of expression and media independence within Egypt in 2016 and will focus on the historical and political context in which these rights are exercised.

⁴⁵² [Freedom House, Egypt Country Report, 2016](#). See also [Reporters Without Borders, World Press Freedom Index, 2016](#).

⁴⁵³ [Freedom House, Egypt Country Report, 2016](#).

⁴⁵⁴ ECtHR, (1976) 1 EHRR 737, *Handyside v. the United Kingdom*, Judgment, 7 December 1976; ECtHR, (1986) 8 EHRR 407, *Lingens v. Austria*, Judgment, 8 July 1986; ECtHR, (1994) 19 EHRR 1, *Jersild v. Denmark*, Judgment, 23 September 1994.



5.2. General Principles

5.2.1. Introduction

361. The General Assembly of the United Nations describes the right to freedom of expression as a fundamental human right which is the [“touchstone of all the freedom to which the United Nations is consecrated”](#).⁴⁵⁵

362. Given its pivotal status, the right to freedom of expression has been subsequently enshrined in a multitude of regional and international treaties, conventions and charters.

363. Whilst this report will not seek to set out the vast literature on freedom of expression and press independence in detail, it is important to summarily understand the scope of the protection as applicable to the state of Egypt.⁴⁵⁶

5.2.2. International and regional statutory provisions⁴⁵⁷

➤ Freedom of expression

364. As one of the founding members of the United Nations, Egypt was directly involved in the [drafting](#) of the Universal Declaration of Human Rights (UDHR) and represented on the 15-member Commission on Human Rights where the early drafts of the

⁴⁵⁵ [UN General Assembly, Resolution 59\(1\), Calling of an International Conference on Freedom of Information, 14 December 1946.](#)

⁴⁵⁶ The right to freedom of opinion and the right to freedom of association will not be dealt with in this report.

⁴⁵⁷ Only those conventions, which are of direct relevance to Egypt, are included in this report.



Declaration were developed.⁴⁵⁸ Egypt fully [promotes](#) all fundamental human rights as provided for within the UDHR,⁴⁵⁹ which includes the right to freedom of expression provided for in [article 19](#):

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁴⁶⁰

365. Egypt's recognition of universal rights, including the right to freedom of expression, is also echoed in article 19 of the International Covenant on Civil and Political Rights (ICCPR) to which Egypt became a state party in [1982](#)⁴⁶¹ and which provides in [paragraph 2](#):

Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.⁴⁶²

366. On an international plane, the right to freedom of expression is clearly a broad right, which is [equally applicable to all persons](#).

⁴⁵⁸ [UN Commission on Human Rights, Drafting of the Universal Declaration of Human Rights, Second Session, 2-10 December 1947; UN Commission on Human Rights, Drafting of the Universal Declaration of Human Rights, Third Session, 24 May-18 June 1948.](#) See also Schabas, W., Cambridge University Press, *The Universal Declaration of Human Rights: the travaux préparatoires*, 2015.

⁴⁵⁹ [State Information Service, Human Rights, 19 May 2013](#)

⁴⁶⁰ [UN General Assembly, Resolution 217A, Universal Declaration of Human Rights, 10 December 1948.](#)

⁴⁶¹ [UN OHCHR, Status of Ratification of 18 International Human Rights Treaties.](#)

⁴⁶² [UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966.](#)



[without distinction and across geographic frontiers](#).⁴⁶³ The substantive scope of this right also has no boundaries and includes the corresponding right to [access information](#).⁴⁶⁴ The importance of this protection is further epitomized by the UN Human Rights Committee (HRC) in its General Comment No. 34 in which it asserts that recognition of this protection stands as “[indispensable conditions for the full development of the person](#)”.⁴⁶⁵

367. The wide scope of this protection is also reflected within regional conventions. As part of its commitment to the protection of fundamental freedoms, Egypt also became a state party to the African Charter on Human and People’s Rights (African Charter) in [1984](#),⁴⁶⁶ thereby recognizing the protections provided for in [article 2](#) of the African Charter, namely:

Every individual shall have the right to receive information.

Every individual shall have the right to express and disseminate his opinions within the law.⁴⁶⁷

368. As a state party to the African Charter, Egypt is also guided by the [Declaration of Principles on Freedom of Expression in Africa](#)

⁴⁶³ [UN HRC, CCPR/C/GC/34, General comment No. 34 Article 19: Freedoms of opinion and expression, 11-29 July 2011, para. 11.](#)

⁴⁶⁴ [UN HRC, CCPR/C/GC/34, General comment No. 34 Article 19: Freedoms of opinion and expression, 11-29 July 2011, paras. 18-19.](#)

⁴⁶⁵ [UN HRC, CCPR/C/GC/34, General comment No. 34 Article 19: Freedoms of opinion and expression, 11-29 July 2011, para. 2.](#)

⁴⁶⁶ [African Commission on Human and Peoples’ Rights, Ratification Table: African Charter on Human and Peoples’ Rights.](#)

⁴⁶⁷ [Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 \(1982\), African \(Banjul\) Charter On Human And Peoples’ Rights, 27 June 1981.](#)



(African Declaration) that is part of the body of ‘soft law’ developed by the African Commission on Human and Peoples’ Rights.⁴⁶⁸ Although the African Declaration is not binding, it reflects African states’ [affirmation of the importance of freedom of expression as a human right and cornerstone of democracy](#).⁴⁶⁹ In particular, [article I](#) of the African Declaration provides:

Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.

Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.⁴⁷⁰

369. These values are also echoed within [article 32](#) of the Arab Charter on Human Rights (Arab Charter) which provides:⁴⁷¹

The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek,

⁴⁶⁸ [African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression in Africa, 32nd Session, 17 - 23 October, 2002.](#)

⁴⁶⁹ [African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression in Africa, 32nd Session, 17 - 23 October, 2002, preamble.](#)

⁴⁷⁰ [African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression in Africa, 32nd Session, 17 - 23 October, 2002, principle I.](#)

⁴⁷¹ [League of Arab States, 12 Int’l Hum. Rts. Rep. 893 \(2005\), Arab Charter on Human Rights, May 22, 2004.](#)



receive and impart information and ideas through any media, regardless of frontiers.

370. Although Egypt has yet to ratify the Arab Charter, it is a signatory party and the instrument has been relied upon by the [Egyptian judiciary](#).⁴⁷²

➤ *Independence of the media*

371. One of the core manifestations of the practice of the right to freedom of expression is the subsidiary principle of the independence of the media, whereby the various components of the media are able to exercise their right to freedom of expression within an institution which is otherwise subject to rules.

372. The right to press independence is considered a [pivotal constituent](#) of any democracy as it guarantees the full enjoyment of the right to obtain information, disseminate news, and impart opinions and thoughts.⁴⁷³

373. Although the independence of the media is not provided due weight in international conventions, it is widely characterized as a “press independent from [government, political or economic control](#) or from control of material and infrastructure essential for the production

⁴⁷² [Mattar, M., Harvard Human Rights Journal / Vol. 26, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, 2013.](#)

⁴⁷³ [Shaaf, M., Arab Media and Society, Media Law in Egypt and the Universal Principles of Freedom of Expression, 1 July 2015.](#)



and dissemination of newspaper, magazines and periodicals reflecting the widest possible range of opinion within the community”.⁴⁷⁴

374. The importance of the independence of the media has been recognized throughout the international community. For example, [General Comment No. 34](#) of the HRC provides:

[that] free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society [...] The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.⁴⁷⁵

375. African states have also highlighted the [significant role of the media in the region](#) as provided for in the preamble of the African Declaration:

Considering the key role of the media and other means of communication in ensuring full respect for freedom of expression, in promoting the free flow of information and ideas,

⁴⁷⁴ [UNESCO, Declaration of Windhoek, 3 May 1991.](#)

⁴⁷⁵ [UN HRC, CCPR/C/GC/34, General comment No. 34 Article 19: Freedoms of opinion and expression, 11-29 July 2011, para. 13.](#)



in assisting people to make informed decisions and in facilitating and strengthening democracy;

Aware of the particular importance of the broadcast media in Africa, given its capacity to reach a wide audience due to the comparatively low cost of receiving transmissions and its ability to overcome barriers of illiteracy.⁴⁷⁶

376. Having signed and ratified the core international and regional conventions, Egypt has pledged to take positive steps to protect the full scope of the right to freedom of expression and, as an auxiliary component, the independence of the media.

➤ *Islamic sharia*

377. As a state which [observes](#) Islamic sharia,⁴⁷⁷ it is important to set out Egypt's additional obligations as an Islamic country.

378. Although the right to freedom of expression is not explicitly provided for in the Quran, Islamic scholars have extensively set out a number of varied principals in which an [entire doctrine of speech](#) can be derived.⁴⁷⁸

⁴⁷⁶ [African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression in Africa, 32nd Session, 17 - 23 October, 2002, preamble.](#)

⁴⁷⁷ [Article 2 and preamble of Constitution of the Arab Republic of Egypt, 2014.](#)

⁴⁷⁸ [Jallow, A., J Mass Communicat Journalism 5:278, Freedom of Expression from the Islamic Perspective, 2015.](#)



379. In particular, it is considered that these principles, including the obligation to [discover the truth and uphold human dignity](#),⁴⁷⁹ can only be carried out with the [protection of freedom of expression](#).⁴⁸⁰

380. The Prophet Mohammed states:

The one who sees a wrongdoing, he should change it by force; if he could not, he should change it by word and if he could not, he should seek change by his heart and that is the least thing to be done.⁴⁸¹

381. As a result, it is considered that Islam not only respects freedom of expression but also demands it of society.⁴⁸²

382. Given the principles within the Quran [apply to all of mankind](#),⁴⁸³ it is considered that the right to freedom of expression is to be [exercised by all](#).⁴⁸⁴

383. As with the international and regional conventions, freedom of speech within Islam also encompasses the right to access information, with scholars drawing on various Hadiths, which demonstrate Prophet

⁴⁷⁹ [Siddiq, N., Review of Religions, Freedom of Conscience and Expression in Islam, June 2010.](#)

⁴⁸⁰ [Jallow, A., J Mass Communicat Journalism 5:278, Freedom of Expression from the Islamic Perspective, 2015.](#)

⁴⁸¹ [Dalloul, M., University of Westminster, Freedom of Expression, Comparing Freedom of Expression in the Statutory Law and the Sharia Law, 2014.](#)

⁴⁸² [Dalloul, M., University of Westminster, Freedom of Expression, Comparing Freedom of Expression in the Statutory Law and the Sharia Law, 2014.](#)

⁴⁸³ [Dalloul, M., University of Westminster, Freedom of Expression, Comparing Freedom of Expression in the Statutory Law and the Sharia Law, 2014.](#) See also Abdel Kader Ouda, Al Tashria Al Genai Al Islami Mokaranan be Al Kanoon Al Wadai (Islamic Criminal Legislation: A Comparison with Positive Law), General Part, Vol. 1, (Cairo, 1984).

⁴⁸⁴ [Jallow, A., J Mass Communicat Journalism 5:278, Freedom of Expression from the Islamic Perspective, 2015.](#)



Mohammed's insistence for mankind to [seek knowledge and forbidding](#) those with information from imparting it to those who seek it.⁴⁸⁵

384. Adhering with the above Islamic principles, member states of the Organisation of the Islamic Conference (OIC) signed the [Cairo Declaration on Human Rights in Islam](#) in 1990 in Egypt (Cairo Declaration).⁴⁸⁶ [Article 22](#) of the Cairo Declaration provides:⁴⁸⁷

Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.

Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah

385. Article 22 of the Cairo Declaration seeks to present a [mixture](#) of elements taken from traditional Islamic principles and 'Western' core values.⁴⁸⁸ Whilst not binding on Egypt, provisions within the OIC's Cairo Declaration seek to complement pre-existing universal principles

⁴⁸⁵ [Dalloul, M., University of Westminster, Freedom of Expression, Comparing Freedom of Expression in the Statutory Law and the Sharia Law, 2014.](#)

⁴⁸⁶ [Organisation of the Islamic Conference, A/CONF.157/PC/62/Add.18 \(1993\), Cairo Declaration on Human Rights in Islam, 5 August 1990.](#)

⁴⁸⁷ [Organisation of the Islamic Conference, A/CONF.157/PC/62/Add.18 \(1993\), Cairo Declaration on Human Rights in Islam, 5 August 1990, article 22.](#)

⁴⁸⁸ [Hashemi, N. and Qureshi, E., The Oxford Encyclopedia of the Islamic World. Oxford Islamic Studies Online, Human Rights, 2007.](#) See also Price, M. et al., Routledge, Routledge Handbook of Media Law, 2013.



and [accommodate the Islamic worldview and unique cultural context](#).⁴⁸⁹

➤ *Domestic law*

386. The Egyptian Supreme Constitutional Court has repeatedly upheld the importance of freedom of expression as an inherent component of a democratic regime and essential to the free formation of the public will.⁴⁹⁰

387. Following this direction, when adopting a new Constitution in 2014, Egypt sought to ensure that its international, regional and religious obligations are adhered to, with the preamble expressly affirming the principles of Islamic sharia as the principle source of legislation as well recognizing its [commitment and approval of the UDHR](#).⁴⁹¹ The Egyptian Supreme Constitutional Court clarified the idea behind the principles of Islamic sharia, confirming that “no provision set out in any law may contradict or deviate from the general principles and the immutable sources of the Islamic sharia as they are not open to interpretation and cannot be changed”.⁴⁹² In a later

⁴⁸⁹ [Organisation of the Islamic Conference, Final Communiqué Of The Eleventh Session Of The Islamic Summit Conference, 2008, para. 106.](#)

⁴⁹⁰ Cotran, E. and Yamani, M., IB Tauris Pub, *The Rule of Law in the Middle East and the Islamic World: Human Rights and the Judicial Process*, 2000, citing to Egyptian Supreme Constitutional Court, Case No.44, Judicial Year 7, 7/5/88.

⁴⁹¹ [Article 2 and preamble of Constitution of the Arab Republic of Egypt, 2014.](#)

⁴⁹² See for example, Egyptian Supreme Constitutional Court, Appeal No. 7, Judicial Year No. 8, 15 May 1993. See also Asmaa Ali v. President, Prime Minister, Egyptian Supreme Constitutional Court, Appeal No. 6, Constitutional Judicial Year No. 9, 18 March 1995; Atef Ibrahim v. Prime Minister, Minister of Justice, Egyptian Supreme Constitutional Court, Appeal No. 4, Constitutional Judicial Year No. 15, 6 July 1996. Whilst the Supreme Constitutional Court was interpreting article 2 of the Constitution of the Arab Republic of



decision, the Egyptian Supreme Administrative Court held the same view when it concluded that:

The principles of the Islamic shari'a are the major source of legislation. This imposes a limitation curtailing both the legislative and executive power, through which they are obliged that whatever laws or decrees they enact, no provision contained in them may contradict the provisions of Islamic law which are definite in terms of their immutability and their meaning. Because these principles [are] not accessible to [Ijtihad] as they represent the general principles and immutable sources of the Islamic shari'a which are not open to interpretation and cannot be changed [It] is [therefore] not permitted to deviate from them or to depart from their meaning. Whatever legislative enactment contravenes them must be declared null and void.⁴⁹³

388. The 2014 Constitution further sets out [Egypt's commitment](#) to the "agreements, covenants, and international conventions of human rights that were ratified by Egypt".⁴⁹⁴

389. With regard to the protection of freedom of expression, [article 65](#) of the 2014 Constitution expressly provides:

Freedom of thought and opinion is guaranteed.

