



Egypt

Shadow Report

Report submitted to the Committee against Torture in the context of the
Fifth Periodic Review of Egypt

Committee for Justice – 2 October 2023



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Introduction

The fifth report of Egypt ([CAT/C/EGY/5](#)) was submitted to the Committee against Torture on 13 September 2021 and will be reviewed by the Committee at its 78th session on 30 October and 24 November 2023.

The Committee for Justice(CFJ) presents this comprehensive shadow report, aiming to assess the adherence of Egypt to the Convention against Torture (UNCAT). This document sheds light on key concerns and offers recommendations to the State Party. Our analysis is rooted in CFJ's extensive documentation of human rights violations in Egypt, spanning from 2013 to the present, encompassing both individual cases and broader trends. Additionally, we have scrutinized Egypt's responses to the Committee's List of Issues Prior to Reporting ([LOIPR](#)), coupled with an in-depth examination of pertinent domestic laws and practices.

Context

The Arab Republic of Egypt is a semi-presidential system of government. The current political system was established following the 2013 military coup against Mohamed Morsi, the first democratically elected president in the country's history. Since President Abdel Fattah Al-Sisi took power, the government of Egypt has become increasingly authoritarian. In fact, over the last decade, the human rights situation in Egypt has deteriorated to levels unseen in the country's

modern history. Countless human rights violations including arbitrary arrests, indefinite detentions, military trials, torture in places of detention, enforced disappearances, and extrajudicial killings, are committed by State agents with total impunity – under the pretext of maintaining order and security when the ultimate purpose is to prevent the emergence of political dissidence and stifle civil liberties. Having eliminated political opposition in its quasi-entirety, the military junta is now using the pretext of countering “terrorism” to justify the restriction of press freedom and freedom of assembly, routine mass arbitrary arrests, enforced disappearances and indefinite pretrial detentions, often exceeding legal limits. Since the 2015 amendments to the anti-terrorism law (No. 94 of 2015) which has excessively broadened the definitions of “terrorist entity” and “terrorist act”, the direct and very flagrant consequence has been the multiplication of arbitrary detentions, enforced disappearances, and a wider crackdown against fundamental freedoms of ordinary citizens.

Definition, Absolute Prohibition, and Criminalization of Torture

Definition

Article one of the Convention Against Torture (UNCAT) states that: “*The term ‘torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity.’*”

Egypt has argued that Articles 126, 129, 375, and 375 bis (a) of its Criminal Code combined *already* incorporate the definition of torture as stipulated in Article 1 of the UNCAT, thereby dismissing the Committee’s request to amend Article 126 to cover all such definitional elements. In fact, Egypt has clarified that:

- Article 126 pertains to torture to force a confession or obtain information.
- Article 129 sets punishment for the use of cruelty and the infliction of bodily pain during the exercise of a public position.
- Article 375 sets punishment for the use of torture with the intent to intimidate.
- Article 375 bis (a) addresses more specifically torture with the intent to coerce.

Egypt even argued that its definition of torture as contained in its Penal Code is more comprehensive than that of UNCAT’s, in that the pain or suffering inflicted does not have to be “severe” to amount to torture. Rather, “it is sufficient that there should be pain or suffering, even if it is slight and leaves no physical trace on the victim” (Article 1, subpart 13). In addition, Egypt

has stated that Article 15 of its Penal Code has removed the statute of limitation for the crime of torture, in light of its gravity and to avoid impunity for perpetrators.

Nevertheless, Egypt's state report does not provide information on cases in which articles 126, 129, 375 and 375 (bis) have been implemented before courts, rendering it quasi-impossible to examine their judicial enforcement and effective implementation. More importantly, Egypt did not comment on the unprecedented jurisdictional expansion of military courts over civilians, infamous for their power to indefinitely detain and interrogate suspects using questionable methods with little to no judicial oversight¹. This raises doubts upon the effectiveness of Egypt's anti-torture provisions. In fact, torture and ill-treatment of detainees continues to be a persistent practice used by law enforcement officials against detainees, especially in the early stages of investigations, and confessions obtained under duress continue to be accepted as evidence by Egyptian Courts. In addition, Article 126 does not perfectly align with the UNCAT requirements in that it limits punishment only to public officials "who order [the] torturing [of] a suspect or do the torturing personally". By contrast, those involved in inciting, consenting, or acquiescing to the crime of torture are not liable, in contravention of Article 1 of the UNCAT.

