



## Joint Submission by PEN International, English PEN and PEN America in Advance of the Fourth Universal Periodic Review of the Arab Republic of Egypt

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## Executive Summary

1. The submitting organisations welcome the opportunity to contribute to the fourth cycle of the Universal Periodic Review (UPR) of the Arab Republic of Egypt (“Egypt”).

This submission focuses on compliance with international human rights obligations with respect to freedom of expression, in particular concerns relating to:

- Restrictions on freedom of expression and access to information
- The treatment of writers and artists

Recommendations are provided following each section.

2. During the previous UPR cycle in 2019, Egypt received 34 recommendations regarding freedom of expression, freedom of the press, freedom of association and peaceful assembly and the right to information.<sup>i</sup> The Egyptian government supported 19 recommendations, including recommendation 31.191 on ensuring that freedom of expression is safeguarded in all its forms in accordance with Egypt’s international commitments.<sup>ii</sup> Nevertheless, subsequently, the Egyptian authorities have failed to implement these recommendations and instead continued to arbitrarily detain individuals for peacefully expressing views deemed critical of the government.<sup>iii</sup> Those detained face unfair trials, torture, ill-treatment, medical negligence and poor detention conditions. Egypt continues to enforce strict censorship over traditional and social media. Since 2017 the Egyptian government have been aggressively consolidating grip over its traditional media outlets, including amending the legislative framework governing the media, to enable them to fundamentally alter and redraw the ownership map of the private media outlets -- ultimately to throttle media independence.<sup>iv</sup>
3. Egypt noted three recommendations regarding access to information (31.167, 31.193, 31.160) but instead has repeatedly blocked and limited internet and news websites, severely restricting access to information.<sup>v</sup> Authorities also continue to target writers, journalists, and human rights defenders including various means including harassment, arbitrary detention, and ill-treatment, creating a chilling effect on freedom of expression in Egypt.<sup>vi</sup>

### Restrictions on freedom of expression and access to information

### Primary legislation that restricts freedom of expression

4. Article 71 of the 2014 Egyptian constitution prohibits censoring, confiscating or shutting down newspapers, except “in time of war or general mobilization.”<sup>vii</sup> However, since the previous UPR cycle, the Egyptian government has systematically censored traditional and social media, intimidated critics because of their online expression, blocked independent news services, and forced publishers to remove online content deemed critical of the government.<sup>viii</sup> The submitting organisations identify a significant number of problematic pieces of legislation used to suppress freedom of expression.
5. Defamation is a criminal offence in Egypt, punishable with up to five years imprisonment. Articles 176, 178, 178bis and 179 of the 1937 Penal Code cover a range of vague provisions on criminal defamation and other related publishing offences that have been used to punish online commentators for expressing critical opinions about public officials.<sup>ix</sup> Egyptian government has systematically leveraged articles 102bis, 80D, 188 of the 1937 Penal Code to curtail press freedom and label criticism of the government as “false news,” and punishing critics, including writers, with unjust heavy jail sentences and prolonged arbitrary pretrial detention.<sup>x</sup> These provisions are in contradiction with Egypt’s commitment to uphold freedom of expression under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) to which Egypt has been a party since 1982.<sup>xi</sup> Egypt noted recommendation 31.208 on criminalizing the work of human rights defenders, politicians, and civil society actors.<sup>xii</sup>

### Emergency and Anti-terrorism laws

6. Despite supporting nine recommendations during the last UPR cycle, including recommendation 31.134 and 31.136 calling specifically on the Egyptian government to amend anti-terrorism law and bring it into line with international human rights standards, Egypt continued to utilise anti-terrorism law to suffocate freedom of expression.<sup>xiii</sup> Further, Egypt introduced amendments to the 2015 anti-terrorism law in April 2020, overly broadening the scope of definitions “terrorist entity,” “terrorist crime,” and “terrorist act.” These amendments have empowered the government to arbitrarily label any group or individual as a terrorist and continue its crackdown on freedom of expression.<sup>xiv</sup> Although, the

Egyptian government lifted the state of emergency in October 2021, which should have ended the jurisdiction of the Emergency State Security Courts over national security related crimes, Egypt continued to refer cases of high profile critics to the Emergency State Security Courts.<sup>xv</sup>