Egypt 1971, the core provision is reflected in article 2 of the Constitution of the Arab Republic of Egypt 2014.

⁴⁹³ Egyptian Supreme Administrative Court, Appeal no. 5257/43, 28 December 1997.

⁴⁹⁴ [Article 93 of Constitution of the Arab Republic of Egypt, 2014.](#)



All individuals have the right to express their opinion through speech, writing imagery, or any other means of expression and publication⁴⁹⁵

390. Unlike the Constitution passed in 2012 under the governing authority of President Morsi, the 2014 Constitution no longer provides for the [prohibition of insulting others or Islamic prophets](#), instead adopting language used by international and regional treaties.⁴⁹⁶ As the supreme law of the land, the 2014 Constitution takes precedence over all other national legislation.

391. With regard to the protection of freedom of expression within the media, articles 70 and 71 provide for the freedom of the press from an [economic perspective](#),⁴⁹⁷ and the [prohibition of censorship](#).⁴⁹⁸ Article 72 goes on to provide for the [independence of the press](#):

The state shall ensure the independence of all press institutions and owned media outlets, in a way that ensures their neutrality and expressing all opinions, political and intellectual trends and

⁴⁹⁵ [Article 65 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁴⁹⁶ [Articles 31 and 44 of Constitution of the Arab Republic of Egypt, 2012](#) c/f [Constitution of the Arab Republic of Egypt, 2014.](#)

⁴⁹⁷ [Article 70 of Constitution of the Arab Republic of Egypt, 2014](#): “Freedom of press and printing, along with paper, visual, audio and digital distribution is guaranteed. Egyptians -- whether natural or legal persons, public or private -- have the right to own and issue newspapers and establish visual, audio and digital media outlets[...]”. For further information regarding ownership of press in Egypt see [Abdulla, R., Carnegie Endowment for International Peace, Egypt’s Media in the Midst of Revolution, 2014.](#)

⁴⁹⁸ [Constitution of the Arab Republic of Egypt, 2014, articles 71](#): “It is prohibited to censor, confiscate, suspend or shut down Egyptian newspapers and media outlets in any way[...]”.



social interests; and guarantees equality and equal opportunity in addressing public opinion.⁴⁹⁹

392. The importance of a free and independent press is further acknowledged in articles 1 and 3 of [Law No. 96 of 1996](#), recognizing the following rights of a journalist:

- a. Conduct their journalistic work independently;
- b. Access public information; and
- c. Not to disclose the identities of their sources.⁵⁰⁰

393. The new amendments in the 2014 Constitution found overwhelming support from both civil actors and the Egyptian public, with over [98% of Egyptian voters](#) in favour of a new constitution, despite only recently adopting a new constitution in 2012.⁵⁰¹

Statutory restrictions to the right to freedom of expression

5.3.1. Introduction

394. Whilst it is a principal pillar of any democratic state, the right to freedom of expression is not an absolute right. The media may be subject to regulation without this being considered a violation of the right to freedom of expression.

⁴⁹⁹ [Article 72 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁵⁰⁰ [Law No. 96 of 1996, Press Law.](#)

⁵⁰¹ [Sayah, R. and Tawfeeq, M., CNN, Egypt passes a new constitution, 18 January 2014.](#)



5.3.2. *International and regional statutory provisions*

➤ *General principles*

395. In providing for the right to freedom of expression, the ICCPR also recognises the potential for this right to be abused so as to undermine the rights of others. Article 19 (3) of the ICCPR expressly states that the right bears with it “[special duties and responsibilities](#)” and sets out specific conditions which allow for a restriction of this right:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.⁵⁰²

396. Similar restrictions are applicable to the right to freedom of expression within [article 2](#) of the Arab Charter which provides:

Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights

⁵⁰² [UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966](#). This report will only focus on the restrictions for the protection of national security or of public order.



and reputation of others or the protection of national security, public order and public health or morals.⁵⁰³

397. Unlike the ICCPR and Arab Charter, the African Charter does not contain an explicit limitation within the protection of freedom of expression. However, member states to the African Charter are guided by the [African Declaration](#), which provides:

Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society⁵⁰⁴

398. Further guidance is also sought in the [Johannesburg Principles on National Security, Freedom of Expression and Access to Information](#) (Johannesburg Principles).⁵⁰⁵ Although not binding, these principles are frequently cited, notably by the [UN Special Rapporteur](#),⁵⁰⁶ on the promotion and protection of freedom of opinion and expression, as a [progressive summary of standards](#) in this area.⁵⁰⁷ In particular, the Johannesburg Principles address the circumstances in

⁵⁰³ [League of Arab States, 12 Int'l Hum. Rts. Rep. 893 \(2005\), Arab Charter on Human Rights, May 22, 2004.](#)

⁵⁰⁴ [African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression in Africa, 32nd Session, 17 - 23 October, 2002, principle II\(2\).](#)

⁵⁰⁵ [International Centre Against Censorship et al., U.N. Doc. E/CN.4/1996/39, Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information, 1996.](#)

⁵⁰⁶ See for example, [UN HRC, A/HRC/17.27, Report of the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 16 May 2011.](#)

⁵⁰⁷ [Southern Africa Litigation Centre and Media Legal Defence Initiative, Freedom of Expression: Litigating Cases of Limitations to the Exercise of Freedom of Speech and Opinion, 2016.](#) See also [El Aswad, M., AFTE, Right to Information and National Security in Egypt, 2016.](#)



which the right to freedom of expression might [legitimately be limited](#), namely:

[As] established in international law, including for the protection of national security.

No restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government.⁵⁰⁸

399. Following up on the Johannesburg principles, the [Tshwane Principles](#) seek to provide further guidelines on the restriction of the right to information on national security grounds only where a government can demonstrate that (1) the restriction (a) is prescribed by law and (b) is necessary in a democratic society (c) to protect a legitimate national security interest; and (2) the law provides for adequate safeguards against abuse, including prompt, full, accessible, and effective scrutiny of the validity of the restriction by an independent oversight authority and full review by the courts.⁵⁰⁹

⁵⁰⁸ [International Centre Against Censorship et al., U.N. Doc. E/CN.4/1996/39, Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1996.](#)

⁵⁰⁹ [Open Society Foundations et al., The Global Principles on National Security and the Right to Information \(Tshwane Principles\), 12 June 2013, principle 13.](#)



➤ *“Prescribed by law” and “necessary”*

400. In its interpretation of paragraph 3 of article 19 of the ICCPR, the HRC sought to provide clarity on the [necessity test](#), further stating:

National laws and regulations shall also be crafted with “sufficient precision” to enable all individuals to clearly comprehend his/her rights and obligations and regulate their conduct accordingly. Moreover, state parties to the covenant shall precisely demonstrate the causal link between legitimate restrictions to the practice of “freedom of opinion and expression,” and the threat or the public interest they vindicate.⁵¹⁰

401. The African Declaration also forms a link between the acceptability of limitations to the right to freedom of expression with the potential harm that expression may cause. [Principle XIII](#) explicitly calls on African states to ensure that criminal restrictions “serve a legitimate interest in a democratic society,” and states that “[f]reedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression”.⁵¹¹ Similar language is echoed in [principle 3](#) of the Tshwane Principles,⁵¹² as well as [principle 1.3](#) of the Johannesburg

⁵¹⁰ [UN HRC, CCPR/C/GC/34, General comment No. 34 Article 19: Freedoms of opinion and expression, 11-29 July 2011, para. 30.](#)

⁵¹¹ [African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression in Africa, 32nd Session, 17 - 23 October, 2002, principle XIII.](#)

⁵¹² [Open Society Foundations et al., The Global Principles on National Security and the Right to Information \(Tshwane Principles\), 12 June 2013, principle 3.](#)



Principles which, in relation to the exception of national security, provides:

To establish that a restriction on freedom of expression or information is necessary to protect a legitimate national security interest, a government must demonstrate that:

- (a) the expression or information at issue poses a serious threat to a legitimate national security interest;
- (b) the restriction imposed is the least restrictive means possible for protecting that interest; and
- (c) the restriction is compatible with democratic principles⁵¹³

402. This interpretation is also consistent with that of the European Court of Human Rights' (ECtHR) position on the necessity test, finding that when considering whether interference of freedom of expression was justifiably restricted, the court must determine: (i) whether the interference complained of corresponded to a pressing social need; (ii) whether it was proportionate to the legitimate aim pursued; and (iii) whether the reasons given by the national authorities to justify it are relevant and sufficient.⁵¹⁴

⁵¹³ [International Centre Against Censorship et al., U.N. Doc. E/CN.4/1996/39, Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1996, principle 1.3.](#)

⁵¹⁴ ECtHR, [1979] ECHR 1, *Sunday Times v. the United Kingdom* (No. 1), Judgment, 26 April 1979.



➤ *National security and public order*

403. As set out above, international and regional instruments provide for an exception to the right of freedom of expression when necessary to protect national security or public order.

404. A definition for the meaning of ‘national security’ has eluded many efforts by states and civil actors. More recent efforts by those involved in the Tshwane Principles, including the UN Special Rapporteur on Freedom of Opinion and Expression, recognised the fact that the term ‘national security’ had to be [defined within national law](#) in light of the variability of social, political and economic determinants in every country.⁵¹⁵ In light of this some states have sought to define the term within their own constitutions.⁵¹⁶

405. In turn, international and regional definitions of ‘national security’ focus on the legitimacy component of this restriction. For example, the Tshwane Principles [define a legitimate national security interest](#) as “an interest the genuine purpose and primary impact of which is to protect national security, consistent with international and national law” and whose real purpose or primary impact is to “protect an interest unrelated to national security, such as protection of government or officials from embarrassment or exposure of wrongdoing; concealment of information about human rights

⁵¹⁵ [Open Society Foundations et al., The Global Principles on National Security and the Right to Information \(Tshwane Principles\), 12 June 2013.](#)

⁵¹⁶ See for example [The Constitution of Kenya, 2010, article 238\(1\)](#): “National security is the protection against internal and external threats to Kenya’s territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests”.



violations, any other violation of law, or the functioning of public institutions; strengthening or perpetuating a particular political interest, party, or ideology; or suppression of lawful protests”.⁵¹⁷

406. A similar definition is found within the [Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights](#) (Siracusa Principles), as approved by the [UN Commission on Human Rights](#),⁵¹⁸ which defines a legitimate national security interest as one that aims “to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.”⁵¹⁹ Subsequent articles of the Siracusa Principles indicate that a national security limitation “cannot be invoked as a reason for imposing limitation to [prevent merely local or relatively isolated](#) threats to law and order”.⁵²⁰

407. The legitimacy of a national security interest also arises in [article 2 of the Johannesburg Principles](#) which provides that the “genuine purpose and demonstrable effect is to protect a country’s existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external

⁵¹⁷ [Open Society Foundations et al., The Global Principles on National Security and the Right to Information \(Tshwane Principles\), 12 June 2013.](#)

⁵¹⁸ [UN Commission on Human Rights, E/CN.4/1985/4, Status of the International Covenants on Human Rights, 24 August 1984.](#)

⁵¹⁹ [UNESCO, U.N. Doc. E/CN.4/1985/4, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1985.](#)

⁵²⁰ [UNESCO, U.N. Doc. E/CN.4/1985/4, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1985.](#)



source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government”.⁵²¹

408. In turn, public order is considered a broader concept than national security and “may be defined as the [sum of rules](#) which ensure the peaceful and effective functioning of society”.⁵²² As a result, in accordance with the ICCPR, [common ‘public order’ limitations](#) include prohibitions on speech which may incite crime, violence, or mass panic.⁵²³

409. The incitement of crime, violence or mass panic that threatens national security or public order may occur with the dissemination of false information and would therefore warrant intervention in the protection of freedom of expression.⁵²⁴

410. As a result, a number of states have adopted “false news provisions”, which place a [duty on journalists](#) to report truthfully or to avoid one-sided, distorted or alarmist reports.⁵²⁵ This includes a

⁵²¹ [International Centre Against Censorship et al., U.N. Doc. E/CN.4/1996/39, Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1996](#). See principle 2 (b): “a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.”

⁵²² [UNESCO, U.N. Doc. E/CN.4/1985/4, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1985](#).

⁵²³ [UN HRC, CCPR/C/GC/34, General comment No. 34 Article 19: Freedoms of opinion and expression, 11-29 July 2011, para. 31](#).

⁵²⁴ ECtHR, [2002] ECHR 55, *Columbani and others v. France*, Judgment, 25 June 2002.

⁵²⁵ [Article 19, False News](#).



number of states within the [region](#) including, *inter alia*, Saudi Arabia, Bahrain, UAE and Oman.⁵²⁶

411. In doing so, states echo the principles of the [Chapultepec Declaration](#), as promulgated by the Inter-American Commission on Human Rights Special Rapporteurship for Freedom of Expression, which affirms that the “credibility of the press is linked to its commitment to the truth and to the pursuit of accuracy, fairness and objectivity”.⁵²⁷ Similarly, the ECtHR has repeatedly highlighted the fact that the protection of freedom of expression for journalists remains “subject to the proviso that they are acting in good faith to provide accurate and reliable information in accordance with the ethics of journalism”,⁵²⁸ and that journalists are responsible to report the truth in a balanced way.⁵²⁹

➤ *Propaganda for war and hate speech*

412. In addition to the restrictions to the protection of freedom of expression provided for in paragraph 3 of article 19 of the ICCPR, states have affirmed the legitimacy of restricting any advocacy or propaganda for war or for social/religious hatred that could incite violence and cause severe social disruptions.

⁵²⁶ [Duffy, M., Berkeley Journal of Middle Eastern and Islamic Law, Arab Media Regulations: Identifying Restraints on Freedom of the Press in the Laws of Six Arabian Peninsula Countries, 2014.](#)

⁵²⁷ [IACHR, Chapultepec Declaration, 11 March 1994.](#)

⁵²⁸ ECtHR, (1996) 22 EHRR 123, Goodwin v. the United Kingdom, Judgment, 27 March 1996; see also ECtHR, [1999] ECHR 1, Fressoz and Roire v. France, Judgment, 21 January 1999.

⁵²⁹ ECtHR, [2002] ECHR 55, Columbani and others v. France, Judgment, 25 June 2002.



413. Recognising the destructive nature of certain types of expression, [article 20 of the ICCPR](#) provides mandatory language for states to outlaw propaganda for war and vilification of person on national, racial or religious grounds.⁵³⁰

414. The Human Rights Committee's [General Comment No. 11](#) further provides that the prohibition under article 20 of the ICCPR "extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations [and] while paragraph 2 any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned".⁵³¹

415. States are further guided by [principle 3 of the Johannesburg Principles](#) which provides that during a public emergency, which threatens the life of the country, a state may "impose restrictions on freedom of expression and information but only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government's other obligations under international law".⁵³²

⁵³⁰ [UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966](#). Article 20 ICCPR provides: "Any propaganda for war shall be prohibited by law; Any advocacy of national, racial or religious hatred constitutes incitement to discrimination, hostility or violence shall be prohibited by law".

⁵³¹ [UN HRC, CCPR, General comment No. 11 Article 20: Prohibition of propaganda for war and inciting national, racial or religious hatred, 1983](#).