Prohibition

The absolute prohibition of torture was evoked at two separate occasions in the LOIPR. Nevertheless, Egyptian law still does not include any provisions to ensure that no derogation be invoked to justify torture or ill-treatment under exceptional circumstances, whether those be a state or threat of war, internal political instability, or any other public emergency.

Although Article 52 of the Egyptian Constitution stipulates that "torture in all forms and types is a crime that is not subject to prescription", this provision does not expressly affirm the absolute prohibition of torture as requested by the Convention. In fact, Article 102 of the 1971 Police Act explicitly allows the use of firearms to "apprehend a convicted individual". The use of force by law enforcement officials against a detainee which may result in pain or suffering is therefore allowed under the Police Act, in violation of the non-derogability of the prohibition of torture laid out in Article 2 of the UNCAT.

Criminalization

With regards to the criminalization of torture, Egypt has strengthened the punishments for acts of torture. The sentences prescribed in article 126 for public servant who order or do torture is one of hard labor or imprisonment for a period of three to ten years. Nevertheless, the employment of

¹ <https://www.cfjustice.org/press-release-20-march-military-trials/>

cruelty by a public official under article 129 is punishable by detention for a period not exceeding one year or paying a fine not exceeding two hundred pounds. A fine, however, cannot be considered as an appropriate punishment for the use of cruelty.

Furthermore, it is concerning that Article 126 stipulates that the death penalty may be applied in instances where torture results in the death of the victim. It is our contention that this does not constitute an “appropriate penalty” in line with article 4(1) UNCAT. In fact, capital punishment is increasingly viewed internationally as a violation of the right to life and the absolute prohibition of torture. The former UN Special Rapporteur on torture, Juan Méndez, urged States to “consider whether the use of the death penalty [...] fails to respect the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture”.

Recommendations

- a) Provide information on cases of torture and ill-treatment that illustrate judicial enforcement and effective implementation of Egypt’s anti-torture provisions.
- b) Incorporate a provision into Egyptian legislation stating that no exceptional circumstance may be invoked as a justification of torture.
- c) Revise the Police Act on the use of firearms to comply with international legal requirements.
- d) Amend the law to set a penalty for the use of cruelty by public official that reflects the gravity of the crime, and which may not be substituted by a fine, and consider replacing the death sentence with life-imprisonment.

Violations of Legal Safeguards

Legal safeguards adopted by Egypt to protect detainees from torture and ill-treatment are enshrined in articles 54, 52 and 55 of the Constitution and articles 126, 282, 375, 375 (bis) of the Code of Criminal Procedure. These legal safeguards include the right not to be arrested without a warrant, as well as the right to be brought before a judicial authority within 24 hours and to seek legal assistance.

With regards to the Committee’s request for the State Party to respond to the allegations of threats, harassment, intimidation, assault, prolonged and illegal pretrial detention, arbitrary detention, prosecution and conviction on trumped up politically motivated charges of terrorism or disinformation, enforced disappearances, torture and ill-treatment and extrajudicial executions of human rights defenders, political opponents, civil society activists, journalists, lawyers, trade unionists, scholars, students, bloggers and artists who are critical of the Government, the State Party provides no information on measures to ensure that the effective protection of such

individuals and groups to enable them to carry out their work. The Egyptian authorities only specify that Article 280 of the Code of Criminal Procedures makes it an offence to arrest, imprison or detain persons without a reasoned judicial warrant issued by a competent authority.

As with regards to the Committee's request to describe the steps taken to limit the use of solitary confinement to an exceptional measure, the Egyptian authorities affirm that it is only used as an exceptional measure and for short periods of time. While the state specifies the relevant articles of the Regulation of Penal and Correctional Institutions on the procedure for issuing punitive measures, there are no provisions on what constitutes exceptional measures and there is no mention of time limitations stipulated in the Regulation.

Recommendations

- a) Abolish prolonged and illegal pretrial detention, arbitrary detention, prosecution, and conviction based on trumped up politically motivated charges of terrorism or disinformation, enforced disappearances, torture and ill-treatment, and extrajudicial executions.
- b) Ensure that solitary confinement remains an exceptional measure of limited duration.

