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SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE UN HUMAN RIGHTS COMMITTEE IN VIEW OF THE COMMITTEE'S EXAMINATION OF EGYPT'S FIFTH PERIODIC REPORT UNDER ARTICLE 40 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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I. Introduction

1. During its 137th session, from 27 February to 24 March 2023, the Human Rights Committee ('the Committee') will examine the Arab Republic of Egypt's implementation of and compliance with the provisions of the International Covenant on Civil and Political Rights (ICCPR or Covenant), including in light of Egypt's fifth periodic report[1] under article 40 of the ICCPR and its replies to the Committee's List of issues in relation to the fifth periodic report of Egypt.[2]

2. In light of the above, the International Commission of Jurists (ICJ) wishes to draw the Committee's attention to significant concerns arising from Egypt's failure to comply with its obligations under the ICCPR, and the consequences for the protection of certain Covenant rights. In particular, this submission addresses:
(a) violations of the right to life and of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (articles 2, 6, 7 and 14);
(b) enforced disappearances (articles 2, 6, 7, 9, 10 and 16);
(c) violations of the right to liberty and security of person, and concerns about the treatment of persons deprived of their liberty (articles 2, 6, 7, 9, 10 and 14); and
(d) concerns about the administration of justice and the independence of the judiciary, as well as violations of the right to a fair trial (articles 2 and 14).

3. This submission is relevant for the Committee's evaluation of the Arab Republic of Egypt's implementation of the State's obligations and related Covenant rights under articles 2, 6, 7, 9, 10, 14, 16 and 19, and of the ICCPR.

II. Right to life and prohibition of torture and other cruel, Inhuman or degrading treatment or punishment

a. Imposition of the death penalty

4. As far back as 2002, in its Concluding Observations, the Committee recommended that Egypt take measures to abolish the death penalty.[3] Not only has Egypt failed to implement the Committee's recommendation, but since the ouster of President Morsi in July 2013, there has been an increase in the imposition of capital punishment by courts in Egypt, and in executions carried out pursuant to such sentences. Many cases in which death sentences have been handed down have been marred by a litany of fair trial rights violations.

5. In 2017, 331 death sentences were issued in Egypt — 260 by civilian courts and 71 by military courts — and 49 individuals were executed in the same year. In 2018, 595 death sentences were handed down — 543 by civilian courts and 52 by military courts — and 43 individuals were executed.[4] In 2019, Amnesty International recorded 435

[1] Human Rights Committee, Fifth periodic report submitted by Egypt under article 40 of the Covenant, due in 2004 UN Doc. CCPR/C/EGY/5, 18 November 2020.
[2] UN Human Rights Committee, List of issues in relation to the fifth periodic report of Egypt, UN Doc. CCPR/C/EGY/Q/5, 27 June 2022; UN Human Rights Committee, Egypt's responses to the list of issues for its fifth periodic report, UN Doc. CCPR/C/EGY/RQ/5, 30 December 2022.
[3] UN Human Rights Committee, Concluding Observations on Egypt, UN Doc. CCPR/CO/76/EGY, 28 November 2002, para 12. The African Commission has also repeatedly called on Egypt to Impose a moratorium on the death penalty, See African Commission on Human and Peoples' Rights, Resolution 544 on the Death Penalty and the prohibition of Torture and cruel, inhuman or degrading punishment or treatment (2022) para 1 available at: https://achpr.au.int/index.php/en/adopted-resolutions/544-resolution-death-penalty-and-prohibition-torture-and-cruel; Resolution 297 on the Deteriorating Human Rights Situation in the Arab Republic of Egypt (2015), paras 4-5, available at:http://www.achpr.org/sessions/17th-eo/resolutions/297/ https://www.achpr.org/sessions/resolutions?id=146%20.
[4] ICJ and Adalah, Submission to the Universal Periodic Review of Egypt, March 2019, p. 6.

death sentences and 32 executions;[5] 264 death sentences and 107 executions in 2020;[6] and 356 death sentences and 83 executions in 2021.[7]

6. As a party to the ICCPR and as a retentionist State, Egypt must ensure that the death penalty be available as punishment only for the most serious crimes.[8] The Special Rapporteur on extrajudicial, summary or arbitrary executions has interpreted 'most serious crimes' as "limited to crimes involving lethal intent and resulting in death — in other words, intentional killing."[9] In its previous Concluding Observations, the Committee expressed concern over the very large number of offences under Egyptian law that are punishable by the death penalty, and recommended that Egypt bring its legislation and practice in line with the Covenant.[10] Egypt has since maintained its position and interpreted 'most serious crimes' as including a wide range of crimes.[11] To date, there are more than 100 crimes punishable by death under Egyptian law, including, broad and ill-defined "terrorism-related" offences, rape, kidnapping, drug trafficking, drug possession for the purpose of trade, "treason" and "espionage".[12]

7. In addition, the Committee has underscored that the passing of a death sentence following a trial that failed to meet the due process requirements of article 14 of the Covenant, guaranteeing the right to a fair trial, is arbitrary in nature.[13]

8. The ICJ opposes the death penalty in all cases as a violation of the right to life, and considers that, *per se*, its imposition amounts to a form of cruel, inhuman and degrading treatment or punishment.

b. Prevalence of torture and other ill-treatment

9. Egypt has a history of systematic torture of detainees.[14] Indeed, from 2012-2016, the UN Committee against Torture (UNCAT) conducted a rare "Article 20 inquiry" concerning "well-founded indications that torture [was] being systematically practised" in Egypt. The UNCAT inquiry concluded:

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[5] Amnesty International Global Report – Death Sentences and Executions 2020, p. 34.
[6] Amnesty International Global Report – Death Sentences and Executions 2021, p. 36.
[7] Amnesty International Global Report – Death Sentences and Executions 2022, p. 40.
[8] ICCPR, art. 6(2). With respect to the expression 'most serious crimes', in its General Comment No. 36 on the right to life, the Human Rights Committee has affirmed: "The term "the most serious crimes" must be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing. Crimes not resulting directly and intentionally in death, such as attempted murder, corruption and other economic and political crimes, armed robbery, piracy, abduction, drug and sexual offences, although serious in nature, can never serve as the basis, within the framework of article 6, for the imposition of the death penalty. In the same vein, a limited degree of involvement or of complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder, cannot justify the imposition of the death penalty. States parties are under an obligation to review their criminal laws so as to ensure that the death penalty is not imposed for crimes which do not qualify as the most serious crimes. They should also revoke death sentences issued for crimes not qualifying as the most serious crimes and pursue the necessary legal procedures to re-sentence those convicted for such crimes". See UN Human Rights Committee, General Comment No. 36 on the right to life, UN Doc. CCPR/C/GC/36, 3 September 2019, para. 35, footnotes in the original omitted. The same standard appears in section N(9)(b) of The African Commission on Human and People's Rights, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003) (Principles on Fair Trial in Africa). Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council resolution 1984/50 of 25 May 1984, art 1
[9] Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/67/275 (2012), paras 34-67, in particular paras 35 and 66-67.
[10] CCPR/CO/76/EGY, para 12.
[11] CCPR/C/EGY/5, para 23. This position was reaffirmed by Egypt in its reply to the List of Issues, CCPR/C/EGY/RQ/5 para. 49.
[12] Criminal Code, Law No. 58 of 1937, as amended, arts 77-77(c), 78(A)-78(C), 80 (1), 81, 82(B), 83, 83(A) cum, 85-102(2) Bis, 102(B), and 290; Arms and Ammunition Law No. 394 of 1954, as amended by Law No. 165 of 1981, art. 26; Narcotics Law No. 182 of 1960, as amended, arts 33-34.
[13] See General Comment No. 36, para 17
[14] ICJ, *Egypt: A Return to a Permanent State of Emergency?*, June 2018, available at: https://www.icj.org/wp-content/uploads/2018/09/Egypt-Return-to-State-of-Emergency-Advocacy-Analysis-brief-2018-ENG.pdf p. 8

"Torture appears to occur particularly frequently following arbitrary arrests and is often carried out to obtain a confession or to punish and threaten political dissenters. Torture occurs in police stations, prisons, State Security and Central Security Forces facilities and is perpetrated by police officers, military officers, National Security officers and prison guards. Prosecutors, judges and prison officials, however, also facilitate torture by failing to curb practices of torture, arbitrary detention and ill-treatment or to act on complaints about such violations. Perpetrators of torture almost universally enjoy impunity. In the Committee's view, all the above lead to the inescapable conclusion that torture is a systematic practice in Egypt."[15]

10. The systematic practice of torture in Egypt is facilitated by an inadequate framework on the prohibition of torture and other ill-treatment. The definition of torture under article 126 of the Egyptian Penal Code only establishes liability for torture for the purpose of obtaining a "confession" against a suspect, falling significantly below the standard required by the Egyptian Constitution and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), both of which prohibit torture for a number of other purposes in addition to forbidding it to obtain a confession.

11. In its Concluding Observations in 2002 the Committee recommended that all violations of articles 6 and 7 of the Covenant be investigated, and that Egypt should establish an independent body to investigate such allegations.[16] Egypt declared in its reply to the List of Issues that the Public Prosecution is the body entrusted for investigating these allegations according to Article 189 of the Constitution, thus indicating that no independent body has been established since the Committee's recommendation in 2002.[17] Moreover, the Public Prosecution has been complicit in abuses by security forces,[18] and has failed to open investigations into allegations of torture or ill-treatment, confirming, therefore, that it cannot be entrusted to conduct an independent, impartial and transparent investigation, as required by international human rights law into credible allegations of violations of articles 6 and 7 of the Covenant.

12. The following cases illustrate that torture and other ill-treatment are facilitated by the prevailing impunity of security officials responsible for human rights violations in the country.[19]

13. The ICJ monitored the arrest and trial of researcher Ahmed Samir Santawy. Mr Santawy was arrested on 1 February 2021 and was subjected to enforced disappearance for five days, during which time he was beaten in the face by members of the security service. His defence team requested that the Supreme State Security Prosecution (SSSP) conduct an investigation into these allegations on 22 May 2021; to date, however, the SSSP has failed to carry out an investigation into these serious allegations.[20] Ahmed Samir Santawy has since been released pursuant to a Presidential pardon.

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[15] UN Committee Against Torture, Report of the Committee Against Torture, U.N. Doc A/72/44 (2017) (UNCAT Annual Report 2017), para. 69, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f72%2f44&Lang=en

[16] CCPR/CO/76/EGY, para 13.

[17] CCPR/C/EGY/RQ/5, para. 55

[18] ICJ, *Egypt: Law 71 an assault on the right to a public trial and on freedom of expression,* 28 June 2021, available at: https://www.icj.org/egypt-law-71-an-assault-on-the-right-to-a-public-trial-and-on-freedom-of-expression/

[19] ICJ and TIMEP*, Targeting the last line of defense: Egypt's attacks against lawyers*, September 2020,Available at: https://icj2.wpenginepowered.com/wp-content/uploads/2020/09/Egypt-Last-Line-of-Defense-Advocacy-Analysis-brief-2020-ENG.pdf p. 14. See also:On 22 February 2015, lawyer Karim Hamdi was arrested and questioned on suspicion of participating in an unauthorized demonstration against the government. While in police custody in Matariya Police Station, he was reported to have been severely beaten on his neck, chest and abdomen. He died two days later after he was transferred to hospital. In May 2015, an Egyptian criminal court acquitted two police officers charged with beating Hamdi to death while held in custody. In May 2018, after an appeal and a retrial, the two officers were acquitted once again by another criminal court, p.4

[20] ICJ, *Politicized and Unfair Trials before the Emergency State Security Court – The case of Ahmed Samir Santawy*, November 2021, available at: https://icj2.wpenginepowered.com/wp-content/uploads/2021/11/Egypt-Santawy-trial-monitoring-publications-briefing-2021-ENG.pdf, p. 6.

14. In 2022, the UN Working Group on Arbitrary Detention, the UN Working Group on Enforced or Involuntary Disappearances, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health published a joint communication to the Egyptian authorities on the death of Mr Ayman Hadhoud.[21] Mr Hadhoud was an economist, researcher and member of the Reform and Development Party in the Egyptian Parliament. Prior to his death following his arrest, Mr Hadhoud regularly spoke out about Egypt's economic policies on his social media accounts.