⁵³² [International Centre Against Censorship et al., U.N. Doc. E/CN.4/1996/39, Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1996, principle 3](#).



416. The necessity for the restrictions provided for in article 20 ICCPR are apparent – with modern history [abundant](#) with examples of the fuelling of aggression and incitement of racism and intolerance giving rise to military hostilities, genocide and crimes against humanity.⁵³³ Propaganda for war and calls for discrimination and violence based on nationality, race or beliefs result in abuses of core human rights stipulated in the ICCPR; as well as being an assault on the “inherent dignity” and “equal and inalienable rights of all members of the human family” as the “foundation of freedom, justice and peace in the world”, as provided in the [ICCPR’s preamble](#).⁵³⁴

417. Although there remains an apparent conflict between article 20 ICCPR and the absolutist guarantees under article 19 ICCPR, the UN HRC has determined that both articles remain [compatible](#) with one another. It does so on the basis that the acts which may be subject to restriction in article 19 (3) of the ICCPR are distinguishable from the acts addressed in article 20 of the ICCPR as the latter requires a state to take positive action to legally prohibit such acts.⁵³⁵

418. A restriction on propaganda or advocacy which threatens the peace does not therefore necessarily equate to a derogation of the protection of freedom of expression but rather is part of a state’s

⁵³³ [Richter, A., International Journal of Communication 9\(2015\), Legal Response to Propaganda Broadcasts Related to Crisis in and Around Ukraine, 2014–2015, 2015.](#)

⁵³⁴ [UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966.](#)

⁵³⁵ [UN HRC, CCPR/C/GC/34, General comment No. 34 Article 19: Freedoms of opinion and expression, 11-29 July 2011, paras 50-52.](#)



obligation to have legal prohibitions of certain acts in order to protect international peace and security.⁵³⁶

➤ *Islamic sharia*

419. In Islamic sharia, the overriding restriction to freedom of expression is where it may result in [harming the cause of the truth](#),⁵³⁷ or posing a threat to society's normal order otherwise known as [seditious fitnah](#).⁵³⁸ Seditious fitnah has been described as applying to words and acts which [incite dissension and controversy](#) which cloud the atmosphere of understanding and confounds the thoughts and minds of people that they can no longer distinguish right from wrong and therefore unable to advocate the truth.⁵³⁹

420. The OIC has further attempted to characterize the restrictions to freedom of expression within the sharia. For example, the [Council of the International Fiqh Academy](#), an OIC initiative, has declared that the most important sharia limitations on freedom of expression include:

⁵³⁶ This is throwback to the [League of Nations' International Convention Concerning the Use of Broadcasting in the Cause of Peace, 23 September 1936](#) which restricted expression which "constituted a threat to international peace and security". See also early resolutions of the UN General Assembly ([110 \(II\)](#), [290 \(IV\)](#), [380 \(V\)](#)) that addressed the issue of dangerous propaganda and affirmed condemnation of "propaganda against peace. See also ECtHR, (2005) 40 EHRR, *Norwood v United Kingdom*, Judgment, 16 November 2004.

⁵³⁷ [Siddiq, N., Review of Religions, Freedom of Conscience and Expression in Islam, June 2010.](#)

⁵³⁸ [Kamali, M., American Journal of Islamic Social Science, Freedom of Expression in Islam: An analysis of Fitnah, 1993.](#)

⁵³⁹ [Kamali, M., American Journal of Islamic Social Science, Freedom of Expression in Islam: An analysis of Fitnah, 1993.](#)



- a. Freedom of expression must not lead to a disruption of public order or strife between Muslims;
- b. Freedom of expression must not contain an attack on religion, its symbols, its rulings and sanctities; and
- c. The purpose of freedom of expression must be aligned to God's will and serve the public and private interests of Muslims.⁵⁴⁰

421. These categories reflect the position of the OIC adopted in [article 22 of the Cairo Declaration](#) which provides:

[...] Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith.

It is not permitted to arouse nationalistic or doctrinal hatred or to do anything that may be an incitement to any form or racial discrimination.⁵⁴¹

➤ *Domestic law*

422. The 2014 Egyptian Constitution also recognises the necessity to restrict freedom of expression during specific and prescribed circumstances. Emulating the ICCPR provisions, as well as the various

⁵⁴⁰ [Abdo G. and Lyons, J., The National Interest, Freedom of Speech with Islamic Characteristics, 17 March 2015.](#)

⁵⁴¹ [Organisation of the Islamic Conference, A/CONF.157/PC/62/Add.18 \(1993\), Cairo Declaration on Human Rights in Islam, 5 August 1990, article 22.](#)



soft law guidelines mentioned above, [article 71](#) of the constitution prohibits the “incitement to violence or discrimination amongst citizens, or impugning the honour of individuals”.⁵⁴² This appears to fall within the two aims prescribed within articles 19(3) of the ICCPR.

423. With regard to press independence, article 71 of the 2014 Egyptian Constitution also permits for restriction of freedom of expression in a limited manner “[in time of war or general mobilization](#)”,⁵⁴³ in accordance with article 20 of the ICCPR.

424. Contrary to the guidance of the Tshwane Principles, the Egyptian Constitution does not set out a definition for ‘national security’ although the term does appear within the [Constitution](#).⁵⁴⁴ However, [Law No. 10 of 2003](#), which concerns the issuance of the law organising communication, defines national security as “all that concerns affairs of the republican presidency, the armed forces, military production, ministry of interior, general security, national security agency, administrative control and related bodies”.⁵⁴⁵ Therefore some guidance may be sought from this definition when assessing interference into protection of freedom of expression on grounds of national security.

425. Whilst the 2014 Constitution removes a number of restrictions to the right of freedom of expression, which had previously been included in the 1971 and/or 2012 Constitution, the equivalent

⁵⁴² [Article 71 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁵⁴³ [Article 71 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁵⁴⁴ [Article 86 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁵⁴⁵ [Law No. 10 of 2003, Egypt Telecommunication Regulation Law.](#)



amendments to pre-existing press laws or the penal code have yet to take place. For example, the 1971 and 2012 Constitutions provided for religious-based restrictions to freedom of expression which was subsequently removed in the 2012 Constitution but remains penalized under [article 98](#) of the Egyptian Penal Code.⁵⁴⁶ Although pre-existing legislative codes should be updated to reflect amendments to the 2014 Constitution, it is noted that the Constitution remains supreme law within the Egyptian legal order and breaches of such are ultimately safeguarded by the [Supreme Constitutional Court](#).⁵⁴⁷

5.3. Restrictions to right of freedom of expression and media independence in Egypt

5.4.1. Introduction

426. In light of legal and cultural differences between states, human rights protections are often interpreted in different ways. To accommodate such differences, international and regional courts such as the European Court of Human Rights, afford states a degree of appreciation when considering whether a state has breached a fundamental right.⁵⁴⁸

427. The degree of appreciation is dependent on the category of case at hand and the circumstances at play. In particular, states are afforded

⁵⁴⁶ [Article 98 of Law No. 58 of 1937, Penal Code.](#)

⁵⁴⁷ For competency of the [Egyptian Supreme Constitutional Court](#) see [Ministry of Justice, Supreme Constitutional Court, Overview.](#)

⁵⁴⁸ See for example ECtHR, (1976) 1 EHRR 737, Handyside Case v The United Kingdom, Judgment, 7 December 1976.



a [wide margin of appreciation](#) in cases which concern public emergencies, national security interests, or public morals.⁵⁴⁹

428. The Human Rights Committee has also recognised the margin of discretion, akin to the margin of appreciation afforded to states parties to the ECHR, when assessing alleged violations of the ICCPR.⁵⁵⁰ Although the Human Rights Committee has sought to move away from the terminology of this doctrine in its General Comment No. 34,⁵⁵¹ the substance of it remains within the Human Rights Committee's practice and communications.⁵⁵²

429. More recently, Egypt has faced criticism over the way in which it has exercised this discretion when limiting the protection of freedom of expression. In particular, focus has been concentrated upon the introduction of a counter-terrorism bill in August 2015 and the arrest and conviction of, amongst others, three Al-Jazeera journalists which concluded in their pardon on 23 September 2015.

430. Both topics will be discussed in this section with a view to analyzing the legitimacy of Egypt's restriction on the right to freedom of expression and the independence of its media.

⁵⁴⁹ See for example, ECtHR, (1976) 1 EHRR 737, *Handyside Case v The United Kingdom*, Judgment, 7 December 1976. For further discussion on this doctrine see [Council of Europe, The Margin of Appreciation](#).

⁵⁵⁰ HRC, *Hertzberg et al v Finland* (61/79).

⁵⁵¹ [UN HRC, CCPR/C/GC/34, General comment No. 34 Article 19: Freedoms of opinion and expression, 11-29 July 2011, para. 36.](#)

⁵⁵² Legg, A., OUP, *The Margin of Appreciation in International Human Rights Law*, 2012.



5.4.2. Counter-terrorism law

431. The nature of the threat to national security has undergone significant changes following the attacks in the United States on 11 September 2001, with a significant shift in focus on the [development of security legislation to counter terrorism](#).⁵⁵³ In particular, the [UN Security Council](#) has repeatedly required member states to take a number of steps to combat terrorism and condemned “incitement to terrorist acts” and “attempts at the justification or glorification (apologie) of terrorist acts that may incite further terrorist acts”.⁵⁵⁴
432. In line with its international responsibilities, Egypt published [Law No. 94 of 2015](#) for Confronting Terrorism in the official gazette on 15 August 2015.⁵⁵⁵ This new law seeks to provide [definitions and further clarity](#) to the meaning of “terrorist group”, “terrorist” and “terrorist crime” aimed at strengthening the country’s efforts in combating a rising terror insurgency.⁵⁵⁶
433. Following its adoption, [critics](#) argue that the new counter-terrorist law is overly broad⁵⁵⁷ and employs overly harsh or [excessive measures](#).⁵⁵⁸ In particular, there are concerns that Law No. 94 of 2015 could have a significant [detrimental impact](#) on human rights and

⁵⁵³ [Southern Africa Litigation Centre and Media Legal Defence Initiative, Freedom of Expression: Litigating Cases of Limitations to the Exercise of Freedom of Speech and Opinion, 2016.](#)

⁵⁵⁴ [UN Security Council, S/RES/1624\(2005\), Resolution 1624 of 2005, preamble.](#)

⁵⁵⁵ [Law No. 94 of 2015, Anti-Terrorism Law.](#)

⁵⁵⁶ [Law No. 94 of 2015, Anti-Terrorism Law.](#)

⁵⁵⁷ See for example, [Human Rights Watch, Egypt: Counterterrorism Law Erodes Basic Rights, 19 August 2015.](#)

⁵⁵⁸ [BBC News, Egypt’s al-Sisi imposes strict anti-terrorism laws, 17 August 2015.](#)



fundamental freedoms,⁵⁵⁹ with particular criticism for the [potential threat](#) to the right of freedom of expression and the independence of the media.⁵⁶⁰ For example [article 35](#) of Law No. 94 of 2015 provides:

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 Defense shall be punishable by a fine of no less than 200,000 Egyptian pounds and no more than 500,000 Egyptian pounds, without prejudice to the disciplinary penalties prescribed...⁵⁶¹

434. Critics have raised the potential for this provision to be [abused](#) in a manner so as to repress political dissent and prevent the media from exercising its independence, all of which is contrary to the protection of freedom of expression.⁵⁶²

435. However, in accordance with the jurisprudence of the ECtHR, when considering the legitimacy of a state's interference of this protection, the inherent difficulties of combating terrorism, along with the political tension caused by terrorist acts in the region must be taken into account.⁵⁶³

436. Due consideration to the sensitive climate in which article 35 was introduced must therefore be set out, with particular focus on the

⁵⁵⁹ [Mada Masr, HRW: Egypt's counterterrorism law erodes basic rights, 19 August 2015.](#)

⁵⁶⁰ [Freedom House, Egypt Country Report, 2016.](#)

⁵⁶¹ [Article 35 of Law No. 94 of 2015, Anti-Terrorism Law.](#)

⁵⁶² See for example, [Human Rights Watch, Egypt: Counterterrorism Law Erodes Basic Rights, 19 August 2015.](#)

⁵⁶³ ECtHR, (1999) 31 EHRR 10, Başkaya and Okçuoğlu v Turkey, Judgement, 8 July 1999.



significant threat of terrorism faced within Egypt and around the region. Of note, the growing strength of ISIS within Egypt and neighbouring Libya has been widely reported, with ISIS Sinai Peninsula continuing its terrorist campaign throughout 2015 and 2016 and the emergence of [Islamic State-Sinai Peninsula](#) in mid-2015.⁵⁶⁴

437. Law No. 94 of 2015 itself was officially published forty-seven days following the assassination of [Prosecutor General Hisham Barakat](#) who was assassinated by a car bomb on 29 June 2015,⁵⁶⁵ and subsequently linked to the [Muslim Brotherhood](#).⁵⁶⁶ Two days following this assassination, Egypt woke up to reports of a terrorist attack on [military outposts in Sinai killing](#) at least 17 soldiers and over 200 militants on 1 July 2015.⁵⁶⁷ This was followed by, *inter alia*, the bombing of the [Italian Consulate](#) in Cairo on 11 July 2015,⁵⁶⁸ the [beheading of a Croatian national](#) in Cairo on 22 July 2015,⁵⁶⁹ and the crash of a [Metrojet airliner](#) which killed all 224 on board the flight travelling on 31 October 2015.⁵⁷⁰ With each incident, the [level of sophistication](#) of the attack also increased.⁵⁷¹

⁵⁶⁴ [US State Department, Bureau Of Counterterrorism And Countering Violent Extremism, Country Reports on Terrorism – Middle East and North Africa, 2015](#). See also [9 Bedford Row, The Egyptian Experience of the Muslim Brotherhood in Power 2012-2013, 3 June 2015](#).

⁵⁶⁵ [Kingsley, P., The Guardian, Egypt's chief prosecutor Hisham Barakat killed by Cairo bomb, 29 June 2015](#).

⁵⁶⁶ [The Guardian, Muslim Brotherhood conspired with Hamas to kill prosecutor, Egypt claims, 6 March 2016](#).

⁵⁶⁷ [BBC News, Egypt's Sinai rocked by wave of deadly attacks, 1 July 2015](#).

⁵⁶⁸ [BBC News, Islamic State 'behind blast' at Italian consulate in Cairo, 11 July 2015](#).

⁵⁶⁹ [Loveluck, L., The Telegraph, Isil claim to have beheaded Croatian hostage in Egypt, 12 August 2015](#).

⁵⁷⁰ [Topham, G. et al., The Guardian, Egypt plane crash: Russia says jet was bombed in terror attack, 17 November 2015](#).

⁵⁷¹ [The Tahrir Institute for Middle East Policy, Egypt's Rising Security Threat, 2015](#).