Lack of Independence of the Judiciary

Provisions within Egyptian domestic law guaranteeing the independence of judges and lawyers include articles 184 - 189 of the Constitution, article 187 of the Criminal Code on punishments for attempting to influence or influencing members of the Judiciary, and the Judicial Instructions regulating the work of the State Prosecution Office, which establishes the independence of the Prosecutor General.

Despite these provisions, ties between the Public Prosecutor's Office, the executive branch, and different arms of the criminal justice system, namely the police, prosecutors, courts, and prison staff remain concerning. In 2006, the former Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, had expressed concern over the erosion of judiciary independence under the Mubarak Presidency. Such erosion has been exacerbated since the military coup d'état of 2013 as claims of institutional independence (e.g. prosecutorial or judicial) have been progressively dispelled. In fact, in February 2019, 23 new amendments were introduced to the Egyptian Constitution out of which four brought about significant changes to the judicial system, further eroding its independence. By way of example, Article 185 was amended to change how the heads of the State Council, the State Lawsuits Authority, the Administrative Prosecution Authority, and the Court of Cassation (the highest court in the ordinary court system) are chosen. Judicial bodies no longer play a role in nominating candidates for these positions, a role now dedicated to the President who, individually and without any requirements for consultancy, selects from among

each judicial body's seven most senior judges. Yet, on 29 June 2019, Al-Sisi appointed Judge Magdy Mahmoud Taha Abu El-Ela to head the Supreme Judicial Council, instead of the most senior judge, Anas Amara². This has sparked outrage and cast doubt upon the constitutionality of the President's his new power to appoint judges and raising concerns about the future of the Egyptian judiciary³. Articles 189 and 193 were also amended to allow the president to select the heads of the Public Prosecution and the Supreme Constitutional Court (SCC). Previously, the SCC chose its own head and the Supreme Judicial Council, the governing body of the common court system, chose the public prosecutor; the president's role was limited to ratifying their choices. These changes raise serious concerns as nominations by the President might have negative repercussions on the judiciary by empowering the Presidency to oversee its affairs and rendering it an ineffective checks and balance mechanisms in light of its eroding ability to challenge executive branch actions.

With this said, a common legal malpractice has emerged since 2014 pertaining to the recycling of defendants which is a form of manipulation used by prosecutors to keep detainees locked up indefinitely beyond the maximum periods of pretrial detention prescribed by article 143 of the national Code of Criminal Procedures. In 2013, an exception was legislatively introduced to article 143 granting the Court of Cassation and the Court of Referral the power to extend detention without any limitations where a case carries charges of a potential life or death sentence and involves a retrial. Recycling sidesteps legal limits attached to arbitrary detention under article 143 by arbitrarily activating new ill-founded cases against accused – with no regard for legality. Case recycling essentially implies that the prosecution brings a new case, often using the same accusations, against a detainee who has just completed or is still in the process of serving their sentence for another case.

Furthermore, the military court system is stipulated in Article 183 of the Egyptian constitution stating that “the law shall regulate the organization of Military Courts and shall prescribe their jurisdictions pursuant to the principles set forth in the constitution”. Military courts have almost become an integral part of the Egyptian court system. Article 50 of the Egyptian Counterterrorism Law adopted in August 2015 serves as the legal basis for the establishment of special terrorism circuits in the judicial criminal system. Furthermore, the amended Law 136 of 2014 on the protection of public facilities increased the competency of the military courts for a vast range of offences. According to the CFJ monitoring team, since 2013, more than 11,000 Egyptians have been tried before a military court. As the United Nations Human Rights Committee asserted in its [comment](#) that military trials lack independence and impartiality, for they are formed and governed by military bodies. Thus, they do not belong to the independent judicial branch, which makes their rulings politically driven, and also, the referral of cases before them is often done for political

² <https://www.al-monitor.com/originals/2017/08/egypt-appointment-heads-judicial-bodies-challenges-law-court.html#ixzz8DAp3VTWJ>

³ <https://www.cfjustice.org/mefreh-everyone-in-egypt-is-targeted-including-children/>

purposes. Moreover, military courts usually lack adherence to due process safeguards and fail to fully ensure fair trial basic standards including right to appeal and challenge sentences before a court of higher degree.