### Anti-Protest laws and other problematic legislation

7. Despite supporting eight recommendations during the latest UPR cycle in relation to freedom of association and assembly, Egypt's Anti-Protest Law, no. 107 of 2013 continues to usurp Egyptians from exercising their right to public assembly by granting authorities powers to pre-emptively ban protests of any size and detain both organisers and demonstrators.<sup>xvi</sup> The law inevitably restricts freedom of expression and prevents human rights defenders, writers, journalists and the wider public from collectively articulating their rightful expression including opinions . This law also creates a chilling effect on freedom of expression, with writers and others imposing self-censorship.
8. Article 80(d) of the 1937 Egyptian Penal Code is systematically used against writers to criminalize expression and muffle dissent. This law imposes a prison sentence of up to five years for anyone in Egypt who “deliberately discloses abroad false or tendentious news, information, or rumours about the country’s internal situation,” or who carries out “any activity aimed at damaging the national interest of the country.”<sup>xvii</sup> The ambiguous definition of “false information” has been exploited and provide authorities with discretionary power to classify any speech as such, without due process or prior court orders.

### Primary legislation that restricts access to information

#### Anti-Cybercrime Law

9. During its last Universal Periodic Review in 2019, Egypt rejected both recommendations regarding access to information, and supported seven recommendations in relation to press freedom.<sup>xviii</sup> Article 7 of the Law on Combating Information Technology Crimes grants Egyptian authorities the power to order the National Telecom Regulatory Agency to block any website it deems to constitute a threat to national security.<sup>xix</sup> Article 2 of the Law facilitates surveillance by forcing telecommunication companies to collect and store users'



data for 180 days, which authorities can request access to, at any point over this duration. This data includes private information, messages, and browsing history. This not only transgresses international standards, namely Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights, but also violates Article 57 of the Egyptian Constitution protecting the right to privacy. The provisions articulated in this law are overly broad and vague, enabling authorities to arbitrarily censors independent news sites and human rights organisations. Since its ratification in 2018, the number of websites blocked has exceeded 500, without the government admitting responsibility for these decisions.<sup>xx</sup> This practice exacerbates the violations of media freedom and Egyptians' right to access information enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

10. In August 2022, Egyptian authorities blocked access to *Al Manasa* independent news website coinciding with the publication of a series of articles by journalists and politicians critical of the government.<sup>xxi</sup> In October 2023, Egypt's Supreme Council for Media Regulation (SCMR) issued an order to block prominent independent news website *Mada Masr* for six months over its coverage of the Israel-Gaza war on bogus charges of "practicing media activities without a license" and "publishing false news without checking its sources."<sup>xxii</sup> The website published a report unveiling ongoing discussions within the Egyptian administration about its response to the potential developments in the situation in Gaza in October 2023, including the possibility to receiving Palestinian displaced families in Sinia, which deemed false news according to the SCMR.<sup>xxiii</sup> This imposed ban is the latest known example of Egypt's targeting of media freedom and infringement upon citizens' fundamental right to access information.

## 11. Recommendations:

- Amend current legislation restricting freedom of expression in line with Egypt commitment under the International Covenant on Civil and Political Rights to which Egypt is a party. Our recommendations include the following revisions:
  - Anti-terrorism law no. 94/2015 and its amendments, especially Articles 1 and 2, must be revised and restricted to exclude peaceful means of expression as grounds for terrorism charges.

- Articles 80(d), 102bis, and 188 of the 1937 Penal Code must be amended or repealed to ensure Egypt's compliance with international human rights law in protecting freedom of expression
- Anti-Protest Law No. 107 of 2013 must be revised in line with international law to protect Egyptians' right to assembly.
- Repeal all criminal defamation and publishing offences provisions in the 1937 Penal Code, including articles 171 to 201 and bring it into line with international law.
- Repeal provisions 2 and 7 of the Anti-Cybercrime Law related to censorship and limitation of the free flow of information in the digital space, and immediately end the practice of blocking news media and human rights organisations websites.