15. Mr Hadhoud was last seen on 5 February 2022. A subsequent statement by the National Public Prosecutor dated 12 April 2022 revealed that Mr Hadhoud was arrested on 6 February 2022 in the Zamalek district of Cairo. On 8 February 2022, an official from the National Security Agency (NSA) informed persons associated with Mr Hadhoud of his detention at Al-Amiriyya Police Station in the Northwest of Cairo Governorate. On 14 February 2022, Mr Hadhoud was officially admitted to the forensic medicine department of Abbasiyya Psychiatric Hospital, which reportedly functions as a detention centre controlled by the Ministry of Interior. This facility is notorious as reports indicate that people face a greater risk of being tortured or otherwise ill-treated by security officers there, including through the use of electric shocks.

16. On 9 April 2022, persons associated with Mr Hadhoud were officially informed of his death in custody on 5 March 2022. On 18 April 2022, the prosecution released a statement outlining the results of the autopsy carried out on Mr Hadhoud's body; the statement indicated that there were no injuries found on his body that could have been indicative of "criminal violence or resistance", and that he had died of a chronic heart condition caused by "blood and respiratory failure".

17. An independent forensic medical report and leaked photographs of Mr Hadhoud's body taken at the morgue following the autopsy appear strongly to corroborate allegations that, prior to his death, Mr Hadhoud was subjected to ill-treatment, possibly amounting to torture, which may have caused his death.[22] In addition, it appears that, during his detention at the psychiatric hospital, Mr. Hadhoud was denied timely and appropriate medical care, which may have caused or contributed to his death.

18. Under the ICCPR, Egypt is under an obligation to conduct an independent, impartial, prompt, thorough, credible and transparent investigation into credible allegations of violations of article 6 and 7 of the Covenant.[23] However, the investigation in this case does not meet these requirements, as the investigation was conducted by the Public Prosecution's office, the same actor allegedly involved in the arrest, detention and alleged ill-treatment of Mr Hadhoud.

[21] Communication from the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, AL EGY 5/2022, 29 July 2022, available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=27426 .

[22] For more information, see Joint Communication from the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, AL EGY 5/2022, 29 July 2022, available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=27426

[23] UN Principles for the Effective Prevention and Investigation of Extra-Legal, Summary and Arbitrary Executions, and the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)).

Recommendations

In light of the above, the Human Rights Committee should recommend that Egypt:

- **In relation to the death penalty:**
  - **Amend Egyptian law and abolish the use of the death penalty;**
  - **Pending abolition, implement an immediate moratorium on all executions and on the imposition of capital punishment, including in cases involving intentional killing;**
  - **Pending abolition, ensure that proceedings in death penalty cases conform to the highest standards of judicial independence, competence and impartiality, and strictly comply with all fair trial rights; and**
  - **Ratify or accede to the Second Optional Protocol to the Covenant aiming at the abolition of the death penalty.**
- **In relation to the prevalence of torture and ill-treatment:**
  - **Amend article 126 of the Criminal Code with a view to enacting a crime of torture consistent with article 1 of the CAT, fully reflecting all the purposes for which torture may be perpetrated as set out in that provision. The Criminal Code should also be amended to ensure the criminalization of complicity and participation of public officials in torture, and appropriate penalties commensurate with the gravity of torture;**
  - **Ensure that there are commensurate sanctions against senior officials authorizing, acquiescing or consenting, in any way, to acts of torture committed by their subordinates;**
  - **Accept independent monitoring of detention facilities by allowing independent observers immediate access to detainees and prisoners, and, to that end, accede to the Optional Protocol to the CAT;**
  - **Promptly, thoroughly and impartially investigate all allegations of torture and ill-treatment of convicted prisoners and detainees, and bring to justice State officials and law enforcement officers who carried out, ordered, instigated or acquiesced in such practices;**
  - **Break the cycle of impunity that prevails over the involvement of Egypt's security services and armed forces in gross human rights violations, including torture and other ill-treatment, enforced disappearances, and unlawful killings, and, to that end, ensure that all those responsible be brought to justice;**
- **In relation to Ahled Samir Santawy**
  - **Order an immediate investigation into the allegations of torture and ill-treatment in his case.**
- **In relation to Mr Ayman Hadhoud:**
  - **Conduct an impartial and independent investigation into the arrest, detention, alleged ill-treatment, alleged denial of medical care and death in disputed circumstances of Mr Hadhoud, and publish its findings;**
  - **Identify those responsible and, if the evidence so warrants, bring them to justice in proceedings that fully comply with international fair trial standards.**

III. Enforced Disappearances

19. Enforced disappearance is one of the most serious human rights violations systematically practised in Egypt; enforced disappearances are perpetrated on a large scale; often the Egyptian authorities use enforced disappearances as a weapon in order to punish thousands of political dissidents and create an atmosphere of fear and intimidation.

20. Since May 2020, Egypt has received more communications from the Working Group on Enforced or Involuntary Disappearances than any other country.[24] It has now become common practice for individuals to be forcibly disappeared for days after their arrest.

21. As part of its campaign, "Stop Enforced Disappearance," launched on 30 August 2015 in conjunction with the International Day of Victims of Enforced Disappearance, the Egyptian Commission for Rights and Freedoms (ECRF) publishes annual reports on enforced disappearances in Egypt. Over the course of seven years, the campaign has documented that 3,088 people were subjected to enforced disappearance for varying periods inside the headquarters of the National Security Agency and other official and unofficial detention facilities. The campaign also monitored the patterns of the phenomenon during this period, showing that its practice is systematic and widespread.[25]

22. The ICJ is concerned that the failure to criminalize enforced disappearance in domestic legislation, alongside the failure to conduct investigations into cases of enforced disappearances and hold perpetrators accountable, has encouraged their perpetration. While various articles of the 2014 Constitution and the Criminal Code prohibit and criminalize instances of unlawful detention, there is no direct reference to, or explicit criminalization of, "enforced disappearances" in domestic legislation. The republic of Egypt in their reply to the List of Issues have attested that the Public Prosecutor initiates an investigation into any communication it receives regarding allegations of enforced disappearances.[26] With respect to this, the ICJ wishes to draw to the Committee's attention the fact that the organization has monitored numerous cases of enforced disappearance in which no investigation has been opened.

