



Egypt: Counterterrorism Law Erodes Basic Rights

Publisher [Human Rights Watch](#)

Publication Date 19 August 2015

Cite as Human Rights Watch, *Egypt: Counterterrorism Law Erodes Basic Rights*, 19 August 2015, available at: <http://www.refworld.org/docid/55d58e414.html> [accessed 2 November 2015]

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Egypt's new counterterrorism law increases authorities' power to impose heavy sentences, including the death penalty, for crimes under a definition of terrorism that is so broadly worded it could encompass civil disobedience. President Abdel Fattah al-Sisi enacted the law on August 15, 2015.

The new law also gives prosecutors greater power to detain suspects without judicial review and order wide-ranging and potentially indefinite surveillance of terrorist suspects without a court order.

"With this sweeping new decree, Egypt's president has taken a big step toward enshrining a permanent state of emergency as the law of the land," said Nadim Houry, deputy Middle East and North Africa director. "The government has equipped itself with even greater powers to continue stamping out its critics and opponents under its vague and ever-expanding war on terrorism."

The law makes it a crime to publish or promote news about terrorism if it contradicts the Defense Ministry's official statements and would allow the courts to temporarily ban journalists from practicing their profession for doing so. It also makes anyone judged to have facilitated, incited, or agreed to a vaguely defined terrorist crime - whether in public or in private - liable for the same penalty that they would receive if they had committed that crime, even if the crime does not occur. The law eliminates any time limit for bringing terrorism prosecutions.

Egypt has had no lower house of parliament, which drafts laws, since it was dissolved by court order in 2012. In its absence, al-Sisi has issued at least 175 laws and decrees since taking office in June 2014. The government has repeatedly postponed elections for a new parliament. By law, the new parliament will have only 15 days after its first session to review and amend all legislation passed in its absence before that legislation becomes final.

The government revived its discussion of a draft counterterrorism law - which had been proposed following the 2013 removal of former President Mohamed Morsy by the military - after the assassination of Prosecutor General Hisham Barakat on June 29, 2015, in a Cairo car bombing. In

a speech at Barakat's funeral on June 30, al-Sisi said that "the prompt hand of justice is tied by the laws, and we can't wait for that," and pledged to amend Egypt's laws "to implement the law and justice in the fastest possible time."

Since Morsy's overthrow, the government has focused its crackdown on the Muslim Brotherhood, Morsy's former organization, arresting thousands of its members, while courts have sentenced hundreds to death. On the day of Barakat's funeral, Egypt's State Information Service blamed the Brotherhood for his killing - which the Brotherhood called "reprehensible" - without presenting any evidence.

Egypt's cabinet labeled the Brotherhood a terrorist group in December 2013 and April 2014. Cairo's Court of Urgent Appeals, normally meant to handle temporary civil injunctions, designated the Brotherhood a terrorist group in February 2014, but that ruling remains on appeal and legal analysts have said that the court likely exceeded its jurisdiction. No competent court in Egypt has designated the Brotherhood a terrorist group, though prosecutors have filed thousands of cases accusing Brotherhood members of terrorism or membership in a terrorist group.

"Barakat's assassination and the ongoing conflict in the Sinai Peninsula show that the Egyptian government faces a serious and deadly insurgency," Houry said. "But eroding basic rights, curtailing dissent, and using 'terrorism' as a cudgel against opponents is no way to win the battle for hearts and minds."

Provisions of Egypt's New Counterterrorism Law

The new Law 95 of 2015 for Confronting Terrorism largely maintains the overbroad definition of terrorism in Egypt's penal code. Under this definition, a "terrorist act" encompasses any "use of force or violence or threat or terrorizing" that aims, among other things, to:

Disrupt general order or endanger the safety, interests or security of society; harm individual liberties or rights; harm national unity, peace, security, the environment or buildings or property; prevent or hinder public authorities, judicial bodies, government facilities, and others from carrying out all or part of their work and activity.

Such a framework far exceeds a definition of terrorism that the United Nations Security Council unanimously adopted in 2004 and that the UN special rapporteur on counterterrorism and human rights subsequently endorsed. That definition says that terrorism is an act committed with the intent to kill, cause serious bodily injury, or take hostages with the aim of intimidating or terrorizing a population or compelling a government or international organization.

Egypt's new counterterrorism law also runs counter to a basic principle in international human rights law that requires laws to be precisely drafted and understandable as a safeguard against their arbitrary use and so that people know what actions constitute a crime.

The new counterterrorism law will affect any person or group designated under Egypt's Terrorist Entities Law, issued in February 2015, which created a procedure for courts to approve prosecutors' nominations of individuals or groups as officially designated terrorists. Egyptian human rights groups have strongly criticized the Terrorist Entities Law for relying on an ambiguous definition of terrorism similar to the broad one included in the new counterterrorism law.