Recommendations

- a) Take effective measures to guarantee the independence of the judiciary.
- b) Revert the status-quo ante, particularly, Articles 185, 189 and 193, prior to the 2019 amendments, in order to give the selection power of heads of the State Council, the State Lawsuits Authority, the Administrative Prosecution Authority, the Court of Cassation, the Public Prosecution and the Supreme Constitutional Court back to judiciary bodies and limit the influence of the executive on the judiciary.
- c) Remove the exceptional provision introduced to Article 143 which grants the Court of Cassation and the Court of Referral the power to extend detention without any limitations where a case carries charges of a potential life or death sentence and involves a retrial.
- d) Abolish the practice of legal recycling of defendants.
- e) Limit the use of military courts against civilians.

Non-Refoulement

In its national report, the State Party affirms its membership to the 1951 United Nations Convention relating to the Status of Refugees, its 1967 Protocol, as well as the 1969 Organization of African Unity Convention, which have become integral to Egyptian domestic law. Procedural guarantees governing extradition are stipulated in Articles 93 and 91 of the Constitution. Article 93 of the Egyptian Constitution stipulates that international conventions ratified by Egypt have the force of law and Article 91 guarantees the right of asylum to those facing persecution on various grounds.

Moreover, while Egypt does not yet have a legislative framework to manage asylum⁴, it has signed, in 1954, a Memorandum of Understanding with the Office of the United Nations High Commissioner for Refugees (UNHCR) delegating refugee status determination to the UNHCR country office in Egypt.

CFJ has documented a number of cases relating to the extradition of individuals by Egyptian authorities carried out in violation of article 3 UNCAT. Most recently, in 2021, Egypt violated the non-refoulement principle and its international legal obligation through its forced return of seventy

⁴ <https://reporting.unhcr.org/status-determination-22#:~:text=Egypt%20is%20a%20signatory%20to,legislative%20framework%20to%20manage%20asylum.>

Eritrean asylum seekers, despite the risk of enforced disappearance, torture, and ill-treatment⁵. The abovementioned case demonstrates a clear breach of Egypt's obligations under article 3 UNCAT.

Finally, Egypt has failed to provide in its state report any quantitative data on the number of cases of refoulement and expulsion during the reporting period or any diplomatic assurances involved.

Recommendation

- a) Guarantee that no individuals are extradited to another country where there are substantial grounds for believing that they would be subjected to torture or other forms of cruel, inhumane, or degrading treatment.

Absence of Effective Measures to Prevent Torture

Training of Law Enforcement Officials

In its report, Egypt provides information on training courses delivered to law enforcement personnel, judges, members of the State Prosecution and other officials involved in detention, interrogation and other dealings with detained persons or asylum-seekers on the prevention of torture and other cruel, inhuman, or degrading treatment or punishment. Furthermore, Egypt provides information on the issuing of a code of conduct and ethics for policework, which contains a set of principles and values intended to govern professional conduct in accordance with international standards⁶.

The low number of participants in the abovementioned programs is concerning. Between January 2010 and the completion of the State report, 70 training courses on human rights and torture prevention were held, attended by 1,392 police officers⁷. From 2017 to the present, training was offered to 4 officers and 58 police officials⁸. Moreover, the State party did not report on whether these courses are mandatory or optional. In the report, Egypt claims that "regular training courses are held for doctors and forensic experts to improve their ability to detect and document torture"⁹. Nevertheless, the lack of information with regards to how many of such courses were conducted and by how many officials is puzzling.

⁵ <https://www.cfjustice.org/un-experts-denounce-egypts-expulsion-of-asylum-seeking-eritrean-family-in-violation-of-principle-of-non-refoulement/>

⁶ State Report, Article 10, Para. 89.

⁷ State Report, Article 10, Para. 86.

⁸ State Report, Article 10, Para. 88.

⁹ State Report, Article 10, Para. 1.

Finally, the State Party has not provided any information on the impact and effectiveness of the abovementioned programs.

Monitoring of Places of Detention

Egypt states in its report that the Office of the Public Prosecutor and the National Council for Human Rights Committee (NHRC) and the monitoring and surveillance mechanisms of the Ministry of Interior are mandated to conduct unannounced visits to prisons as well as medical and correctional facilities, interview prisoners in private to ensure they are well treated and make recommendations as to how places of detention may be improved. Between 2011 and 2019, the State Prosecution Office conducted a total of 266 prison inspections¹⁰. In addition, it affirms that unannounced visits to prisons are conducted by the Human Rights Committee of the House of Representatives, the National Council for Human Rights, the National Council for Women and the National Council for Childhood and Motherhood, as well as by representatives of NGOs to ensure that the rights of prisoners are being respected and that they are not being subjected to torture or ill-treatment.