23. The following cases are illustrative of the above-mentioned concerns. Mr Ahmed Samir Santawy was subjected to enforced disappearance in violation of Egypt's obligations under international human rights law, and in particular under the Covenant, from 1 to 6 February 2021 when he was held incommunicado. The Egyptian authorities failed to acknowledge that he was in their custody, both at the time and since the facts, and have failed to conduct an investigation into the allegations.[27]

24. As mentioned above, on 5 February 2022 Mr Ayman Hadhoud's family lost contact with him; three days later, persons associated to Mr Hadhoud were informed that he was being held at Amiriya police station but were prohibited from speaking to him. On 11 February 2022, persons associated with Mr Hadhoud visited Amiriya prison, only to be informed by officers that he was not there. Mr Hadhoud later died while detained. Egypt has so far failed to conduct an effective investigation into his disappearance.[28]

25. While Egypt has not yet become a party to the International Convention for the Protection of All Persons from Enforced Disappearance (CED), the prohibition on enforced disappearance is embodied in other treaties ratified by Egypt, including the ICCPR. Indeed, the Committee has held that, under the ICCPR, enforced disappearances violate the right to liberty and security of person, the right to freedom from torture and

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[24] ICJ, ICJ denounces Egypt's large-scale use of enforced disappearances to silence any kind of opposition (UN Statement), 20 September 2022, available at: https://www.icj.org/icj-denounces-egypts-large-scale-use-of-enforced-disappearances-to-silence-any-kind-of-opposition-un-statement/

[25] Egyptian taskforce, A crisis by Design, The Systemic Nature of Human Rights Violations in Egypt, January 2023 available at: https://cihrs.org/egypt-crisis-by-design-a-human-rights-report-by-independent-egyptian-organizations-to-the-un/?lang=en para 14https://www.ec-rf.net/3760-2/amp/

[26] CCPR/C/EGY/RQ/5, para. 47

[27] ICJ, *Politicized and Unfair Trials before the Emergency State Security Court – The case of Ahmed Samir Santawy*, November 2021, available at: https://icj2.wpenginepowered.com/wp-content/uploads/2021/11/Egypt-Santawy-trial-monitoring-publications-briefing-2021-ENG.pdf p.4

[28] Communication from the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, AL EGY 5/2022, 29 July 2022, available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=27426 .

other ill-treatment, the right to recognition as a person before the law, the right to life and the right to an effective remedy for violations of one's rights under the Covenant.[29]

Recommendations

In light of the above, the Human Rights Committee should recommend that Egypt:

- **Become a party to the CED;**
- **Ensure that State officials are not involved in the perpetration of enforced disappearances, including through the provision of adequate training and independent monitoring;**
- **Promptly, thoroughly and impartially investigate all allegations of enforced disappearance, and bring to justice State officials and law enforcement officers who carried out, ordered, instigated or failed to prevent or punish such practices committed by their subordinates;**
- **Enact a crime of enforced disappearance in the Egyptian Criminal Code consistent with article 2 of the CED, namely, one that includes "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", and provide for appropriate sanctions commensurate with the gravity of the crime. The Criminal Code should also be amended to ensure the criminalization of complicity and participation of public officials, as well as of senior officials who failed to prevent or punish the crime committed by their subordinates.**

IV. Right to liberty and security of person, and treatment of persons deprived of their liberty

a. Mandatory pre-trial detention

28. The ICJ is concerned that neither the legislative framework in Egypt, nor the practice of the Egyptian authorities allows for an individualized assessment of when pre-trial detention is necessary; instead, Egypt's legislation enables an automatic remand into custody pending trial.

29. Although the 2014 Egyptian Constitution guarantees the right to "personal freedom" and requires an accused to be brought before the authorities within 24 hours of the imposition of a restriction on his or her freedom, it also states that this hearing is held before the "investigating authority."[30] The Code of Criminal Procedure (CCP) further states that the prosecutor or investigating judge may conduct such hearings. The prosecutor can order detention for a period of four days, after which the accused must be brought before a judge (an investigating judge though),[31] and the investigating judge can order preventive detention for 15 days, renewable by a further 45 days. Only after 60 days of detention have elapsed is the accused brought before an independent judge who is not connected with the investigation or the prosecuting authorities.[32] Article 143 of the CCP further provides that "in any case, pre-trial detention must not exceed ... six months for defendants accused of

[29] UN Human Rights Committee, General Comment No. 35 on the right to liberty and security of person, UN Doc. CCPR/C/GC/35, 16 December 2014 (General Comment 35), para. 35.
[30] 2014 Constitution, art. 54. Article 54 also guarantees the right to challenge any detention before a court and to a determination of this claim within one week or to release.
[31] Code of Criminal Procedure, arts 201 and 202.
[32] Code of Criminal Procedure, arts 134, 142 and 143.

misdemeanours (offences punished by up to three years in prison), 18 months for felonies and two years for felonies punished by death or life imprisonment."[33]

30. In its previous Concluding Observations, the Committee noted with concern the persistent occurrence of arbitrary detention in Egypt,[34] and has since clarified that, to be consistent with the right to liberty and security of person under article 9 of the ICCPR, detention pending trial may be ordered only pursuant to an individualized determination demonstrating that detention "is reasonable and necessary in all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime,"[35] or "influencing witnesses."[36]

31. The prosecutors of the Supreme State Security Prosecution (SSSP) are responsible for prosecuting "terrorism-related" offences and oversee the pre-trial detention of individuals accused of such offences. With respect to this, the UN Working Group on Arbitrary Detention has observed, "that the near-automatic extension of pre-trial detention by prosecutors for a prolonged time period is a common practice, and that it is not based on individualized determination or periodic judicial reviews."[37]

32. In this regard, the ICJ is concerned that the CCP enables pre-trial detention in cases of felonies and misdemeanors punishable by a prison sentence, without giving any consideration to the circumstances of the individual case at hand.

b. Practice of 'tadweer' rotation

33. Furthermore, the ICJ is concerned that the Egyptian authorities resort to the practice of 'tadweer', that is, rotation, to further crackdown on perceived opponents of the regime, including lawyers, human rights defenders, political figures and advocates; tadweer is used to circumvent the already very limited domestic restrictions on pre-trial detention duration described above. Tadweer is common in trials before the Emergency State Security Court, and it refers to the practice of initiating a new criminal case (B) against individuals while they are in pre-trial detention for another criminal case (A), where the charges and fact patterns are the same in both case A and case B.