438. These incidents clearly demonstrate the [significant increase](#) in terrorist activity, threats and security challenges in Egypt, with hundreds of civilians and scores of security forces killed by terrorists.⁵⁷² In particular, the dissemination of false reports in similar conflicts has previously been linked to an increase in attacks on security forces.⁵⁷³

439. Article 35 of Law 94 of 2015 is therefore intended to target terrorist activity by preventing the dissemination of false reporting on acts of terrorism within Egypt and counter-terrorism operations conducted by the state. Similar provisions exist in a number of states within the region, including [Bahrain](#),⁵⁷⁴ [Jordan](#),⁵⁷⁵ [Qatar](#),⁵⁷⁶ and [Turkey](#).⁵⁷⁷

440. The introduction of the counter-terrorism law also found support amongst the Egyptian public who, given the very real existence of the terror threat in Egypt, and its impact on ordinary civilians, viewed the introduction of Law No. 94 of 2015 as a [necessary precaution](#), with those [supporting the use of exceptional measures](#) against perpetrators of terrorism.⁵⁷⁸ Amongst the supporters were

⁵⁷² [US State Department, Bureau Of Counterterrorism And Countering Violent Extremism, Country Reports on Terrorism – Middle East and North Africa, 2015.](#)

⁵⁷³ See for example, Theohary, C., Diane Publishing, Terrorist Use of the Internet: Information Operations in Cyberspace, 2011 with regard to false reports disseminated by the Office of Strategic Influence and impact on attacks on US forces within Iraq and the region.

⁵⁷⁴ [World Audit, Press Freedom.](#)

⁵⁷⁵ [Stern, J., Committee to Protect Journalists, Mission Journal: Rise in journalist arrests tarnishes Jordan's image as reformist, 22 March 2016.](#)

⁵⁷⁶ [Freedom House, Qatar Country Report, 2016.](#) See also for example, [Strickland, A., Global Journalist, Cybercrime Law Threatens Press In Qatar, 24 September 2014.](#)

⁵⁷⁷ [Hurriyet Daily News, Two journalists arrested for story on intelligence trucks bound for Syria, 26 November 2015.](#)

⁵⁷⁸ [Farid, S., Atlantic Council, Egypt's New Anti-Terror Law: An In-Depth Reading, 10 July 2015.](#)



journalists defending article 35 of Law No. 94 of 2015, who saw Egypt as being “[in a state of war](#)” and that article 35 “imposes exceptional measures to confront the enemy”.⁵⁷⁹

441. For others it became clear that article 35 demonstrated the Egyptian authorities’ intention for the [media to play a role in supporting](#) the government in its war against terrorism and that, in particular, any counter-information was potentially a threat to national security and stability.⁵⁸⁰

442. The government itself demonstrated a genuine concern with regard to attempts to undermine a unified approach to counter-terrorism with President Sisi taking an active involvement in [approving](#) Law No. 94 of 2015,⁵⁸¹ and holding discussions with various officials, including the [President of the UN General Assembly](#) regarding the use of the internet by terrorists.⁵⁸² Recognising such efforts, the UN Security Council unanimously elected Egypt to lead the [UN Counterterrorism Committee](#).⁵⁸³

443. Across the region, threats to national unity have in themselves been categorized as a form of terrorism, including in [Qatar](#),⁵⁸⁴

⁵⁷⁹ [Farid, S., Atlantic Council, Egypt’s New Anti-Terror Law: An In-Depth Reading, 10 July 2015.](#)

⁵⁸⁰ [NPR, Journalist: Egypt’s Anti-Terror Law Restricts Freedom Of Expression, 4 September 2015.](#)

⁵⁸¹ [Middle East Eye, Sisi calls for crackdown following killing of Egypt’s top prosecutor, 29 June 2015.](#)

⁵⁸² [Aswat Masriya, Kutesa after meeting Al-Sisi: Terrorism file to put on UN Meeting in September, 17 March 2015.](#)

⁵⁸³ [Aftandilian, G., The Arab Weekly, International Support for Egypt’s War on Terror, 18 December 2015.](#)

⁵⁸⁴ [Qatari Law No \(3\) on Combating Terrorism, 16 February 2004.](#)



[Bahrain](#)⁵⁸⁵ and South Africa,⁵⁸⁶ and are considered to threaten national security and public disorder. Steps to prohibit attempts to undermine national unity are not intended to deprive freedom of expression, but rather to punish abuse of that freedom.⁵⁸⁷ Terrorist groups including ISIS have actively relied on [divisions](#) within a country to promote their own agenda.⁵⁸⁸

444. The impact of any false reporting with regard to efforts to counter-terrorism within Egypt is therefore both very real and has the potential to cause devastating results. Indeed, recent studies have identified [clear links](#) between the reporting of genuine terrorist attacks and an increase in subsequent follow up terrorist acts, with experts warning media outlets of providing a free media platform for terrorists.⁵⁸⁹ It is reasonable to conclude therefore, that any false reporting on security issues which concern a state may have a similar, if not greater, impact on the commission of terrorist attacks.

445. In doing so, necessary safeguards must be in place with regard to the introduction of any 'false news' provisions. In this instance, article 35 of Law No. 94 of 2015 seeks only to prevent intentional acts of misreporting which connotes a degree of knowingness and repetition and an absence of verifying the truth of the contents.

⁵⁸⁵ [Bahrain Law No. 58 Of 2006 With Respect To Protection Of The Community Against Terrorist Acts, 2006.](#)

⁵⁸⁶ Roach, K., Cambridge University Press, Comparative Counter-Terrorism Law, 2015.

⁵⁸⁷ See also ECtHR, 1 EHRR 647, Engel and others v. the Netherlands, Judgment, 8 June 1976.

⁵⁸⁸ [Ignatius, D., The Atlantic, How ISIS spread in the Middle East and how to stop it, 29 October 2015.](#)

⁵⁸⁹ [Doward, J., The Guardian, Media coverage of terrorism 'leads to further violence', 1 August 2015.](#)



446. Furthermore, in the event that a journalist or media outlet is considered to have intentionally fallen foul of article 35 of Law No. 94 of 2015, the prescribed penalty is in accordance with [article 71](#) of the 2014 Constitution which prohibits custodial sentences for crimes committed by way of publication or the public nature thereof.⁵⁹⁰ The non-custodial penalties also appear to be a proportionate response in accordance with comments of the UN Special Rapporteur.⁵⁹¹

447. These legislative safeguards are intended to strike a balance between the protection of the freedom of expression and independence of the press against the very real use of the media to promote terrorism.

5.4.3. Al-Jazeera trial

448. Concerns for the increase in terrorist activity in Egypt is not limited to attacks by ISIS. In February 2015, [Law No. 8 of 2015](#) was officially issued,⁵⁹² providing a definition of terrorist organisations which led to the ban of seventeen groups, including the Muslim Brotherhood.

449. This designation followed the [Muslim Brotherhood's](#) efforts to destabilise Egypt, its ties with other brutal terrorist groups, and its

⁵⁹⁰ [Article 71 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁵⁹¹ "Imprisoning individuals for seeking, receiving and imparting information and ideas can rarely be justified as a proportionate measure to achieve one of the legitimate aims under article 19, paragraph 3, of the International Covenant on Civil and Political Rights" see [UN HRC, A/HRC/17.27, Report of the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 16 May 2011.](#)

⁵⁹² [Law No. 8 of 2015, Terrorism Entities and Lists.](#)



direct link to terrorist attacks across Egypt.⁵⁹³ More recently, members of the Muslim Brotherhood have confirmed that they were [armed](#) with, *inter alia*, kalashnikovs, grenades and molotov cocktails during the so-called “Rabaa massacre” despite the organisation attempting to depict events of that day as a clampdown on its peaceful supporters.⁵⁹⁴

450. It was these ties with the Muslim Brotherhood which led to the well-publicised Al Jazeera trial which has attracted [international criticism](#) of Egypt’s apparent infringement of press independence and the right to freedom of expression.⁵⁹⁵

451. On [29 December 2013](#), three Al-Jazeera employees were arrested for, *inter alia*, the false broadcasting of media reports which threatened national security and their coordination with members of the Muslim Brotherhood.⁵⁹⁶ Following completion of the investigation, [twenty defendants](#) were eventually named on the indictment,⁵⁹⁷ including three students who were members of the [Muslim Brotherhood](#).⁵⁹⁸

452. On 23 June 2014, the Giza Criminal Court convicted all twenty defendants of the intentional broadcasting of false news on Al-Jazeera that threatened national security and public order contrary to [article](#)

⁵⁹³ See in particular [9 Bedford Row, The Egyptian Revolution against the Muslim Brotherhood 2013, 10 December 2015](#) and [9 Bedford Row, The History of the Muslim Brotherhood, 2 April 2015](#).

⁵⁹⁴ [Abu Rass, I., Al-Bawaba News, “Terrorist” Establish commission to investigate with “changes” in preparation for dismissal, 15 August 2016.](#)

⁵⁹⁵ See for example, [Freedom House, Egypt Country Report, 2015.](#)

⁵⁹⁶ [Official Page of the Egyptian Ministry of Interior, 29 December 2013.](#)

⁵⁹⁷ [Giza Criminal Court, Case No. 1145 of 2014, Judgement, 23 June 2014.](#)

⁵⁹⁸ [Giza Criminal Court, Case No. 1145 of 2014, Judgement, 23 June 2014.](#) See also [Sabry, M., Atlantic Council, The Students: The Untold Details of the Al-Jazeera Trial, 19 December 2014.](#)



[102bis and 188 of the Penal Code](#).⁵⁹⁹ Taking into account convictions for other crimes, including material assistance to a terrorist organisation, the three Al-Jazeera reporters initially arrested were [sentenced to seven and ten years](#) imprisonment.⁶⁰⁰

453. In reaching its findings, the Giza Criminal Court reviewed a number of video recordings which showed [coverage](#) of, *inter alia*, Muslim Brotherhood-led protests, attacks on security forces and training sessions of Ansar Beit Al-Maqdis, another named terrorist organisation.⁶⁰¹ The court found that the defendants had [manipulated recordings and propagated false information](#) in order to undermine national unity and to serve the Muslim Brotherhood.⁶⁰²

454. The court further highlighted the significance of Al-Jazeera's false reporting given the immediacy in which the channel could broadcast news which had a real risk of leading to a [divisive state](#).⁶⁰³

455. Although the findings of the Giza Criminal Court were subject to re-trial following a decision of the [Egyptian Court of Cassation](#),⁶⁰⁴ the [Cairo Criminal Court](#) also convicted the Al-Jazeera defendants for, *inter alia*, supporting a terrorist organisation, publishing false news and

⁵⁹⁹ [Giza Criminal Court, Case No. 1145 of 2014, Judgement, 23 June 2014](#). The defendants were also convicted of various other crimes.

⁶⁰⁰ [Giza Criminal Court, Case No. 1145 of 2014, Judgement, 23 June 2014](#). Peter Greste and Mohamed Fahmy were sentenced to seven years whilst Baher Mohamed was sentenced to an additional three years for possession of ammunition. At the time of judgment, Peter Greste had been freed and subsequently tried *in absentia*. These sentences were subsequently reduced following re-trial see Cairo Criminal Court, Case No. 26806 of the 86th judicial year, Judgment, 29 August 2015.

⁶⁰¹ [Giza Criminal Court, Case No. 1145 of 2014, Judgement, 23 June 2014](#).

⁶⁰² [Giza Criminal Court, Case No. 1145 of 2014, Judgement, 23 June 2014](#).

⁶⁰³ [Giza Criminal Court, Case No. 1145 of 2014, Judgement, 23 June 2014](#).

⁶⁰⁴ [Court of Cassation, Case No. 26806/2015, Judgment, 1 January 2015](#).



endangering national security.⁶⁰⁵ In this instance, the Cairo Criminal Court relied on material which demonstrated Al-Jazeera's reliance on Muslim Brotherhood produced material.⁶⁰⁶ In particular, the court relied on material supplied by the three Muslim-Brotherhood affiliated students to find that Al-Jazeera had not acted in good faith and instead relied on false sources from the Muslim Brotherhood thereby producing false reports.⁶⁰⁷ This in turn meant that Al-Jazeera was assisting the Muslim Brotherhood to [undermine national security](#).⁶⁰⁸

456. As highlighted by the Egyptian courts, Al-Jazeera is a major channel, which reaches an audience of [220 million across 100 countries](#).⁶⁰⁹ Therefore, any false reporting of the security situation within Egypt by the channel has a significant impact,⁶¹⁰ and poses a genuine threat to the national security of the country.

457. This was particularly so, given the sensitivity of the security situation in Egypt,⁶¹¹ and the inherent [instability](#) that had followed the cessation of a thirty-year period dictatorship.⁶¹²

⁶⁰⁵ Cairo Criminal Court, Case No. 26806 of the 86th judicial year, Judgment, 29 August 2015. See also [Badaway, N., Daily News Egypt, Cairo Criminal Court releases reasoning behind Al Jazeera trial verdict, 7 September 2015.](#)

⁶⁰⁶ Cairo Criminal Court, Case No. 26806 of the 86th judicial year, Judgment, 29 August 2015.

⁶⁰⁷ Cairo Criminal Court, Case No. 26806 of the 86th judicial year, Judgment, 29 August 2015.

⁶⁰⁸ [Sabry, M., Atlantic Council, The Students: The Untold Details of the Al-Jazeera Trial, 19 December 2014.](#)

⁶⁰⁹ [Al Jazeera, Facts and Figures, 23 February 2012.](#)

⁶¹⁰ *Contra* ECtHR, (1999) 31 EHRR 10, Başkaya and Okçuoğlu v Turkey, Judgement, 8 July 1999 whereby comments in an article were not deemed to be threat to national security because they were published in "periodical whose circulation was low, thereby significantly reducing their potential impact on 'national security', 'public order', or 'territorial integrity'".

⁶¹¹ See ECtHR, (1999) 31 EHRR 10, Başkaya and Okçuoğlu v Turkey, Judgement, 8 July 1999, whereby "sensitivity of the security situation in south-east Turkey" was considered to be a factor relevant to whether interference was necessary.



458. The facts surrounding the false reporting by Al-Jazeera echo those in *Zana v Turkey* before the European Court of Human Rights in which the Grand Chamber looked into a published interview of a local mayor who referred to the Kurdistan Workers Party, a banned terrorist organization, as a “national liberation movement” and criticised measures taken by the government to deal with the resurgence of fundamentalist movements.⁶¹³ The court held that the term of imprisonment imposed on the mayor was not a violation of his freedom of expression as the facts could not be taken in isolation.⁶¹⁴ In particular, the court looked at the specific circumstances in which the interview was published namely, that the article (i) had been published in a major national newspaper; (ii) expressed support for terrorist groups of an Islamist persuasion which resorted to jihad; (iii) likely to aggravate an already explosive situation within the region.⁶¹⁵ In view of the danger to civil peace and the democratic system, the Court ruled that the disputed interference had answered a “pressing social need”.⁶¹⁶

459. Al-Jazeera was considered by some to have [lost credibility](#) for its coverage of political events in Egypt.⁶¹⁷ In particular, the channel was routinely criticized for the number of significant [errors](#) it had

⁶¹² See [9 Bedford Row, The Egyptian Experience of the Muslim Brotherhood in Power 2012-2013, 3 June 2015](#) and [9 Bedford Row, The Egyptian Revolution against the Muslim Brotherhood 2013, 10 December 2015](#)

⁶¹³ ECtHR, (1997) 27 EHRR 607, *Zana v. Turkey*, Judgment, 25 November 1997.

⁶¹⁴ ECtHR, (1997) 27 EHRR 607, *Zana v. Turkey*, Judgment, 25 November 1997.

⁶¹⁵ ECtHR, (1997) 27 EHRR 607, *Zana v. Turkey*, Judgment, 25 November 1997.