The counterterrorism law punishes a dozen different acts with the death penalty, making it the mandatory punishment for anyone convicted of funding a terrorist group or terrorist act. Other crimes that can incur the death penalty if they result in death include manufacturing weapons; damaging a gas, water, or electricity network; or compelling another person to join or remain in a

terrorist group. The law does not require that the death be intentional. Under international law, even countries that maintain the death penalty have to restrict its application to the most serious crimes. Human Rights Watch opposes the use of the death penalty at all times as a uniquely final and inhumane punishment.

The law also makes it a crime to join or participate in a terrorist group "with knowledge of its purposes" and prescribes a minimum 10-year prison sentence for any member who receives military or security training. A terrorist group must consist of a minimum of three people.

The law attaches stiff penalties for incitement or the propagation of ideas that advocate what Egypt defines as terrorism, potentially criminalizing even private expressions of opposition to the government. In article 8, the law states that "incitement to commit any terrorist crime ... whatever the means used" shall be punishable in the same way as the crime itself regardless of whether such incitement is "public or non-public" or "has an effect."

While international law allows governments to prohibit speech that directly encourages a crime or is intended to result in criminal action, even if no crime is committed, the UN special rapporteur on counterterrorism has proposed that countries adopt a more specific definition of incitement that criminalizes the public distribution of a message that incites a terrorist act and creates "a danger" that it may be committed. Countries such as Tunisia, Jordan, and Lebanon have all criminalized incitement to terrorism that occurs in public or results in a terrorist act.

Egypt's new terrorism law goes beyond this by also criminalizing private, ineffectual incitement and by linking that incitement to a definition of terrorism that includes using force or threats to "disrupt general order" or "harm national unity," which could conceivably include civil disobedience. Egyptian authorities have prosecuted many Brotherhood members on terrorism charges for engaging in sit-ins or blocking roads during protests. Anyone who privately urges another to participate in such actions may face prosecution under the new terrorism law.

The law further restricts freedom of expression in article 35, which states that anyone who publishes or even promotes "untrue" news about acts of terrorism or news that contradicts official Defense Ministry statements about counterterrorism operations can be punished by a fine of 200,000-500,000 Egyptian pounds (US\$25,000-\$64,000). If the person publishes the news as part of their occupation, a court can bar them from practicing their profession for up to a year. The law also punishes anyone who uses a website for the purpose of "promoting ideas or beliefs advocating the commission of terrorist acts" with at least five years in prison.

Egypt's Journalists Syndicate strongly opposed an earlier draft of article 35, which prescribed a prison sentence for anyone who published false news about counterterrorism operations. Egypt's Supreme Judicial Council, the judiciary's governing body, also criticized several elements of the draft law, including a shortening of the appeals process. Both appeared to have succeeded in convincing the government to limit some of its changes.

The law significantly strengthens prosecutors by removing some judicial oversight of their actions. Article 46 allows prosecutors or other investigators to order surveillance and recording of terrorist suspects' communications, Internet use, and "whatever takes place in private places" for indefinitely renewable 30-day periods without a court order. Previously, investigating judges held the power to order home inspections and surveillance. The law also establishes undefined special courts within the normal judiciary to handle terrorism cases. The law further reduces judges' roles by giving prosecutors more power to order detention in terrorism-related cases.

Under the new law, an arresting officer can hold a terrorism suspect for 24 hours without a warrant, during which a prosecutor can order the person held for seven more days without judicial review. The new law puts the prosecutor in charge of subsequent pretrial detention, which under

Egypt's recently amended criminal procedure code can be renewed for up to two years in cases in which the suspect faces a life sentence or the death penalty. Previously, a minor offenses appeals court judge reviewed and ruled on such detention orders, though in practice, courts have regularly approved prosecutors' requests to hold in pretrial detention thousands of people arrested in the fallout from Morsy's removal.

Under Egypt's law, a terrorism suspect can appeal their detention to a competent court, which must rule within three days. An arresting officer must inform a suspect of the reason for their arrest, but a suspect is only allowed to contact their relatives and consult with a lawyer "without prejudice to the interests of the evidence gathering."

Human Rights Watch has documented how police and officers of the Interior Ministry's National Security Agency have forcibly disappeared dozens of people, some of whom were held without access to a lawyer for weeks and subsequently accused of terrorism crimes. The new counterterrorism law raises the possibility that such detentions could become legalized.

A fundamental principle of international law, applicable even during states of emergency, is that every detainee should be brought promptly before a judge to review their detention (usually, within a few days of being detained).

Mimicking language already contained in Egypt's decades-old Emergency Law, the new law also gives the president, in article 53, power to take "appropriate measures to protect the general order and security" to confront the danger of terrorism or in case of an environmental catastrophe. This includes the power to order six-month curfews or evacuations in defined areas, subject to a majority vote in parliament within seven days, or cabinet approval if parliament is not in session.

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