## **The treatment of writers and artists**

12. The Egyptian government has systematically infringed upon individuals' fundamental right to freely express their opinions, thoughts, and criticisms. Since its last Universal Periodic Review, Egypt has arbitrarily detained at least 5 writers for exercising their right to freedom of expression.<sup>xxiv</sup> This is despite having supported 19 recommendations aimed to safeguard free expression, including recommendation No. 31.165 guaranteeing "that freedom of expression is ensured in all its forms, including artistic expression, online and offline."<sup>xxv</sup> Detained writers were subjected to inhuman detention conditions, torture and other forms of ill-treatment, denied access to lawyer and family visits, adequate food and medicine. Those who have subsequently been released, have continued to face constraints on their freedom of movement and travel bans, threats, and intimidation aimed at silencing them.

13. A prime example of Egypt's violation of free expression and targeting of writers is the prosecution and imprisonment of renowned Egyptian-British writer, blogger, and activist Alaa Abd El-Fattah. In December 2021, Emergency State Security Court sentenced Alaa Abd El-Fattah to five years in prison for bogus charges including "spreading false information," following a grossly unfair trial.<sup>xxvi</sup> Several Special Rapporteurs, independent experts and working groups part of the Special Procedure of the Human Rights Council describe Egypt's Terrorism Circuit Court procedures as "systematic" and "lacking judicial independence."<sup>xxvii</sup> Abd El-Fattah has been subjected to torture and other forms of ill-treatment, held in

deplorable prison conditions, as well as prohibited his access to in-person family visits, books and newspapers for a prolonged period, which have all impacted his physical and mental health.<sup>xxviii</sup> Abdel Fattah remains denied access to a lawyer and consular visits while in prison.

14. Another clear example on treatment of writers and poets who express critical views of the government is poet and activist Ahmed Douma. He was arbitrarily arrested and detained in December 2013, amid a sweeping crackdown underpinned by the enactment of the aforementioned protest law (No. 107/2013). In February 2015, Douma was sentenced to 15 years in prison.<sup>xxix</sup> Since Egypt's last UPR cycle, Douma has been subjected to poor detention conditions and degrading treatment while in detention. The United Nations Working Group on Arbitrary Detention established that Douma's detention was arbitrary and retaliatory and that his trial proceedings "failed to meet fair trial standards."<sup>xxx</sup> Douma was released on 19 August 2023, after serving about ten years in arbitrary detention following a presidential pardon.<sup>xxxi</sup> However, he remains subject to travel ban, threats, frequent intimidation, and harassment – by national security officers – because of his writings since his release.
15. Despite the established limits and regulations of pre-trial detention in Egyptian law, the government continues to detain writers, activists, human rights defenders without trial for prolonged periods, exceeding the maximum legal limits and regulations. This includes an increasingly routine and abusive practise of issuing a fresh set of charges against those it can no longer legally detain. Under this practise of revolving doors those just released, invariably face a new set of charges immediately upon their release from detention, because of the state's inability to legally detain them under existing in pre-trial detention procedures.<sup>xxxii</sup> Egypt rejected recommendation 31.201 on retaliation against individuals for their expression through, asset freezes, travel bans, and long periods of pretrial detention.<sup>xxxiii</sup>
16. On September 5, 2023, poet and lyricist Galal El-Behairy reached the maximum legal limit of pre-trial detention without a trial, on trumped-up charges of "disseminating false news" and "joining a terrorist group."<sup>xxxiv</sup> Despite fully serving an unjust 3-year sentence by a military court in July 2021, Egyptian prosecutors subsequently brought forth additional fabricated charges against El-Behairy, leading to his continued (and arbitrary) pre-trial detention. El-Behairy's health has significantly deteriorated due to ongoing torture and inhumane conditions - whilst in detention - over five years of imprisonment. He has reportedly lost considerable weight since he began striking in March 2023.<sup>xxxv</sup> On 9 September 2023, El-Behairy survived a suicide attempt 5 days after resuming his hunger strike for his ongoing



and unjust pretrial detention.<sup>xxxvi</sup>

17. The Egyptian government often subject writers released from prison to ongoing intense surveillance, censorship, threats and intimidation, as well as restricting their freedom of movement (including banning them from travelling abroad). These arbitrary travel bans are imposed without justification or due process, representing another facet of repression and infringement on individuals' fundamental right of movement protected by Article 12 of the ICCPR. The Egyptian government continues to ban writer, journalist, and researcher Ismael Al-Alexandrani from traveling outside of Egypt, due to an unofficial travel ban imposed on him after serving seven years in prison on bogus charges, including 'leaking military secrets' and 'membership of a terrorist group' following a grossly unfair trial.<sup>xxxvii</sup> The submitting organizations determined that Al- Alexandrani's detention, conviction, and ongoing harassment are in retaliation for his criticism of the Egyptian government's counter-terrorism operations since 2012 in the Sinai Peninsula.