34. Once the maximum duration of pre-trial detention at the behest of the Prosecutor has been reached, the trial court must then review the Prosecutor's requests to renew pre-trial detention every 45 days. However, there have been credible reports that, even when a judge issues a release order, the "SSSP either always successfully appeals them or maintains [the detainees] in detention without any legal basis, pending rotation into another new case."[38]

c. Treatment of persons deprived of their liberty

35. Egyptian prisons are notorious for their inhuman and degrading detention conditions, most notably al-Aqrab prison (Scorpian prison), which housed detainees without

[33] Section M(1)(e) of The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (Principles on Fair Trial in Africa) affirm that detention pending trial shall be used only as a measure of last resort, and can only be ordered when "there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others,

[34] CCPR/CO/76/EGY, para. 14

[35] General Comment 35, para. 38.

[36] UN Human Rights Committee, *Michael and Brian Hill v. Spain*, Communication No. 526/1993, U.N. Doc. CCPR/C/59/D/526/1993 (1997) http://hrlibrary.umn.edu/undocs/html/VWS526.HTM para. 12.3

[37] UN Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention during its eight-seventh session, 27 April –1 May 2020, UN Doc. A/HRC/WGAD/2020/14 available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/150/91/PDF/G2015091.pdf?OpenElement para. 52 (footnote in the original omitted).

[38] MENA Rights Group, "The practice of "rotation": how Egypt keeps its dissidents in indefinite detention", 14 December 2021.

beds, mattresses, clean water or basic hygiene products.[39] In June 2019, about 130 detainees went on hunger strike to protest these conditions.[40] Al-aqrab prison has since closed, and individuals detained there have been transferred to other prisons, including newly opened prisons. The closure of al-Aqrab prison, and efforts to ensure that newly opened prisons such as Badr prison or Wadi Al Natrun prison, comply with international standards on adequate lighting and ventilation, as cited in Egypt's reply to the List of Issues, is welcomed.[41] However, the ICJ is concerned at reports indicating that prisoners have been held in new prisons in horrific conditions comparable to or even worse than those documented in al-aqrab prison.[42]

36. Badr prison was officially opened in late 2021, and prisoners held there have reported poor detention conditions, including but not limited to lack of access to sufficient food, clothes and adequate medical care. By November 2022, it had been reported that four prisoners had died in the Badr prison complex, at least two of which a result of poor detention conditions and lack of appropriate medical care. [43]

37. The Egyptian authorities have regularly denied medical treatment to prisoners in prisons across Egypt, even in the face of seriously deteriorating health.

38. The ICJ documented the trial of Egyptian parliamentarian Zyad el-Elaimy, including his treatment in detention. During Mr el-Elaimy's prolonged pre-trial detention, the SSSP repeatedly ignored requests from his defence team and pleas from his family to transfer Mr el-Elaimy to a hospital as he suffered from diabetes, asthma, high blood pressure, stomach ulcers and a rare autoimmune disease. Mr el-Elaimy's health deteriorated as his right to receive medical treatment was continuously violated.[44]

39. The right of persons in detention to receive medical treatment is enshrined in article 18 of the Egyptian Constitution, as well as provisions 33-37 of Chapter VII of the Egyptian Prisons Organization Law No. 396 of 1956. According to international human rights law, failure to provide access to adequate medical treatment may violate the right of all persons deprived of their liberty to be treated with humanity and with respect to the inherent dignity of the human person under article 10 of the Covenant,[45] as well as article 7.

Recommendations

In light of the above, the Human Rights Committee should recommend that Egypt:

- **End the practice of holding detainees routinely in pre-trial detention;**
- **Comprehensively reform the pre-trial detention framework, including by ensuring that resort to it is exceptional, and that such detention may be ordered only when it is determined on the basis of evidence that it is**

[39] *Targeting the last line of defense*, p. 10.
[40] Amnesty International, *Egypt: Mass hunger strike at al-Aqrab prison over denial of family visits and dire conditions*, 31 July 2019, available at: https://www.amnesty.org/en/latest/press-release/2019/07/egypt-mass-hunger-strike-at-al-aqrab-prison-over-denial-of-family-visits-and-dire-conditions/
[41] CCPR/C/EGY/RQ/5, para.59
[42] Amnesty International, *Egypt: New prison, PR gloss ahead of COP27 cannot hide human rights crisis,* 20 October 2022, available at: https://www.amnesty.org/en/latest/news/2022/10/egypt-new-prison-pr-gloss-ahead-of-cop27-cannot-hide-human-rights-crisis/
[43] Middle East Monitor, *Egypt: Detainee deaths continue inside Badr Prison*, 3 December 2022, available at: https://www.middleeastmonitor.com/20221203-egypt-detainee-deaths-continue-inside-badr-prison/
[44] ICJ, *Politicized and Unfair Trials before the Emergency State Security Court – The case of Zyad el-Elaimy*, December 2022, available at: https://icj2.wpenginepowered.com/wp-content/uploads/2022/12/ICJ-legal-brief-Zyad-el-Elaimy-v2-2.pdf
[45] Report of the UN Working Group on Arbitrary Detention, UN Doc. A/HRC/WGAD/2022/53 (5 October 2022) available at: https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session94/2022-10-28/A-HRC-WGAD-2022-53-Egypt-Advance-Edited-Version.pdf, para. 94 has emphasised that "denial of medical assistance constitutes a violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), in particular rules 24, 25, 27 and 30 thereof, as well as principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

necessary, proportionate and reasonable in the circumstances of the individual case. To this end, the Egyptian authorities must amend the CCP, including articles 134, 142 and 143, with a view to:

- **Providing for exhaustive, clear and precise grounds and criteria for pre-trial detention, in accordance with international standards on appropriateness, predictability and due process of law, and to exclude vague and broad formulations such as "severe disruption of security and public order;"**
- **In particular, ensuring that pre-trial detention can only be ordered based on the factual circumstances of each individual case;**
- **Ensuring that in making a determination about such circumstances:**
  - **Pre-trial detention is based on one or more of the grounds recognized by international law, as well as on objective criteria and on clear evidence;**
  - **Each case is individually assessed as to whether the request for detention is reasonable, proportionate and necessary;**
  - **the arguments militating for detention cannot be addressed adequately by alternatives to pre-trial detention, such as bail, electronic bracelets or other measures that would render detention unnecessary;**
- **Ensuring that pre-trial detention is not mandatory for all individuals charged with a particular category of felony or misdemeanour, or based on the potential sentences for the offences alleged;**
- **Repealing the Prosecutor's powers to order detention pending trial, and ensuring that such decisions are made by judges or other officers authorized by law to exercise judicial power who meet the requirements of judicial independence, impartiality and objectivity;**

- **End all other forms of arbitrary detention;**
- **Ensure humane conditions of detention and respect the right to medical care of detainees;**
- **End the practice of 'tadweer' and nullify "recycled" charges and related cases.**

V. Administration of justice, right to a fair trial and independence of the judiciary

a. The continued use of specialized courts

40. Egypt's resort to specialized and exceptional courts, including military courts and the ESSC, in order to evade due process guarantees and fair trial rights, has been a long standing concern. In addition, the ICJ is concerned that these courts are utilized at a greater rate under the current regime.

41. The Committee has emphasized that the requirement that tribunals are competent, independent and impartial is "an absolute right that is not subject to any exception"[46] and applies equally to all tribunals; regardless of whether the court is "ordinary or specialized, civilian or military".[47] Military tribunals and the ESSCs in Egypt cannot be considered independent and impartial tribunals as required by article 14 of the Covenant because, among other things, they are subject to strong political influence from the executive.

I. Military tribunals in light of international standards

42. The Committee has underscored that, while the ICCPR "does not prohibit the trial of civilians in military courts or special courts, it requires that such trials are in full conformity with the requirements of Article 14 and that its guarantees cannot be

[46] Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para.19.
[47] ibid, para 22

limited or modified because of the military or special character of the court concerned."[48] The Committee has further stated that military trials of civilians 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".[49]

43. In accordance with international standards, the subject matter jurisdiction of military courts should be limited to military-related offences, it should not extend to crimes under international law or other human rights violations.[50]

44. In Egypt, however, contrary to international standards, civilians are still subject to the jurisdiction of military courts in wide variety of circumstances. On 27 October 2014, with Presidential Decree No. 136 of 2014 on 'Security and Protection of Public and Vital facilities',[51] President al-Sisi further expanded the jurisdiction of military courts to include any crime committed on "any public or vital property" resulting in the referral of thousands of cases of civilians for prosecution before military courts.[52] Article 3 of this Decree stipulated a two-year limitation on its enforcement, which was extended in 2016 for another five years, and, on 31 October 2021, the House of Representatives passed an amendment to the law, allowing the armed forces "to continue to assist the police in protecting public and vital facilities", without specifying any time limit. The ICJ is concerned that this amendment has entrenched the continuation of the referral of civilians to military rather than ordinary courts in the law.

45. Egypt has maintained in its Reply to the List of Issues that military courts comply with fair trial guarantees, including the right to be heard before an independent and impartial tribunal.[53] However, military court judges in Egypt are appointed by the Minister of Defense and are subject to the military chain of command and military disciplinary procedures. Consequently, such courts cannot be considered independent and impartial for the purposes of article 14 of the ICCPR.

II. Emergency State Security Courts in light of international standards

46. Law No. 162 of 1958 ("the Emergency Law") established the Emergency State Security Court (ESSC) to adjudicate "crimes" committed during the "state of emergency".[54] In 2017, the Prime Minister transferred "protesting" and "terrorism-related" offences from the jurisdiction of ordinary courts to the jurisdiction of the ESSC.[55] In addition, certain "crimes" featured in the first two chapters of the Penal Code, including those relating to "spreading false news", were added to the ESSC's jurisdiction in January 2021.

47. Although President al-Sisi formally lifted the "state of emergency" on 25 October 2021,[56] criminal cases have continued to be heard before the ESSC, in trial proceedings that are inherently unfair. Under Article 19 of the Emergency Law, the

[48] Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 22.
[49] Ibid
[50] Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle L(a) underscores that "the only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel."
[51] Presidential Decree No. 136 of 2014 on 'Securing and Protection of Public and Vital Facilities', 27 October 2014.
[52] Human Rights Watch, Egypt: Surge of Military Trials, 18 December 2014, available at: https://www.hrw.org/news/2014/12/18/egypt-surge-military-trials.
[53] CCPR/C/EGY/RQ/5, para 74.
[54] Law No. 162 of 1958, The Emergency Law, 28 September 1958 (The Emergency Law), art. 7.
[55] Prime Minister Decision No. 2165/2017, art. 1.
[56] Egypt Presidential Website, The President Abdel-Fattah al-Sisi announces decision to end the State of Emergency in all areas of the Country for the first time in years, 25 October 2021.

ESSC continues to hear cases that were referred to the Court before the end of the "state of emergency." As a result, the ESSC continues to be a tool in the government's efforts to suppress dissent, and to punish those who peacefully exercise their human rights. The ICJ monitored the case of Ahmed Samir Santawy and the case of Zyad el-Elaimy before the ESSC,[57] both cases were marred by a litany of violations of internationally recognized fair trial standards and rights, such as the right to effective legal counsel, the right to appeal and the right to be heard by an independent and impartial tribunal.

b. The right to effective legal counsel

27. As noted in the fifth periodic report submitted by the Republic of Egypt, the Constitution provides for fair trial guarantees, as reflected in Article 54, which asserts that persons detained must be allowed to immediately "meet with their lawyer during the evidence gathering stage as well as during the investigation and trial stages."[58] However, the ICJ has documented cases in which this guarantee was not respected, during multiple stages of the process.