Despite this, the independence of monitoring mechanisms is of concern. Firstly, because the NCHR has systematically failed to react and act on the major human rights violations occurring in the country. Secondly, the President and Vice-President of the NCHR are former Egyptian officials; with the Vice-President being the presidential campaign coordinator of al-Sisi in both 2014 and 2018. As such, the independence of monitoring mechanisms is also of concern. As mentioned above, the close ties between the Public Prosecutor's Office, the NCHR and the executive branch raises doubt as to whether the former can carry out its mandate impartially and independently. Moreover, while Article 3 (16) of [Law No. 197 of 2017](#) mandates the NCHR to visit prisons and all places of detention, interview inmates, and submit its reports to the Public Prosecutor and House of Representatives, the law is silent on whether prior notice is required in conducting these visits. Following an inquiry by the GANHRI SCA (The Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation), the NCHR confirmed that prior notice is necessary. In a report issued in 2018, the SCA stated that "an NHRI should be mandated to conduct 'unannounced' visits to all places of detention within its jurisdiction as these limits opportunities for detaining authorities to hide or obscure human rights violations and facilitates greater scrutiny. Not being able to conduct unannounced visits severely affects the effectiveness of detention visits"¹¹.

¹⁰ State Report, Article 2, Para. 33.

¹¹https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_May_2018-Eng.pdf

Furthermore, the State Party failed to respond to requests by the Committee to report on the percentage of places of deprivation of liberty and of interrogation rooms that include a video monitoring system, as well as the efforts undertaken to include them in all such places.

Recommendations

- a) Provide training for all law enforcement officials on the respect and implementation of the Convention against Torture as well as the prevention of torture.
- b) Introduce systematic video and audio recordings for the preliminary interrogations of individuals.

Failure to Investigate and Prosecute Acts of Torture and Lack of Redress

The Committee against Torture's General Comment No. 3 defines "redress" as entailing "restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition"¹². In addition, it outlines states' procedural and substantive obligations under Article 14 of the Convention. While the former obliges states to "enact legislation which establishes complaint mechanisms, investigation bodies and institutions capable of determining the rights and awarding redress to victims of torture"¹³, the latter obliges states to ensure that "victims of torture obtain full and effective redress and reparation, including compensation and means for as full rehabilitation as possible"¹⁴.

Egypt's domestic legislation provides for complaint mechanisms and investigative bodies for acts of torture. In 2017, Decree No. 2034 was issued establishing the Human Rights Department in the Office of the Public Prosecutor, mandated to receive, investigate, and act upon complaints and reports related to human rights violations¹⁵. Accordingly, between 1 January 2010 and 10 April 2019, 485 criminal investigations and trials were conducted against police personnel, of which 41 involved torture, 117 cruel treatment and 327 ill-treatment and unwarranted detention. These led to 120 convictions, while 302 cases were archived and 63 are still ongoing. During the same period, 1,788 disciplinary hearings were held against police personnel, either for acts that did not amount to torture or ill-treatment or for other criminal offences. These led to 1,069 convictions, while 622 cases were archived and 97 are still ongoing¹⁶.

The procedure for filing a complaint against police officials is outlined in article 43 of the Code of Criminal Procedure. Article 43 stipulates that "any prisoner in the detention places, may, at any

¹² General Comment No.3. UN. Doc. CAT/C/GC/3. December 2012, Para. 2.

¹³ *Ibid.*, Para. 5.

¹⁴ *Ibidem.*

¹⁵ State Report, Article 13, Para. 112.

¹⁶ *Ibid.*, Article 12, Para. 105.

time, submit to the officer in charge a written or oral complaint”. Once submitted and documented in the “special register”, the officer must “immediately” notify the public prosecutor who in-turn will conduct an “immediate investigation”¹⁷.

However, the State Party fails in its report to provide any information as to whether the “immediate” time frame for investigation outlined above is upheld in practice. Furthermore, the rehabilitation section of the Code of Criminal Procedure focuses solely on the reintegration of offenders into society, without paying due regard to the specific barriers faced by victims of torture or the obligation to provide redress mechanisms tailored to them. Lastly, Egypt has neither provided information on redress and compensation measures offered by the State, nor on the number of requests made for redress and compensation; the number granted; the amount of compensation ordered; and the amount actually provided in each case, nor on any ongoing rehabilitation programs for victims of torture and ill-treatment and on the resources allocated to them.