⁶¹⁶ ECtHR, (1997) 27 EHRR 607, *Zana v. Turkey*, Judgment, 25 November 1997.

⁶¹⁷ [Sabry, M., Atlantic Council, The Students: The Untold Details of the Al-Jazeera Trial, 19 December 2014.](#)



made in broadcasting major anti-Morsi protests as pro-Morsi protests,⁶¹⁸ or interviewing allegedly wounded protesters who were [falsely representing](#) their injuries for the media.⁶¹⁹ Indeed, within a week of the ousting of President Mohammed Morsi, at least twenty-two media personnel employed at Al-Jazeera [resigned](#) on the basis that the channel was now “airing lies and misleading viewers” and that “orders had changed” with regard to its coverage of political events.⁶²⁰

5.4. Efforts to protect freedom of expression and press independence

460. The arrest and detention of journalists raises immediate red flags within any democratic state. Reports of the increasing number of incarcerated journalists within Egypt therefore remain a cause for concern and risk a slide back in efforts taken to protect this right.

461. Egyptian media undoubtedly plays a [prominent role](#) across the Arabic speaking world and is viewed as a leader in evolving its media structure across the Arab region.⁶²¹ Egypt was one of the first Arabic-speaking countries to publish newspapers and subsequently the first in the region to have its [own satellite](#) and the first to provide [internet](#) access to its public.⁶²²

⁶¹⁸ [Abdalla, R., Carnegie Endowment for International Peace, Egypt's Media in the Midst of Revolution, July 2014.](#)

⁶¹⁹ [Abdalla, R., Carnegie Endowment for International Peace, Egypt's Media in the Midst of Revolution, July 2014.](#)

⁶²⁰ [Abdalla, R., Carnegie Endowment for International Peace, Egypt's Media in the Midst of Revolution, July 2014.](#) .See also [Altuwaijri, N., Al-Arabiya, 'We aired lies': Al Jazeera staff quit over 'misleading' Egypt coverage, 9 July 2013.](#)

⁶²¹ [El Shaer, G., Arab Media and Society, Mapping Egypt's Media: State Influence in a Transforming Landscape, 2015.](#)

⁶²² [BBC News, Egypt Profile – Media, 17 June 2016.](#)



462. Egypt also has the highest number of printed publications, with over [five hundred](#) newspapers in publication, the highest number of channels broadcast across the Arab region, and a growing number of internet users accessing blogs and op-eds published online.⁶²³ As a result, the Egyptian media is immensely influential, attracting a diverse and vast audience.

463. Given the extensive use of the media in daily Egyptian life, Egyptian authorities have historically been the subject of criticism with regard to its protection of the right to freedom of expression. Indeed whilst much has been written with regard to Egypt's so-called "press freedom status" over the past two years, it must be noted that Egypt has continuously faced similar ratings over the past two decades, even dogging popular leader [Gamal Abdel Nasser](#) who was heavily criticised for the nationalization of the media in 1960.⁶²⁴ In the following years, Egypt has been [criticized](#) for the targeting of journalists opposing government and the censorship of media articles criticising authority.⁶²⁵

464. Whilst much of these problems also continued under the [Mubarak regime](#),⁶²⁶ not all these issues immediately dissipated with the overthrow of President Hosni Mubarak in 2011.

⁶²³ [European Neighbourhood Journalism Network, Egypt: Media Landscape.](#)

⁶²⁴ [El Shaer, G., Arab Media and Society, Mapping Egypt's Media: State Influence in a Transforming Landscape, 2015.](#)

⁶²⁵ See for example, [El Shaer, G., Arab Media and Society, Mapping Egypt's Media: State Influence in a Transforming Landscape, 2015.](#)

⁶²⁶ [El Shaer, G., Arab Media and Society, Mapping Egypt's Media: State Influence in a Transforming Landscape, 2015.](#)



465. For example, following the assassination of President Anwar Sadat in 1981, Egyptian authorities repeatedly extended the imposition of its [Emergency Law](#) on an annual basis.⁶²⁷ As a result, authorities were able to [storm basic rights and freedoms](#) as provided for in the constitution,⁶²⁸ including those relating to the right to freedom of thought and [expression and free press](#).⁶²⁹ The emergency law only ceased following efforts of the [Supreme Council of the Armed Forces](#) in 2012.⁶³⁰

466. In 2008, civil actors criticized the “[open war against freedom of expression](#)” culture which seem to have dominated within the Egyptian executive with the government intent on silencing voices against it.⁶³¹ Similar tactics were employed during the presidency of Mohammed Morsi. Rather than disbanding or re-structuring the much-maligned Ministry of Information, President Morsi retained the body and appointed a minister from the Muslim Brotherhood who moved quickly to formalize the [state media’s pro-government bias](#).⁶³²

467. According to [Arab Network for Human Rights Information](#) (ANHRI), it became difficult to get articles critical of the government published in the state newspapers.⁶³³ For instance, *Al-Akhbar* eliminated its regular “[Free Opinion](#)” section and ceased publishing the writings of novelist Ibrahim Abdul Meguid because of his criticism

⁶²⁷ [FIDH, The Emergency Law in Egypt, 17 November 2001.](#)

⁶²⁸ [FIDH, The Emergency Law in Egypt, 17 November 2001.](#)

⁶²⁹ See for example [Articles 47 and 208 of Constitution of the Arab Republic of Egypt 1971.](#)

⁶³⁰ [BBC News, Egypt state of emergency lifted after 31 years, 1 June 2012.](#)

⁶³¹ [Saleh, A., Media Freedom in Egypt: A Comparative Analysis of Pre- and Post-Revolution Perceptions, 2013.](#)

⁶³² [Freedom House, Egypt Country Report, 2013.](#)

⁶³³ [Freedom House, Egypt Country Report, 2013.](#)



of the Brotherhood.⁶³⁴ Al-Akhbar also refused to publish an article by writer [Yusef al-Qaeed](#) that criticized Islamist intimidation of opposition-aligned media.⁶³⁵ An article by [Ghada Nabeel](#) that denounced these publication bans was itself refused publication by Al-Gomhuria.⁶³⁶

468. The detention of journalists was also a frequent occurrence during the reign of Hosni Mubarak. In an attempt to find out the real number of cases launched against journalists in 2007, Gamal Eid, the Executive Director of the Arabic Network asserted that it remained “very difficult to define a certain number of such cases. More than [one thousand summons and five hundred cases](#) were launched against journalists. These numbers do not include cases against non-syndicate members or the bloggers or artists and men of letters who are not syndicate members”.⁶³⁷

469. A similar wave of attack took place during the presidency of Mohammed Morsi. During this era, an [unprecedented number](#) of court cases were brought against journalists and media personalities for insulting the president or the religion.⁶³⁸ Despite a pledge by Morsi to guarantee freedom of expression when he took over, Muslim Brotherhood supporters [unleashed a wave of criminal complaints](#)

⁶³⁴ [Freedom House, Egypt Country Report, 2013.](#)

⁶³⁵ [Freedom House, Egypt Country Report, 2013.](#)

⁶³⁶ [Freedom House, Egypt Country Report, 2013.](#)

⁶³⁷ [Saleh, A., Media Freedom in Egypt: A Comparative Analysis of Pre- and Post-Revolution Perceptions, 2013.](#)

⁶³⁸ [Abdulla, R., Carnegie Endowment for International Peace, Egypt's Media in the Midst of Revolution, 2014.](#)



against media critics.⁶³⁹ It is reported that, during the latter half of 2012, more state media employees were subjected to [professional investigation](#) whilst under President Morsi's rule than in the entire 18 months of SCAF rule.⁶⁴⁰ Typically the investigations [targeted](#) those who departed from the script on air, gave airtime to highly vocal critics of the government, or covered the protests against the Muslim Brotherhood in sympathetic terms.⁶⁴¹

470. Furthermore, [ANHRI](#) reported that 24 such cases were filed in the first 200 days of Morsi's rule compared to 23 cases in the previous 126 years.⁶⁴² The Egyptian Organization for Human Rights counted at least 600 criminal defamation cases in the first nine months of the Morsi presidency whilst the [Committee to Protect Journalists](#) documented 78 assaults against journalists during Morsi's year in office.⁶⁴³

471. For example, in March 2013, thousands of Muslim Brotherhood supporters surrounded Media Production City, a compound on the outskirts of Cairo that housed numerous privately owned television networks, and attempted to [prevent](#) workers, prominent talk-show hosts, and their guests from entering the compound.⁶⁴⁴ Verbal intimidation was often used against journalists who opposed the

⁶³⁹ [Abdulla, R., Carnegie Endowment for International Peace, Egypt's Media in the Midst of Revolution, 2014.](#)

⁶⁴⁰ [Freedom House, Egypt Country Report, 2013.](#)

⁶⁴¹ [Freedom House, Egypt Country Report, 2013.](#)

⁶⁴² [Abdulla, R., Carnegie Endowment for International Peace, Egypt's Media in the Midst of Revolution, 2014.](#)

⁶⁴³ [Committee to Protect Journalists, On the Divide – Press Freedom at Risk in Egypt, 14 August 2013.](#)

⁶⁴⁴ [Freedom House, Egypt Country Report, 2014.](#)



Muslim Brotherhood. For example, during a public conference on women's rights in March, Morsi accused his critics of using the media to provoke hostility, and warned the media of [severe punishment](#) if they were found guilty of inciting violence.⁶⁴⁵

472. In short, in the years leading up to Freedom House's current critique of Egypt, there was a systemic and [officially tolerated campaign](#) to intimidate journalists, increased efforts to prosecute reporters and commentators for insulting the political leadership or defaming religion, and intensified polarization of the pro and anti Muslim Brotherhood press, which reduced the availability of balanced coverage."⁶⁴⁶

473. Following the end of Morsi's presidency, recognised efforts have been made to rectify Egypt's record with regard to the protection of freedom of expression. As discussed above, the amendments to the [2014 Constitution](#) are considered to have advanced Egypt's protection of this right as compared to prior versions of the constitution as it emphasises the state's commitment to respecting human rights and freedoms.⁶⁴⁷

474. Further efforts have also been taken within Egypt to allow for the media to independently voice their criticism of governmental acts.

⁶⁴⁵ [Freedom House, Egypt Country Report, 2014.](#)

⁶⁴⁶ [Abdulla, R., Carnegie Endowment for International Peace, Egypt's Media in the Midst of Revolution, 2014.](#)

⁶⁴⁷ See [National Council for Human Rights, Submission Of the National Council for Human Rights To the Universal Periodic Review Mechanism, 2014.](#) See also National Council for Human Rights, Eleventh Annual Report, 2016. See also



475. For example, following the murder of [Giulio Regeni](#), an Italian student abducted and tortured to death in the outskirts of Cairo,⁶⁴⁸ a number of prominent publications criticized the manner in which Egyptian security forces conducted investigations.⁶⁴⁹ Similarly, a number of publications have openly criticised the government in relation to its handling of economic affairs and failure to deliver on electoral promises.⁶⁵⁰ Whilst neither topic threatens a legitimate national security interest, they have not been the subject of restriction by the present regime.

476. The Egyptian executive also demonstrated a commitment to strengthening its reputation in guaranteeing press independence. In 2016, Ministry of Interior withdrew some of its complaints concerning journalists in order to strengthen its ties with the media industry.⁶⁵¹ This is in a similar vein to the presidential decrees annulling imprisonment penalties in relation to crimes concerning the exercise of freedom of expression of the independence of the press.⁶⁵² For example, on 17 November 2016, President Sisi pardoned 82 prisoners including [Islam Al-Behary](#), a television presenter who was sentenced to one year

⁶⁴⁸ [The Guardian, Italian student killed in Egypt: Giulio Regeni 'showed signs of electrocution', 14 February 2016.](#)

⁶⁴⁹ Al-Shrouq, Wael Ghoneem warns against a “disaster” due to the incident of killing the Italian youth Jolio Regeni, 13 February 2016.

⁶⁵⁰ Abdel Hafeez, M., Who dares to talk, 20 March 2016.

⁶⁵¹ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016.

⁶⁵² In August 2013, following the end of Morsi’s presidency, a presidential decree was issued which amended the penal code so as to annul the imprisonment penalty concerning the crime of insulting the president. Similarly, the 2014 Constitution also confirms the annulment of the imprisonment penalty in crimes committed in relation to the publication of information see [Article 17 of Constitution of the Arab Republic of Egypt 2014.](#)



in prison in December 2015 on charges of religious contempt.⁶⁵³ As recognised by Behary, although the pardon came one month off the conclusion of his sentence, the pardon still represented a significant [victory](#) for ‘intellects’ which should be praised.⁶⁵⁴

477. The Ministry of Interior has also demonstrated its commitment to investigating complaints raised by civil actors, including the NCHR,⁶⁵⁵ in accordance with the compensatory awards permitted under [article 99](#) of the Constitution where there has been an assault on the personal freedoms or sanctity of the life of citizens.⁶⁵⁶

478. Whilst a degree of conflict remains in the protection of press freedoms between pre-existing provisions of the penal code and other press laws with the 2014 Constitution, it must be noted that these efforts are being taken during the consolidation phase of Egypt’s transitional paradigm, during which it is taking significant steps to secure democracy and reform state institutions. This is a process which takes time and requires the support of civil sectors and media actors alike.

5.5. Conclusion

479. The restrictions to the protection of freedom of expression and the independence of the press within Egypt are real. However, the

⁶⁵³ [Khater, M., Aswat Masriya, Sisi pardons 82 prisoners including TV host Islam Behery, 17 November 2016.](#)

⁶⁵⁴ [El-Sheikh, S., Daily News Egypt, El-Beairy to resume work after presidential pardon release, 20 November 2016.](#)

⁶⁵⁵ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016.

⁶⁵⁶ [Article 99 of Constitution of the Arab Republic of Egypt 2014.](#)



legitimacy of these restrictions must be read in context of the [unprecedented security challenges](#) faced in Egypt today,⁶⁵⁷ and in recognition of the efforts made by authorities to balance the protection against the national security interests of the state and the constitutional rights of other citizens.⁶⁵⁸ This includes efforts to [persuade and prevent](#) further individuals and youths from joining terrorist ranks by ensuring responsible reporting by media outlets.⁶⁵⁹ These concerns are not unique to Egypt and are reflected by the increase in concern with regard to restrictions to the right to freedom of expression and press independence [across the globe](#).⁶⁶⁰

⁶⁵⁷ [US Department of State, Human Rights Conditions in Egypt, 3 November 2015.](#)

⁶⁵⁸ Egyptian Ministry of Interior, The Comment of the Ministry of Interior on the Remarks of the Eleventh Annual Report of the National Council of Human Rights 2015-2016, 2016.