18. The Egyptian government subjects exiled writers and journalists to threats and intimidation by threatening and detaining their family members in Egypt. In August 2023, Gamal Abdel Hamid, the father of exiled journalist and human rights defender Ahmed Gamal Ziada, editor-in-chief of Zawia3 (Third Angle), was detained at an undisclosed location and interrogated by National Security officers who sought information regarding Ziada's work as a journalist, as well as his human rights activism. Although Ziada's father has no history of political activism or criticism of the authorities on social media, the Supreme State Security Prosecution ordered his pre-trial detention on charges of 'spreading false news', 'misusing social media', and 'belonging to a banned group'. The submitting organisations believes Ziada's father was arrested in retaliation for his journalistic work around the county's appalling human rights record and the political scene ahead of the upcoming election. Abdel Hamid was later released in September 2023.<sup>xxxviii</sup>

## **19. Recommendations:**



- Immediately and unconditionally release all arbitrarily detained individuals for their legitimate exercise of the right to freedom of expression, including Egyptian-British writer Alaa Abdel Fattah and Egyptian poet Galal El-Behairy;
- Immediately cease the use of arbitrary use of Pre-trial detention and immediately release all those who exceeded the maximum legal limit for pre-trial detention, including Egyptian poet Galal El-Behairy;
- Immediately cease all forms of harassment of writers, including intimidation, travel bans, and all other restrictions.
- Ensure that pending their release, writers are held in conditions that meet international standards for the treatment of prisoners, including by providing access to adequate health care and regular communication with family and legal representatives.

<sup>i</sup> "Universal Periodic Review - Egypt - Matrix of Recommendations." United Nations Human Rights Council, <https://www.ohchr.org/en/hr-bodies/upr/eg-index>

<sup>ii</sup> "Universal Periodic Review - Egypt - Matrix of Recommendations." United Nations Human Rights Council, <https://www.ohchr.org/en/hr-bodies/upr/eg-index>

<sup>iii</sup> "Freedom to Write Index 2023." PEN America, May 1, 2024. <https://pen.org/report/freedom-to-write-index-2023/>

<sup>iv</sup> "Under suspicion: Who is monitoring the ownership of the media in Egypt," AFTE, March 2018, <https://afteegypt.org/en/research-en/research-papers-en/2018/03/21/14887-afteegypt.html>

<sup>v</sup> "Universal Periodic Review - Egypt - Matrix of Recommendations." United Nations Human Rights Council, <https://www.ohchr.org/en/hr-bodies/upr/eg-index>

<sup>vi</sup> "PEN International Case List 2023-2024." PEN International, March 21, 2024. <https://www.pen-international.org/news/pen-international-case-list-2023-2024>

<sup>vii</sup> "Egypt 2014 Constitution." The Egyptian Government (In Arabic). <https://www.presidency.eg/ar/>

<sup>viii</sup> "Egypt: Freedom on the Net 2021 Country Report." Freedom House. <https://freedomhouse.org/country/egypt/freedom-net/2022>

<sup>ix</sup> "Law No.58 01 The Year 1937 Promulgating the Penal Code." RefWorld. <https://www.refworld.org/legal/legislation/natlegbod/1937/en/119651>

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<sup>xi</sup> "Egypt: Immediately Release Dissident On Trial For Online Expression." Amnesty International, September 14, 2023. <https://www.amnesty.org/en/latest/news/2023/09/egypt-immediately-release-prominent-dissident-on-trial-for-online-expression/>

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<sup>xiii</sup> "Egypt: Weaponizing Counter Terrorism Laws to Silence Human Rights Defenders." Cairo Institute for Human Rights Studies. June 28, 2021. <https://cihrs.org/egypt-weaponizing-counter-terrorism-laws-to-silence-human-rights-defenders/?lang=en>

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<sup>xv</sup> "Egypt: retaliatory verdicts following an unjust 'emergency' trial must be quashed." PEN International. December 20, 2021. <https://www.pen-international.org/news/egypt-retaliatory-verdicts-following-an-unjust-emergency-trial-must-be-quashed?rq=alaa>

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