28. During his pre-trial detention, Mr el-Elaimy was prohibited from consulting his lawyer without the presence of an SSSP prosecutor. Communications between Mr el-Elaimy and his lawyer were always heavily monitored as they were forced to speak loudly so that the prosecutors could take notes.[59] Furthermore, pursuant to COVID restrictions, the SSSP began to renew pre-trial detention without the presence of Mr el-Elaimy or his lawyers. Mr el-Elaimy was referred to trial on 14 July 2021, and the first trial hearing was held the following day, without giving him an opportunity to meet with his lawyers. Between the first trial hearing on 15 July 2021 and at least the third hearing on 17 August 2021, Mr el-Elaimy was unable to meet with his lawyers to prepare a defence.

29. Mr Santawy did not have access to his lawyers at the time of his arrest on 1 February 2021. He was subsequently held incommunicado and subjected to enforced disappearance for five days. Between February and May 2021, during the pre-trial hearings conducted by the SSSP relating to the first set of charges against Mr al-Santawy, he was only permitted a five-minute consultation with his lawyers before each pre-trial hearing. When the case was referred to the ESSC, Mr al-Santawy was not permitted to consult with his legal representatives before his first trial hearing on 1 June 2021 nor was he able to consult with them between 1 and 8 June, when he was brought to the court for his second trial hearing. On that occasion, the court, at the request of the defence team, only permitted Mr al-Santawy a five-minute consultation with his legal representatives, which was monitored by an employee of the State Security Services.

30. It follows that the right to a defence guaranteed under international human rights law was violated throughout the proceedings of Mr Sanawy and Mr el-Elaimy, thereby severely undermining the fairness of their trials,[60] and further compounding the arbitrariness of their detention.[61] Under the ICCPR, among others, the right to a fair trial requires the provision of adequate time and facilities for the preparation of one's

[57] ICJ, *Politicized and Unfair Trials before the Emergency State Security Court – The case of Ahmed Samir Santawy*, November 2021, available at: https://icj2.wpenginepowered.com/wp-content/uploads/2021/11/Egypt-Santawy-trial-monitoring-publications-briefing-2021-ENG.pdf; ICJ, *Politicized and Unfair Trials before the Emergency State Security Court – The case of Zyad el-Elaimy*, December 2022, available at: https://icj2.wpenginepowered.com/wp-content/uploads/2022/12/ICJ-legal-brief-Zyad-el-Elaimy-v2-2.pdf.
[58] CCPR/C/EGY/5, para.88
[59] Nelson Mandela Rules, rule 58.
[60] See, inter alia, ICCPR, arts 14(3)(b) and d. UN Human Rights Committee, General Comment 32, Article 14, Right to Equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (General Comment 32), para. 34.
[61] See UN Working Group on Arbitrary Detention, Revised Fact Sheet No. 26, 8 February 2019, section IV(A).

defence, including by being guaranteed private, prompt communication with one's own counsel.[62]

c. The right to appeal

31. Most alarmingly, under article 12 of the Emergency law, decisions by the ESSC are not subject to appeal.[63] The President of the Republic may, however, commute or reduce a sentence, suspend its execution or order a retrial before another bench of the ESSC.[64]

32. These provisions violate Egypt's obligations under international law to ensure the right to appeal a verdict of guilt. Article 14 of the ICCPR provides that "everyone convicted of a crime shall have the right to have his conviction and sentence being reviewed by a higher tribunal according to law", and the Committee has confirmed that this right applies during a "state of emergency."[65]

d. The right to be heard before an independent and impartial tribunal

33. The ESSC is subject to strong executive influence, as attested by the President's powers to control the courts' composition and appoint judges, confirm and amend judgments and annul sentences.[66] The Committee has expressed concern about the President's broad authority over the ESSC, including with respect to "ratifying judgments and issuing pardons", describing this role as "both part of the executive and part of the judiciary system".[67] The influence that the President wields over the ESSC seriously blurs the strict distinction between the judiciary and the executive,[68] which ultimately undermines the impartiality and independence of the tribunal and the separation of powers required by international human rights law.[69]

e. Attacks and acts of intimidation against lawyers

34. The ICJ has documented a persistent pattern of attacks against lawyers solely for the legitimate discharge of their duties.[70] On 29 September 2019, Mohamed Al-Baqer, a prominent lawyer, human rights defender and director of the Adalah Center for Rights and Freedoms, was arrested while attending the interrogation of Alaa Abdel Fattah before the SSSP, in his capacity as a lawyer. Al-Baqer was arrested and questioned before the SSSP and ordered into pre-trial detention pending trial in the same case as Alaa Abdel Fattah, based on the same arbitrary charges.[71]

35. On 30 September 2019, Al-Baqer was blindfolded and transferred to al-Aqrab Prison, a maximum-security facility. Furthermore, Al-Baqer was placed in inhumane detention conditions; denied outdoor recreation time or any sunlight at all; and denied access to books, newspapers, a radio, a clock and a mirror.[72] On 20 December 2021, Al-Baqer was sentenced in Case No. 1228/2021 to four years of imprisonment

[62] ICCPR, art. 14(3)(b); General Comment 32, para. 34.
[63] The Emergency Law, art. 12.
[64] ibid, Arts 12-14
[65] ICCPR, art. 14(5); UN Human Rights Committee, General Comment 29 on states of emergency, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 16
[66] The Emergency Law, arts 12-14.
[67] UN Human Rights Committee, Concluding Observations on Egypt, UN Doc. CCPR/C/79/Add.23, 1993, para. 9.
[68] Special Rapporteur report on human rights and counter-terrorism, UN Doc. A/HRC/13/37/Add.2, 2009, para. 35.
[69] See ICCPR, art. 14(1); Universal Declaration of Human Rights, art. 10; African Charter on Human and People's Rights, art. 26.
[70] See *Targeting the last line of defense.*
[71] Egypt: Global Coalition Calls for Release of Mohamed el-Baqer and Alaa Abdel Fattah on Three Year Anniversary of their Arrests**,** 30 September 2022, available at: https://www.icj.org/egypt-global-coalition-calls-for-release-of-mohamed-el-baqer-and-alaa-abdel-fattah-on-three-year-anniversary-of-their-arrests/.
[72] Ibid.

for publishing false news following an unfair trial in which defence lawyers were denied the right to present a defence on behalf of their clients and denied permission to copy the case files.[73] He is charged in other cases that are still pending, and has since been transferred to Badr prison for the continuation of his sentence.