⁶⁵⁹ [US Department of State, Human Rights Conditions in Egypt, 3 November 2015.](#)

⁶⁶⁰ See for example, [UN General Assembly, A/71/373, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 6 September 2016.](#)



Chapter VI

DEATH PENALTY



6.1. Introduction

480. 2015 saw a dramatic increase in the number of executions across the world, with at least [1634 executions](#) recorded by Amnesty International – the highest the non-governmental organisation had recorded since 1989 (with the exclusion of China).⁶⁶¹ Most of the twenty-two countries that conducted executions in 2015 reported a decline, which is consistent with a very [general trend](#) towards reduction of the death penalty and abolition that has been underway around the globe for more than two decades.⁶⁶² The rise was principally due to an enormous increase in the number of executions in Pakistan, Iran and Saudi Arabia.⁶⁶³ Two other countries, [Egypt and Somalia](#), contributed to the increase although with a relatively smaller number of executions.⁶⁶⁴ According to Amnesty International, the number of executions in Egypt increased to at [least 22](#) in 2015 from 14 in 2014.⁶⁶⁵

481. As a retentionist state, Egypt has been criticised for what has been described as an “[expansion of death sentences in Egypt](#)”,⁶⁶⁶ with the UN Office of the High Commissioner for Human Rights (OHCHR) expressing its concern with regard to the imposition of [mass death sentences](#) in Egypt.⁶⁶⁷

⁶⁶¹ [Amnesty International, Death Sentences and Executions, 2015.](#)

⁶⁶² See for example, [OHCHR, Moving Away From The Death Penalty, 2015.](#)

⁶⁶³ [Amnesty International, Death Sentences and Executions, 2015.](#)

⁶⁶⁴ [Amnesty International, Death Sentences and Executions, 2015.](#)

⁶⁶⁵ [Amnesty International, Death Sentences and Executions, 2015.](#)

⁶⁶⁶ [Fouad, A., Al-Monitor, Egypt Pulse, 19 June 2015.](#)

⁶⁶⁷ [OHCHR, Mass death sentences in Egypt a profound disgrace, UN human rights experts say, 9 February 2015.](#)



482. This report is not intended to be part of the discussion as to whether or not Egypt should abolish the death penalty, it is intended to review the context in which Egypt has seen a rise in the issuance of death sentences and how this fits in with the increase in executions recorded in 2015.

483. In doing so, the report will assess the legal framework in which death penalties are issued in Egypt as well as a review into the mass death sentences issued in 2014 and 2015 and the circumstances in which executions were carried out in 2015.⁶⁶⁸

6.2. Legal framework on the death penalty

6.2.1. Statutory provisions

484. Whilst the UN Secretary-General and UN OHCHR have routinely called for the [abolition of the death penalty or a moratorium on its use](#),⁶⁶⁹ the issuance of death sentences is not strictly prohibited by the International Covenant on Political and Civil Rights (ICCPR). As a [state party](#) to the ICCPR,⁶⁷⁰ Egypt must ensure that its implementation of the death penalty is in accordance with the guarantees provided for in [article 6](#) of the ICCPR, namely:

[...]

sentence of death may be imposed only for the most serious

⁶⁶⁸ This report will not focus on discussions concerning the fairness of proceedings or the independence of the judiciary as ancillary topics to the issuance of the death penalty. Further commentary on both topics can be located within chapters 2 and 3 concerning the independence of the judiciary and fairness of trials.

⁶⁶⁹ [OHCHR, Moving Away From The Death Penalty, 2015](#).

⁶⁷⁰ Egypt ratified the ICCPR in 1982 see [OHCHR, Status of Ratification](#).



crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

[...]

Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

[...] ⁶⁷¹

485. Moreover, although the African Charter on Human and Peoples' Rights, to which Egypt became a state party in [1984](#),⁶⁷² does not prohibit states' use of the death penalty, it does prohibit arbitrary deprivation of life pursuant to [article 4](#).⁶⁷³

486. Whilst there is no mention of the death penalty in Egypt's

⁶⁷¹ [UN General Assembly, Resolution 2200A \(XXI\), International Covenant on Civil and Political Rights, 16 December 1966.](#)

⁶⁷² [African Commission on Human and Peoples' Rights, Ratification Table: African Charter on Human and Peoples' Rights.](#)

⁶⁷³ [Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 \(1982\), African \(Banjul\) Charter On Human And Peoples' Rights, 27 June 1981.](#)



Constitution of 2014 *per se*, [article 2](#) of the Constitution does provide for the principles of Islamic sharia as the principal source of legislation.⁶⁷⁴

487. Described as the [criminal justice system](#) of Islam,⁶⁷⁵ the objective of sharia is to guard the [five fundamental principles](#) of Islam (Makasis Al-sharia)⁶⁷⁶ including the protection of life, religion/faith, offspring, property and intellect.⁶⁷⁷ In order to safeguard these five principles, Islamic sharia provides [three categories of crime](#): (i) Qisas - retaliation or retribution; (ii) Hudud - claims against God; and (iii) Ta'zir - claims of the state/society. All three categories, with qisas being the most serious of crimes, and ta'zir being the least, include references to the death penalty as a punishment for four offences including (i) murder, (ii) adultery, (iii) apostasy and (iv) 'waging war against God' or brigandage.⁶⁷⁸

488. Islamic sharia has a [high burden of proof](#) so that punishment should be averted if any suspicion or doubt arises as to the person's guilt, as it is considered preferable to err in granting a pardon, than to

⁶⁷⁴ [Article 2 and preamble of Constitution of the Arab Republic of Egypt, 2014](#). Thus, the death penalty has been incorporated and regulated in the Egyptian penal code and Criminal Procedure Code see, [Articles 230-234 of Law No. 58 of 1937, Penal Code](#) and [Criminal Procedure Code \(150 of 1950 and its amendments\)](#).

⁶⁷⁵ For further information regarding the underlying sources and components of sharia, see [Mumisa, M., Penal Reform International, Sharia Law and the Death Penalty, 2015](#).

⁶⁷⁶ El Zeidy, M., "The Arab World", in Kress, C. and Barriga, S. (eds.), *The Crime of Aggression: A Commentary*, Vol. 2, (Cambridge University Press, 2016), 960-992, at 966.

⁶⁷⁷ [Mumisa, M., Penal Reform International, Sharia Law and the Death Penalty, 2015](#); Abou-Zahra, M., *Al Garimah wa Al-Ukubah fe Al-Fikh Al-Islami* (Crime and Punishment in Islamic Jurisprudence) (Cairo: Dar Al-Fikr Al-Araby, 1998), 28, 143, 151.

⁶⁷⁸ Quran, Al Maidah: 33; [Mumisa, M., Penal Reform International, Sharia Law and the Death Penalty, 2015](#).



err in inflicting punishment.⁶⁷⁹ Therefore, for any offence that cannot be proved [beyond a reasonable doubt](#), the court should find in favour of the defendant.⁶⁸⁰ The evidential requirements under sharia also require a [minimum of two witnesses](#) to testify that they saw the offence take place.⁶⁸¹ [Circumstantial evidence](#) also cannot be admitted into Court for a finding of a qisas offence which give rise to the presumption of a death penalty, such as murder.⁶⁸²

489. Moreover, Islamic sharia does not provide for mandatory death sentences, even in cases concerning murder, which is a qisas offence under the retaliatory principle '[an eye for an eye](#)'.⁶⁸³ Instead, Islamic sharia makes provisions for an alternative course of action through victim forgiveness and restitution in accordance with the following [prophetic tradition](#):

[I]f a relative of anyone is killed, or if he suffers khabl (wound), he may choose one of three things: he may retaliate, or forgive, or receive compensation. ⁶⁸⁴

490. The Quran expressly encourages the victim or their relatives to

⁶⁷⁹ Abdel Kader Ouda, *Al Tashria Al Genai Al Islami Mokaranan be Al Kanoon Al Wadai* (Islamic Criminal Legislation: A Comparison with Positive Law), General Part, Vol. 1, (Cairo, 1984), 217; [Mumisa, M., Penal Reform International, Sharia Law and the Death Penalty, 2015](#);

⁶⁸⁰ [Mumisa, M., Penal Reform International, Sharia Law and the Death Penalty, 2015](#).

⁶⁸¹ [Mumisa, M., Penal Reform International, Sharia Law and the Death Penalty, 2015](#).

⁶⁸² Further evidential requirements are also specified for crimes of adultery, apostasy and waging of war see [Mumisa, M., Penal Reform International, Sharia Law and the Death Penalty, 2015](#). See also Peiffer, E., William and Mary Journal of Women and the Law, The Death Penalty in Traditional Islamic Law and as Interpreted in Saudi Arabia and Nigeria, 2005.

⁶⁸³ Quran, Surat Al Maidah: 45; [Mumisa, M., Penal Reform International, Sharia Law and the Death Penalty, 2015](#).

⁶⁸⁴ [Arafa, M., Qatar Foundation, Death Penalty between Divine Law and Secular Law: Egyptian Criminal Justice System and Counter-Terrorism Law, Quo Vadis?, 2016](#).



forgive the perpetrator, and seek financial compensation known as [diyya](#) as an alternative to demanding retribution through execution as an act of charity or in atonement for sins.⁶⁸⁵

491. In accordance with Islamic sharia, the category of crimes that are subject to the death penalty in Egypt, are those serious crimes which result in the fatality of a victim or include a specified aggravated feature. This is in accordance with article 6 of the ICCPR as well as the ECOSOC Resolution 1984/50, whereby the latter restricts the scope of the death penalty to “[intentional crimes with lethal or other extremely grave consequences](#)”.⁶⁸⁶

492. The Egyptian Penal Code also sets out express differences between aggravated circumstances which, dependent on the crime, may give rise to the death penalty as compared to the commission of the same crime in the absence of such aggravated features. For example, [article 230](#) of the Egyptian Penal Code expressly provides for the issuance of a death sentence following conviction for premeditated murder. This provision is to be read with [articles 231 to 234](#) which specify the aggravated features to take into account.⁶⁸⁷ This position is in contrast with [articles 234\(1\) to 238](#) of the Egyptian Penal Code which provide alternative imprisonment sentences following conviction of murder in the absence of aggravated features as provided for in the

⁶⁸⁵ Quran, Surat Al Baqara: 178; [Mumisa, M., Penal Reform International, Sharia Law and the Death Penalty, 2015.](#)

⁶⁸⁶ [ECOSOC, Resolution 1984/50, Safeguards Guaranteeing Protection of the Rights of those Facing Execution of 1984, 25 May 1984.](#)

⁶⁸⁷ [Articles 230 – 234 of Law No. 58 of 1937, Penal Code.](#)



preceding articles of the penal code.⁶⁸⁸

493. Moreover, and also dependent on case specifics, the following categories of crime which result in death may also be subject to the death penalty including: (i) [assault on any law-enforcing officer](#),⁶⁸⁹ (ii) [arson](#),⁶⁹⁰ (iii) [perjury](#),⁶⁹¹ and (iv) [terrorist acts](#) such as hijacking or hostage taking which result in fatalities.⁶⁹²

494. Whilst the majority of crimes punishable by death in Egypt relate to offences that result in death of a person, the following aggravated crimes also attract the death penalty including: (i) [kidnapping](#) which results in aggravated rape;⁶⁹³ (ii) commanding acts of [pillaging](#),⁶⁹⁴ (iii) establishing, commanding or arming a [terrorist organisation](#),⁶⁹⁵ (iv) [occupation of government property](#) with actual use of force;⁶⁹⁶ (v) [possession or trafficking drugs](#) where accused either abuses authority and/or use of minor;⁶⁹⁷ (vi) [possession of arms](#) with

⁶⁸⁸ [Articles 230 – 238 of Law No. 58 of 1937, Penal Code.](#)

⁶⁸⁹ [Penal Reform International, Towards the abolition of the death penalty and its alternative sanctions in the Middle East and North Africa: Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia and Yemen, 2013.](#)

⁶⁹⁰ Article 257 of the Law on Crimes and Offences against Individual People see [Penal Reform International, Towards the abolition of the death penalty and its alternative sanctions in the Middle East and North Africa: Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia and Yemen, 2013.](#)

⁶⁹¹ [Article 295 of Law No. 58 of 1937, Penal Code.](#)

⁶⁹² [Article 86, 88, 102 and 168 of Law No. 58 of 1937, Penal Code.](#)

⁶⁹³ [Article 290 of Law No. 58 of 1937, Penal Code.](#)

⁶⁹⁴ [Article 89 of Law No. 58 of 1937, Penal Code.](#)

⁶⁹⁵ [Articles 86 and 98 of Law No. 58 of 1937, Penal Code.](#)

⁶⁹⁶ [Article 90 of Law No. 58 of 1937, Penal Code.](#)

⁶⁹⁷ Articles 33 and 34 of Law No. 182 of 1960 as amended by Law No. 122 of 1989 see [Penal Reform International, Towards the abolition of the death penalty and its alternative sanctions in the Middle East and North Africa: Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia and Yemen, 2013.](#)



intention to disturb the peace;⁶⁹⁸ (vii) [high treason](#); ⁶⁹⁹ (viii) communication with foreign countries and disclosure of defence secrets which undermines or threatens national security and peace;⁷⁰⁰ and (ix) a number of military offences including, *inter alia*, [sedition](#).⁷⁰¹

495. In each instance, the aggravated feature is prescribed in law and comprises of crimes which are considered to be a threat to society. This is akin to crimes punishable by death in other countries both within region and internationally. For example, [terrorist acts which do not result in death](#) are punishable by death sentence in Algeria, Bahrain, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Syria, Tunisia and United Arab Emirates, as well as a number of other non-Middle Eastern countries such as the United States of America.⁷⁰² Similarly, by way of another example, [drug trafficking not resulting in death](#) is also punishable by death sentence in Bahrain, Iran, Iraq, Jordan, Kuwait, Libya, Oman, Qatar, Saudi Arabia, Sudan, Syria, United Arab Emirates and Yemen as well as number of other countries which suffer from consequences of drug

⁶⁹⁸ Article 26(2) of the Law of Arms and Ammunition No 394 of 1954 see [Penal Reform International, Towards the abolition of the death penalty and its alternative sanctions in the Middle East and North Africa: Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia and Yemen, 2013](#).

⁶⁹⁹ [Articles 77, 78, 81, 87, 91 and 92 of Law No. 58 of 1937, Penal Code](#).

⁷⁰⁰ [Articles 77 and 80 of Law No. 58 of 1937, Penal Code](#).

⁷⁰¹ Law of Military Provisions see [Penal Reform International, Towards the abolition of the death penalty and its alternative sanctions in the Middle East and North Africa: Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia and Yemen, 2013](#).

⁷⁰² [Cornell Law School, Cornell Center on the Death Penalty Worldwide, Death Penalty Database, accessed on 21 November 2016](#).



trafficking including Thailand and the United States of America.⁷⁰³

6.3. Judicial safeguards

496. In accordance with upholding the [right to life](#),⁷⁰⁴ a number of safeguards to protect the rights of those facing the death penalty are in place within the Egyptian system.

497. First, unlike other countries in the region such as, for example, [Qatar and Saudi Arabia](#)⁷⁰⁵ there is no mandatory death sentence in Egypt. [Article 17](#) of the Egyptian Penal Code expressly provides for judicial discretion to deviate from the prescribed death sentence and instead replace it with hard labour.⁷⁰⁶

498. Second, the Egyptian framework provides for the exclusion of

⁷⁰³ Article 149 of Bahrain Penal Code 1976 as amended by Legislative Decree No. 9 of 1982 With Respect to Amendments to the Penal Code of 1976, article 1; Articles 4 and 8 of Iran Anti-Narcotics Law, 1997; Annex 1 of Decree: The reintroduction of the death penalty, Decree No. 3 of 2004, Article 14 of Iraq Narcotic Drugs Law, Law no. 68 of 1965, Article 190 of Iraq Penal Code and Articles 1 to 4 of Iraq Anti-Terrorism Law, Law No. 14 of 2005; Article 10 of Jordan Law on Narcotic Drugs and Psychotropic Substances, Law No. 11 of 1988; Articles 31 - 32 of Kuwait Act Concerning the Fight Against Drugs and Regulating Use and Trafficking, Law No. 74 of 1983, Article 34 of Libya Law No. 7 of 1990, Article 43 of Omani Law on the Control of Narcotic Drugs and Psychotropic Substances, E/NL 28 of 2000, enabled by Royal Decree No. 17 of 1999, Article 34 of Qatar Law To Control Narcotic Drugs and Dangerous Psychotropic Substances and to Regulate Their Use and Trade Therein, No. 9 of 1987, Articles 15 and 17 of Sudan Narcotics Drugs and Psychotropic Substances Act of 1994, Articles 39-40 of Syria Narcotic Drugs Law, Law No. 2, Apr. 12, 1993, Articles 6(1), 35-36 cum. 48 cum. Schedules 1, 2 & 4, article 49 cum. Schedules 3 & 6-8 of UAE Anti-Narcotic Drugs and Psychotropic Substances Law, No. 14 of 1995, Article 33 of Yemen Law on the Control of Illicit Trafficking in the Abuse of Narcotics and Psychotropic Substances, No. 3 of 1993 and 18 U.S.C. 3591(b)(1), Jun. 25, 1948, effective as of Jan. 15, 2013 - see [Cornell Law School, Cornell Center on the Death Penalty Worldwide, Death Penalty Database, accessed on 21 November 2016](#).

⁷⁰⁴ See for example, [Article 3 of UN General Assembly, Resolution 217A, Universal Declaration of Human Rights, 10 December 1948](#).

⁷⁰⁵ [Cornell Law School, Cornell Center on the Death Penalty Worldwide, Death Penalty Database, accessed on 21 November 2016](#).

⁷⁰⁶ [Article 17 of Law No. 58 of 1937, Penal Code](#).



certain categories of accused from the death penalty. For example, [article 476](#) of the Criminal Procedure Code provides for the exclusion of pregnant women,⁷⁰⁷ as well as those who suffer from [diminished capacity](#).⁷⁰⁸ As a [state party](#) to the Convention on the Rights of the Child,⁷⁰⁹ Egypt also protects against imposing the death penalty for crimes committed by a minor.⁷¹⁰ This is also in accordance with Islamic sharia which has a strict requirement that a person cannot be accused of an offence if they are under the [age of criminal responsibility](#).⁷¹¹

499. Third, the issuance of any death penalty must be unanimously granted in accordance with [article 381](#) of the Egyptian Criminal Procedure Code,⁷¹² and after having consulted the Grand Mufti – the highest religious cleric in the country as further developed below.

500. Moreover, all death sentences must be referred to the Court of Cassation by the Office of the Attorney General, even if the condemned person does not appeal pursuant to [article 46](#) of the Law No. 57 of 1959.⁷¹³ The Attorney General must submit a memorandum explaining

⁷⁰⁷ [Article 476 of the Egyptian Criminal Procedure Code](#).

⁷⁰⁸ [Dr. Mohamed Al Ghamry, Arab Penal Reform Organisation, The Death Penalty In Egypt: Theoretical and Practical Study in the Light of Islamic Shariah and International Human Rights Law, 2008](#).

⁷⁰⁹ Egypt ratified the Convention on the Rights of a Child in 1990 see [OHCHR, Status of Ratification](#).

⁷¹⁰ Article 111 of the Law No. 12 of 1996 promulgating the Amended Child Law by Law No. 126 of 2008.

⁷¹¹ M. Abou-Zahra, M., *Al Garimah wa Al-Ukubah fe Al-Fikh Al-Islami (Crime and Punishment in Islamic Jurisprudence)* (Cairo: Dar Al-Fikr Al-araby, 1998), 337; [Mumisa, M., Penal Reform International, Sharia Law and the Death Penalty, 2015](#).

⁷¹² [Article 381 of the Egyptian Criminal Procedure Code](#).

⁷¹³ Article 46 of Law No. 57 of 1959 (as amended by law No. 106 of 1962, Cases and Procedures for Appeal before Court of Cassation).



the [justification](#) for the sentence to the Court of Cassation.⁷¹⁴

501. The Court of Cassation has the right either to uphold the initial verdict of a death sentence or accept the appeal, and thus [order a retrial](#) in front of another panel of judges in the criminal court.⁷¹⁵ The process is most recently demonstrated by the Court of Cassation's order for a re-trial on 15 November 2015 which overturned the death sentences issued to former [President Morsi](#) and other members of the Muslim Brotherhood including Mohammed Badie.⁷¹⁶

502. Defendants have the right to appeal a death sentence at the [end of the retrial](#), and the Court of Cassation can either uphold it or order yet another retrial.⁷¹⁷ This [second retrial](#) is held in front of the Court of Cassation, whose verdict is final.⁷¹⁸ All decisions regarding death sentences rendered by Egyptian criminal courts cannot be carried out before being final,⁷¹⁹ or being subject to revision,⁷²⁰ and after informing the President for possible pardon as explored below.

503. As to reconsideration or revision, [articles 441-448](#) of the

⁷¹⁴ [Penal Reform International, Towards the abolition of the death penalty and its alternative sanctions in the Middle East and North Africa: Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia and Yemen, 2013.](#)

⁷¹⁵ [Article 30 of Law No. 57 of 1959, Cases and Procedures for Appeal before Court of Cassation.](#) See also [El-Gundy, Z., Ahram Online, Q&A: Capital punishment in Egypt, 21 May 2015.](#)

⁷¹⁶ See for example, [BBC News, Egypt: Mohammed Morsi death sentences overturned, 15 November 2016](#) and [Hadid, D., New York Times, Court in Egypt Overturns Mohamed Morsi's Death Sentence, 15 November 2016.](#)

⁷¹⁷ [Law No. 57 of 1959, Cases and Procedures for Appeal before Court of Cassation.](#) See also [El-Gundy, Z., Ahram Online, Q&A: Capital punishment in Egypt, 21 May 2015.](#)

⁷¹⁸ [Law No. 57 of 1959, Cases and Procedures for Appeal before Court of Cassation.](#) See also [El-Gundy, Z., Ahram Online, Q&A: Capital punishment in Egypt, 21 May 2015.](#)

⁷¹⁹ [Article 455 of the Egyptian Criminal Procedure Code.](#)

⁷²⁰ [Article 441 of the Egyptian Criminal Procedure Code.](#)



Criminal Procedure Code permits and regulates a process for reconsideration of a death sentence in specified circumstances after a final judgment has been rendered.⁷²¹ A request for [reconsideration](#) can be triggered by an accused subject to the death penalty or by his counsel or by the Prosecutor General.⁷²²

504. An accused may also have access to the [Supreme Constitutional Court](#), which can hear petitions on a constitutional issue, disputes over jurisdiction, conflicting judgments, or divergence from the accepted implementation of laws.⁷²³

505. Fifth, specialised provisions are included in the context of trials *in absentia*. For example, an accused who has been notified of the date of the initial hearing and does not make his/her appearance is barred from being represented by a lawyer in his absence, unless the lawyer's presence is for the sole purpose of presenting a justification concerning the accused's absence from the hearing.⁷²⁴ In this case, the criminal court shall reschedule a new date for his attendance.⁷²⁵ If the accused who was sentenced *in absentia* is arrested or appears voluntarily, before the sentence is barred on statute of limitation grounds, the President of the Court of Appeals must set a date for the re-trial of the case.⁷²⁶

506. Sixth, and in accordance with article 6(4) of the ICCPR, a

⁷²¹ [Articles 441- 448 of the Egyptian Criminal Procedure Code](#). For overview of Egyptian court system see [Ministry of Justice, Common Courts](#).

⁷²² [Articles 442 and 443 of the Egyptian Criminal Procedure Code](#).

⁷²³ [Cornell Law School, Cornell Center on the Death Penalty Worldwide, Death Penalty Database, Egypt](#).

⁷²⁴ [Article 388 of the Egyptian Criminal Procedure Code](#).

⁷²⁵ [Article 388 of the Egyptian Criminal Procedure Code](#).

⁷²⁶ [Article 395 of the Egyptian Criminal Procedure Code](#).



convicted person subject to the death penalty may have his sentence commuted by a review conducted by the [Grand Mufti](#),⁷²⁷ or seek a pardon from the executive.

507. The review conducted by the Grand Mufti is [mandatory](#) in all cases that may attract the death penalty.⁷²⁸ Upon consultation, the Grand Mufti will in turn look at all [available material](#) and determine the guilt of the accused in accordance with the sharia.⁷²⁹ In the event that the guilt of the accused is not established, the Grand Mufti recommends for the judges [to err on the side of pardon](#) in accordance with prophetic tradition and Islamic law.⁷³⁰ During the review, the Grand Mufti is assisted by [three counsellors](#) from the heads of the courts of appeals who are tasked with examining the case files to decide whether the offence should result in retaliatory punishment, a discretionary punishment, the prescribed punishment or no punishment at all.⁷³¹ This is a [confidential and rigorous process](#).⁷³²

508. Whilst the recommendations of the Grand Mufti are not binding on the criminal court, Egyptian judges have traditionally [adjusted](#) their final rulings in accordance with his recommendations because they are

⁷²⁷ [Article 381 of the Egyptian Criminal Procedure Code](#). See also [Ahram Online, Egypt's new Grand Mufti elected for first time ever, 11 February 2013](#).

⁷²⁸ [Article 381 of the Egyptian Criminal Procedure Code](#).

⁷²⁹ [Negm, I., Dar Al-Ifta Al-Missriyyah, The role of Egypt's Grand Mufti in upholding death sentences demystified](#).

⁷³⁰ [Negm, I., Dar Al-Ifta Al-Missriyyah, The role of Egypt's Grand Mufti in upholding death sentences demystified](#).

⁷³¹ [Negm, I., Dar Al-Ifta Al-Missriyyah, The role of Egypt's Grand Mufti in upholding death sentences demystified](#).

⁷³² [Negm, I., Dar Al-Ifta Al-Missriyyah, The role of Egypt's Grand Mufti in upholding death sentences demystified](#).



based on the principles of Islamic sharia.⁷³³

509. A pardon may also be sought pursuant to [article 470](#) of the Criminal Procedure Code, the Minister of Justice must inform the President of any final sentence of death.⁷³⁴ The [President](#) subsequently either: (i) confirms the sentence; (ii) pardons the accused; or (iii) commutes the sentence.⁷³⁵ The President may also permit the sentence to become confirmed by expressing [no position](#) within 14 days of receiving the final sentence for consideration.⁷³⁶

510. Moreover, in accordance with [articles 74 to 76](#) of the Egyptian Penal Code, it is possible for the President to commute a death sentence to life imprisonment for offences tried in ordinary courts.⁷³⁷

511. Similar appellate safeguards are also available for accused tried before a Military Court, which has [exclusive jurisdiction](#) over all crimes related to the armed forces, officers, and personnel thereof.⁷³⁸ For example, accused who are subject to the death penalty issued by a military court may appeal to the [Supreme Court for Military Appeals](#) sitting as a court of cassation.⁷³⁹

512. The rigorous appeals process and the safeguards in place within the Egyptian system ensure that any executions arising from the

⁷³³ [El-Gundy, Z., Ahram Online, Q&A: Capital punishment in Egypt, 21 May 2015.](#)

⁷³⁴ [Articles 470, 471 and 473 of the Egyptian Criminal Procedure Code.](#)

⁷³⁵ [Cornell Law School, Cornell Center on the Death Penalty Worldwide, Death Penalty Database, Egypt.](#)

⁷³⁶ [Article 470 of the Egyptian Criminal Procedure Code.](#)

⁷³⁷ [Articles 74 to 76 of Law No. 58 of 1937, Penal Code.](#)

⁷³⁸ [Article 204 of Constitution of the Arab Republic of Egypt, 2014.](#)

⁷³⁹ Military Judiciary Law 2014. See also chapter 3 concerning fairness of trials and [Auf, Y., Atlantic Council, A Legal Analysis of Egypt's Military Judiciary, 6 April 2015.](#)



issuance of a death sentence are substantiated at various levels, by the judiciary, executive and religious sector. These 'checks' are carried out under the sharia maxim to err on the side of caution when dealing with punishments of such severity.

6.4. Application of the death penalty

513. The following section aims to assess the context in which death sentences have been issued in Egypt followed by the circumstances in which executions have taken place. It shall examine the most controversial trials resulting in the imposition of death sentence over the last two years.

6.4.1. Case study I: The Mass Trials of Minya

514. In its most recent death penalty report, Amnesty International recorded at least [538](#) death sentences issued by courts in Egypt in 2015, up from at least [509](#) death sentences issued the previous year in 2014.⁷⁴⁰ Both figures demonstrate a dramatic increase in the number of death sentences issued by Egyptian courts in previous years.

515. For example, between 1981 and 2000, it is reported that at least [709](#) people were sentenced to death in civilian courts throughout the 19 year period.⁷⁴¹ The figures recorded by Amnesty International are also an increase on more recent figures that had been considered a dramatic rise in issuance of the death penalty, including 2010 in which at least

⁷⁴⁰ [Amnesty International, Death Sentences and Executions, 2015.](#)

⁷⁴¹ [El-Gundy, Z., Ahram Online, Q&A: Capital punishment in Egypt, 21 May 2015.](#)



[136](#) death sentences were reportedly issued.⁷⁴²

516. The rise in death sentences issued by Egyptian courts relates to the increase in use of mass trials and subsequently the issuance of mass death sentences. For example, in 2014, 527 accused were put on trial by Minya Criminal Court, followed by a further mass trial of 683 at the same court in the same year.

517. Both trials related to attacks on two police stations, Adwa Police Station and Matay Police Station that are located in Minya.⁷⁴³ The attacks occurred in mid-August 2013 and were carried out by Muslim Brotherhood supporters following the end of Mohamed Morsi's presidency in [July 2013](#).⁷⁴⁴ Both attacks were part of a larger coordinated attack against [twelve other police stations](#) across the Minya governorate which killed thirteen policemen and injured thirty other officers.⁷⁴⁵

518. The coordinated attacks on police stations in Minya were also not one-off events but rather part of the Muslim Brotherhood's schematic plan targeting military and police structures. Prior to the commission of the attacks, the Egyptian Ministry of Interior had announced that it had [intercepted phone calls](#) from leading members of the Muslim Brotherhood who had instructed their supporters to

⁷⁴² [El-Gundy, Z., Ahram Online, Q&A: Capital punishment in Egypt, 21 May 2015.](#)

⁷⁴³ Case No. 8473/2013 concerns trial of 527 accused in connection to attack on Matay police station ("Matay Trial"). Case No. 300/2014 concerns trial of 673 accused in connection to attack on Adwa police station ("Adwa Trial").