36. Gamal Eid, a prominent lawyer and human rights defender, was harassed on four occasions in 2019. On 30 September 2019, Eid repeatedly received anonymous phone calls and messages, ordering him to "stop and behave", and his car was stolen. On 10 October 2019, two armed men in civilian clothing physically assaulted him, stole his phone and attempted to seize his laptop. Eid sustained multiple broken ribs and injuries to his arm and leg as a result. Eid borrowed a car from a colleague, which was in turn vandalized on 31 October. On 29 December 2019, Eid was physically assaulted again by armed men believed to be security officers, he was threatened with pistols, had paint thrown on him and was told once again to "stop and behave." The Egyptian authorities have failed to conduct any effective investigation into these various attacks and acts of intimidation against Eid or to take any effective measures to ensure his safety and physical integrity. Moreover, on 18 July 2020, the Criminal Court of Cairo rejected his appeal against the travel ban he had been subjected to since 2016.[74]

37. The ICJ considers that these attacks and acts of intimidation were related to Eid's work as a lawyer and to his human rights activities, including as the former director of the Arab Network of Human Rights Information (ANHRI), one of the most prominent human rights organizations in Egypt. On 10 January 2022, ANHRI announced that they would be closing their operations effective immediately, due to the endless threats, attacks, and arrests by the National Security Agency as well as the upcoming deadline requiring all non-governmental organizations to register under the associations law.[75]

38. The Egyptian Constitution enshrines guarantees and protection for the legal profession and provides: "[e]xcept in cases of flagrante delicto, arresting or detaining lawyers while exercising their right of defence is prohibited."[76] Pursuant to international standards, States have a duty to ensure that lawyers are able to perform their functions "without intimidation, hindrance, harassment or improper interference", and "shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."[77] The UN Basic Principles on the Role of Lawyers provide that, "[w]here the security of lawyers is threatened as a result of discharging their functions, they must be adequately safeguarded by the authorities."[78] Furthermore, "[l]awyers must not be associated with their clients or their clients' cause as a result of discharging their functions."[79] The UN Basic Principles on the Role of Lawyers specify that, "[l]awyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority."[80]

39. The ICJ recalls that lawyers are instrumental in ensuring the right to a defence, in achieving justice and maintaining the rule of law. Their profession must be protected

[73] Ibid.
[74] Frontline Defenders, Gamal Eid Status, available at: https://www.frontlinedefenders.org/en/case/judicial-harassment-gamal-eid.
[75] Human Rights Watch, Egypt: Prominent Rights Group Forced to Close, January 12 2022, available at: https://www.hrw.org/news/2022/01/12/egypt-prominent-rights-group-forced-close.
[76] 2014 Constitution, section Six: The Legal Profession, art. 198: Guarantees, prohibition against arrest, available at: https://www.constituteproject.org/constitution/Egypt_2014.pdf.
[77] UN Basic Principles on the Role of Lawyers, principle 16(a) and (c); Principles on Fair Trial in Africa, section I(b)(i) and (iii). See also, General Comment No. 32, para. 34, and Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, Recommendation No. R(2000)21, principle I(4).
[78] UN Basic Principles on the Role of Lawyers, principle 17; Principles on Fair Trial in Africa, section I(f).
[79] UN Basic Principles on the Role of Lawyers, principle 18; Principles on Fair Trial in Africa, section I(g).
[80] UN Basic Principles on the Role of Lawyers, principle 20; Principles on Fair Trial in Africa, section I(e).

in order to ensure that each person accused of committing a crime receives a fair trial.[81]

Recommendations

Considering the above, the Human Rights Committee should recommend that Egypt:

- **In relation to military and specialized courts:**
  - **Restrict the jurisdiction of military courts to trials of military personnel only for breaches of military discipline;**
  - **Exclude crimes under international law or other human rights violations, such as torture, enforced disappearance or certain unlawful killing from the jurisdiction of military courts;**
  - **Ensure that the convictions and sentences of all civilians tried by military courts be quashed;**
  - **Abolish the ESSC, including by repealing relevant provisions of the Emergency Law, and ensure that any existing proceedings before the ESSC be either nullified or transferred to the ordinary courts and that convictions and sentences issued the ESSC be quashed;**
- **In relation to the right to a fair trial:**
  - **Ensure the right to habeas corpus by allowing any detained person to challenge the legality of their detention before an independent and impartial court;**
  - **Ensure the protection of the rights of all individuals arrested, detained or charged with a criminal offence to consult and communicate confidentially with their lawyer without delay, interception or censorship and with full confidentiality, and to have the assistance of a lawyer upon arrest or detention, including during any questioning and at all other stages of any criminal proceedings;**
  - **Ensure that judges exercise their functions with complete independence and in line with international standards of due process, and are protected from any form of reprisals;**
  - **Ensure that all persons have the right to appeal a conviction and sentence on all grounds both evidentiary and legal, to a higher independent and impartial civilian tribunal that has the power to reverse the conviction and sentence;**
  - **Ensure that the convictions and sentences of individuals convicted following unfair trials in civilian courts be quashed or that these individuals be retried with due respect for their right to a fair trial;**

- **In relation to the attacks and acts of intimidation against lawyers:**
  - **Ensure the immediate and unconditional release of all lawyers who are detained pending trial or imprisoned upon being convicted solely on the basis of the peaceful exercise of their human rights and/or the legitimate discharge of their professional duties;**
  - **End all attacks against lawyers, including politicized judicial proceedings and abusive prosecutions, as well as all instances of arbitrary detention, physical assault, torture and other ill-treatment, and enforced disappearance;**
  - **Ensure that lawyers are able to carry out their legitimate professional duties without hindrance, harassment or improper interference, and that they are not threatened with prosecution, reprisals or other sanctions for any action taken in accordance with such duties;**
  - **Ensure that lawyers are not associated with their clients or their clients' cause as a result of legitimately discharging their professional duties, and that legal representation is under no circumstances considered to be akin to providing aid or material support to "terrorist groups".**

[81] For more information, see *Targeting the last line of defense.*