⁷⁴⁴ See [9 Bedford Row, The Egyptian Revolution against the Muslim Brotherhood 2013, 10 December 2015.](#)

⁷⁴⁵ [Stremes, S., Cerus Intel, Report: Militant Incidents In Egypt, August 2013.](#)



stage attacks on police stations.⁷⁴⁶

519. The Minya governorate had also seen a dramatic rise in revenge attacks against Christian sects with a number of churches subject to [arson attacks](#) across Minya and an increase in reported kidnappings of Coptic Christians in the area.⁷⁴⁷ The increase in sectarian violence followed calls for violence popular amongst [Muslim Brotherhood](#) supporters.⁷⁴⁸

520. In both mass trials, the accused were [charged](#) with commission of various serious offences including incitement to violence, vandalism, unlawful gathering, the killing of one police officer and membership of an unlawful organisation, as well as charges relating to the acquisition and possession of weapons.⁷⁴⁹ Both trials were heard before the same Judge who had initially recommended that all 1,212 accused be sentenced to death in [March](#) and [April](#) 2014.⁷⁵⁰ It was this initial recommendation, from a single judge, sitting in the same courtroom, which sparked international [condemnation](#).⁷⁵¹ Notably the [Judge](#) in question no longer sits on criminal trials,⁷⁵² following a major

⁷⁴⁶ [“State of Emergency declared in Egypt to Foil NATO-Backed Subversion”, NSNBC, 14 August 2013.](#)

⁷⁴⁷ See for example, [Hauslohner, A., Washington Post, Ravaged churches reveal sectarian split feeding Egypt’s violence, 20 August 2013](#) and [Chick, K., Christian Science Monitor, Egypt’s Christians close ranks as kidnappings spike, 2 November 2013.](#)

⁷⁴⁸ See [9 Bedford Row, The Egyptian Revolution against the Muslim Brotherhood 2013, 10 December 2015.](#)

⁷⁴⁹ [International Commission of Jurists, Egypt’s Judiciary: A Tool of Repression, 2016.](#)

⁷⁵⁰ [Kirkpatrick, D., New York Times, Hundreds of Egyptians Sentenced to Death in Killing of a Police Officer, 24 March 2014](#) and [Cunningham, E. and Hauslohner, A., Washington Post, Egypt sentences 683 to death in latest mass trial of dissidents, 28 April 2014.](#)

⁷⁵¹ See for example, [Gulhane, J., Daily News Egypt, Global condemnation of Minya mass death sentences, 29 April 2014.](#)

⁷⁵² [Middle East Eye, Egypt’s mass death sentence judge removed, 13 February 2015.](#)



review of the judiciary conducted by the [Supreme Disciplinary Board](#).⁷⁵³

521. Ultimately however, following review by the Grand Mufti, the Judge revised his earlier position and affirmed [37](#) of the 527 death sentences it had imposed on 24 March 2014 in the Matay Trial and affirmed [183](#) of the 683 death sentences imposed on 28 April 2014 in the Adwa Trial.⁷⁵⁴ Actually, the fact that the majority of those accused in both the Matay and Adwa trials were tried and sentenced [in absentia](#),⁷⁵⁵ makes it evident that, according to the existing judicial safe guards set out in Egyptian laws, none of those sentenced persons may, in effect, be executed. For example, in the Matay Trial, initial reports indicated that of the 527 accused, at least [381](#) were sentenced *in absentia*.⁷⁵⁶ Similarly, in the Adwa Trial, it is recorded that [573](#) accused were sentenced *in absentia*.⁷⁵⁷ The [remaining sentences](#) in the Matay and Adwa trials were either commuted to prison sentences or resulted in acquittals.⁷⁵⁸

522. In light of their automatic right to [re-trial](#) upon arrest,⁷⁵⁹ those tried *in absentia* in Egypt are normally given the statutorily allowed

⁷⁵³ [International Commission of Jurists, Egypt's Judiciary: A Tool of Repression, 2016.](#)

⁷⁵⁴ [Gulhane, J., Daily News Egypt, 37 death sentences upheld in Minya, 683 more handed preliminary death sentences, 28 April 2014](#) and [BBC News, Court confirms Egypt Muslim Brotherhood death sentences, 21 June 2014.](#)

⁷⁵⁵ [Atlantic Council, Factbox: Backlash Over Egypt's Mass Trials, 29 April 2014.](#)

⁷⁵⁶ [Atlantic Council, Factbox: Backlash Over Egypt's Mass Trials, 29 April 2014.](#)

⁷⁵⁷ [BBC News, Court confirms Egypt Muslim Brotherhood death sentences, 21 June 2014.](#)

⁷⁵⁸ [BBC News, Court confirms Egypt Muslim Brotherhood death sentences, 21 June 2014.](#)

⁷⁵⁹ [Article 395 of the Egyptian Criminal Procedure Code.](#) See also [Center for Strategic and International Studies, Washington, D.C., Comments of Minister of Foreign Affairs of the Arab Republic of Egypt, 28 April 2014](#); see also [Al-Monitor, Death Penalty Divides Egyptians, 19 June 2015.](#)



maximum which is merely regard as a “[legal placeholder](#)” and not considered to be the “real” conviction or sentence.⁷⁶⁰

523. Following an appeal before the Court of Cassation, the remaining death sentences in both the Matay Trial and Adwa Trial were overturned in January and February 2015 with a re-trial ordered in both cases.⁷⁶¹

524. Moreover, pending the outcome of the re-trial ordered by the Court of Cassation, those subject to death sentences may also be granted an amnesty by the [President](#) as has been the example in other cases in which mass sentences were issued.⁷⁶²

525. In what were clearly headline-grabbing circumstances, the actual outcome of the mass death sentences issued by the Minya Criminal Court is far less newsworthy and subject to a number of safeguards. However, in order to protect against similar scenarios and issuance of mass death penalties by ‘rogue’ judges, Egyptian authorities must continue in its efforts to review the conduct of those serving in its judiciary.

⁷⁶⁰ [Risley, D., Egypt Justice, In Absentia Convictions: Legal Placeholders, 20 June 2015](#).³⁸⁸

⁷⁶¹ Court of Cassation Judgment, Case No. 300 of 2014, 11 February 2015 and Memorandum from Public Prosecutor, Case No. 300 of 2014, Adwa Case. See also [Ahram Online, Egypt court accepts appeal in Minya mass death sentence case, 24 January 2015](#) and [El-Din, E., Ahram Online, Egypt's court of Cassation overturns death sentence on 36 Morsi supporters, 11 February 2015](#).

⁷⁶² See for example, [DW, Egypt's el-Sissi pardons 165 inmates who broke anti-protest law, 17 June 2015](#) and [Malsin, J., Time, Egyptian President Sisi Pardons Political Prisoners – Including Jailed Journalists, 23 September 2015](#).



6.4.2. Arab Sharkas executions

526. Whilst there is an increase in the number of death sentences issued in Egypt in 2014 and 2015, there has not been a dramatic increase in the number of executions carried out pursuant to judicial proceedings. For example, in 2016, [no executions](#) have been recorded in Egypt.⁷⁶³ Similarly, in 2015, [22](#) executions, up by seven from the previous year,⁷⁶⁴ were carried out; [16](#) of which were in relation to the commission of aggravated murder.⁷⁶⁵ The remaining [6](#) executions took place on 17 May 2015 in relation to convictions secured before a military court for terrorist-related charges.⁷⁶⁶

527. Better known as the Arab Sharkas case,⁷⁶⁷ this matter concerned the killing of two Egyptian army personnel in the Qaliubiya village of [Arab Sharkas](#), in northern Egypt, in March 2014.⁷⁶⁸ Nine men were accused of carrying out the attack as members of [Ansar Bait Al-Maqdis](#),⁷⁶⁹ a group classified as a [terrorist organization](#) in Egypt, the United States of America and several Gulf states.⁷⁷⁰

528. The nine accused were [charged](#) with carrying out a terrorist attack as well as membership of a terrorist organization and

⁷⁶³ [Cornell Law School, Cornell Center on the Death Penalty Worldwide, Death Penalty Database, Egypt.](#)

⁷⁶⁴ [Amnesty International, Death Sentences and Executions, 2015.](#)

⁷⁶⁵ [Amnesty International, Death Sentences and Executions, 2015.](#)

⁷⁶⁶ [Amnesty International, Death Sentences and Executions, 2015.](#)

⁷⁶⁷ Case No. 43/2014 Military Crimes North.

⁷⁶⁸ [Egyptian Streets, Egypt Executes Six Convicted Men in 'Arab Sharkas' Case, 17 May 2015.](#)

⁷⁶⁹ [Ahram Online, Egypt executes 6 in 'Arab Sharkas' case, 17 May 2015.](#)

⁷⁷⁰ [Tahrir Institute for Middle East, Wilayat Sinai](#) see also 9 [Bedford Row, The History of the Muslim Brotherhood, 2 April 2015.](#)



recruitment of members to the terrorist organization.⁷⁷¹ They were also tried in connection to [attacks on military personnel](#) in Cairo's Amiriya district in March 2014.⁷⁷²

529. As the crime concerned the death of military personnel, the trial took place before an Egyptian military court, with [eight](#) of the nine men appearing in person.⁷⁷³ In [October 2014](#), seven of the nine men were sentenced to death, whilst the other two detainees were given [life sentences](#),⁷⁷⁴ following consultation by the Grand Mufti in [August 2014](#).⁷⁷⁵ The sentences were also subsequently ratified by the Minister of Defence Sedqi Sobhi in [November 2014](#).⁷⁷⁶

530. Although the accused sought appeal of their convictions and sentence, the penalties were upheld by the [Supreme Criminal Military Court](#) on 24 March 2015.⁷⁷⁷ The [Court of Administrative Judiciary](#) also upheld the death sentences, although it did so two months after the executions,⁷⁷⁸ attracting [criticism](#) for its delay and failure to suspend the execution.⁷⁷⁹

⁷⁷¹ [Egyptian Streets, Egypt Executes Six Convicted Men in 'Arab Sharkas' Case, 17 May 2015.](#)

⁷⁷² [Egyptian Streets, Egypt Executes Six Convicted Men in 'Arab Sharkas' Case, 17 May 2015.](#)

⁷⁷³ [Ahram Online, Egypt executes 6 in 'Arab Sharkas' case, 17 May 2015.](#)

⁷⁷⁴ [Ahram Online, Egypt executes 6 in 'Arab Sharkas' case, 17 May 2015](#) and [Egyptian Streets, Egypt Executes Six Convicted Men in 'Arab Sharkas' Case, 17 May 2015.](#)

⁷⁷⁵ [Mamdouh, A., Al-Bawaba, Military court rejects Arab Sharkas terrorist cell appeals, 24 March 2015.](#)

⁷⁷⁶ [Cairo Post, Top court adjourns decision on challenge of executed Arab Sharkas 'terrorists', 19 May 2015.](#)

⁷⁷⁷ [Mamdouh, A., Al-Bawaba, Military court rejects Arab Sharkas terrorist cell appeals, 24 March 2015.](#)

⁷⁷⁸ [Cairo Post, Administrative Judiciary Court rejects Arab Sharkas "terrorist cell" challenge, 27 July 2015.](#)

⁷⁷⁹ [Ahram Online, Egyptian court posthumously upholds death sentence of executed "Arab Sharkas" prisoners, 27 July 2015.](#)



531. Having already [claimed responsibility](#) for the attack on military personnel in Qaliubiya village of Arab Sharkas,⁷⁸⁰ Ansar Bait Al-Maqdis also called for [retribution](#) for the execution of six of its members.⁷⁸¹ This was followed by calls for violence and revenge by the [Islamic State's Sinai Peninsula](#), which was borne out of Ansar Bait Al-Maqdis.⁷⁸² In particular, having already issued a grave warning for the killing of its members days after the execution, the Islamic State subsequently carried a terrorist attack in August 2015 [avenging](#) the death of members of the so-called Arab Sharkas cell.⁷⁸³

532. Given the direct links between the Arab Sharkas accused and jihadist groups, the executions of the six men was met with [support](#) from relatives of victims' of terrorist attacks,⁷⁸⁴ as the only method in which to stop future attacks. Other scholars have drawn direct links between accused who have been sentenced to death and the subsequent increase in [criminal activity](#) conducted whilst awaiting execution in prison.⁷⁸⁵ This raises real concern over the possible increase in terrorist activity and encouragement by accused with terrorist-affiliations who are awaiting the death penalty. Recent reports have also indicated a rise in prisons being used as both [recruitment](#)

⁷⁸⁰ [Egypt Independent, Ansar Bayt al-Maqdis announces affiliation with Arab Sharkas terrorists, 24 March 2014.](#)

⁷⁸¹ [Youssef, A., Daily News Egypt, 6 convicts in 'Arab Sharkas cell' case executed, 17 May 2015.](#)

⁷⁸² [Joscelyn, T., Long War Journal, Islamic State branch says caliphate's 'soldiers' bombed Cairo courthouse, national security building, 20 August 2015.](#)

⁷⁸³ [Joscelyn, T., Long War Journal, Islamic State branch says caliphate's 'soldiers' bombed Cairo courthouse, national security building, 20 August 2015.](#)

⁷⁸⁴ [Fouad, A., Al-Monitor, Death penalty divides Egyptians, 19 June 2015.](#)

⁷⁸⁵ [Fouad, A., Al-Monitor, Death penalty divides Egyptians, 19 June 2015.](#)



and [finishing schools](#) for would-be terrorists.⁷⁸⁶

533. Similar concerns have also transpired [across the region](#) in a number of states, such as Saudi Arabia, Yemen and Pakistan, which have also increased number of executions of accused convicted of terrorist acts.⁷⁸⁷ With the entire region facing [unprecedented challenges](#), the threat of terror attacks is a genuine and real problem in Egypt.⁷⁸⁸

6.5. Conclusion

534. Whilst the issuance of any death sentence will always be surrounded by controversy and criticism, the safeguards in place within the Egyptian judicial system have meant that, proportionally, very few of the sentences have resulted in executions.

535. Whilst Egypt is a largely populated state with thousands of criminal cases processed each year, it must continue to ensure that it errs on the side of caution when meting out death sentences throughout [transitional](#) and vulnerable periods of governance and national security.

536. The pattern of death sentences is erratic. According to the five-year reports issued by the [United Nations Secretary-General](#), executions in Egypt for the 1994-1998 period totaled 132, for the 1999-

⁷⁸⁶ See for example, [Neumann, P., International Center for the Study of Radicalisation and Political Violence, Prisons and Terrorism Radicalisation and De-radicalisation in 15 Countries, 2010](#) and [De Bellaigue, C., The Guardian, Are French prisons 'finishing schools' for terrorism?, 17 March 2016](#).

⁷⁸⁷ [Amnesty International, Death Penalty 2015: Facts and Figures, 6 April 2015](#).

⁷⁸⁸ [Malinowski, T., US Department of State, Human Rights Conditions in Egypt, 3 November 2015](#).



2003 period totaled 350, for the 2004-2008 period totaled 9 and for the 2009-2013 period totaled at least 10.⁷⁸⁹ In other words, for the decade beginning 1994 there were 482 executions and the decade beginning 2004 there were at least 19 executions. The decline is broadly consistent with reductions seen in many countries around the world as the use of the death penalty continues to decline. For the years 2014 and 2015, executions totaled more than 36, nearly double the total for the previous ten years. Although this increase over the last two years is quite alarming, it can be well explained and understood in the context of the complex security situation facing the country and the threat of actual terror within Egypt. So far, 2016 goes by apparently without executions (at time of writing, at the end of November), which is in and of itself a positive indication.

⁷⁸⁹ [Center for Strategic and International Studies, Washington, D.C., Comments of Minister of Foreign Affairs of the Arab Republic of Egypt, 28 April 2014.](#)