Recommendations

- a) Incorporate into Egyptian legislation the right to redress for cases of torture.
- b) Ensure that forms of reparation encompass restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Violations in the Context of the Fight Against Terrorism

The [Anti-terrorism Law \(No. 94 of 2015\)](#) and the [Terrorist Entities \(Law No. 8 of 2015\)](#) which were enacted by presidential decrees in the absence of a sitting parliament serve as the principal legal framework regulating counterterrorism in Egypt. Both laws do not provide an explicit definition of the term “terrorism” as a distinctive crime but rather, as a *method* of committing criminal acts. In fact, Article 1 defines a “terrorist act” as “any use of force, violence, or threat inside [Egypt] or abroad aiming 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 definition far exceeds the one unanimously adopted by the United Nations Security Council in 2004 and endorsed by the United Nations Special Rapporteur on Counterterrorism and Human Rights which states 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”.

¹⁷https://static1.squarespace.com/static/554109b8e4b0269a2d77e01d/t/554b9890e4b029f0ef3a188d/1431017616683/Egypt+Criminal+Procedure+Code_English_Final.pdf

The common characteristic between Law No. 94 and Law No. 8 lies in the excessive broadening of the definition of “terrorists”, “terrorist entity” and “terrorist crimes”. In fact, the adoption of ambiguous terminologies such as “disrupting public order” and “endangering the security of society” paves the way for subjective and malleable interpretations, thereby allowing for preventive legal measures, including heavy sentences as the death penalty, to be taken against those for whom the law was not intended. The direct and very flagrant consequence has been the multiplication of arbitrary detentions, enforced disappearances, and intensified crackdown against the fundamental freedoms of ordinary citizens and the outlawing of opposition groups and human rights organizations through their labelling as “terrorist groups”.

The United Nation Special Rapporteur on Human Rights and Counter Terrorism, Fionnuala D. Ní Aoláin, expressed her deep concerns about the scope, necessity, proportionality, and discriminatory effects of recent amendments to the 2015 national law and urged the government in a letter to reconsider the wider provisions which would “profoundly impinge on a range of fundamental human rights”¹⁸.

Despite the Committee against Torture’s requests for Egypt to revise the Anti-Terrorism Law No. 94 and the Terrorist Entities Law no. 8 of 2015 and bring them in conformity with the Convention, CFJ notes that the State Party has not provided information in its report on any such measures, nor has it provided statistics on the number of individuals arrested on suspicion of violating these laws and the length of time that passed before they were charged with an offence.

Recommendations

- a) Ensure that legal safeguards provided in the Code of Criminal Procedure equally apply to suspects of terrorism.
- b) Amend the Anti-Terrorism Law to bring it into conformity with the Convention.

Death Penalty

In its state report, Egypt failed to respond to the Committee’s request for information with regards to measures taken to ensure that the death penalty is imposed only for the most serious crimes. It also failed to respond to the Committee’s inquiry about the possibility of reviewing its policy, with a view to abolishing the death penalty in law or taking affirmative steps to establish a moratorium on the application of the death penalty.

¹⁸ <https://www.ohchr.org/en/press-releases/2020/04/egypts-updated-terrorism-law-opens-door-more-rights-abuses-says-un-expert>

Penal Code:

- Articles 77, 89, 230, 233, 234/2, 257, 290, 33, 251, 167, 294, 35A (bis) of the Penal Code stipulate the death penalty for various crimes, including crimes committed abroad that are harmful to state security, state security crimes committed inside the country such as premeditated murder, deliberate homicide using poison, homicide associated with a felony or misdemeanor, and arson if it results in death; abduction of a female by fraud or coercion associated with rape, killing a person who has been injured in a war; endangering means of transport if this results in human death, perjury that has led to the execution of a person and bullying associated with premeditated murder.

Military Judiciary Act:

- Articles 130, 132, 133, 134, 4135, 136, 138, 139, 140, 141, 48, 151, 154 of the Military Judiciary Act stipulates the death penalty for failing to report the entry of an enemy into a military location, mistreating prisoners of war or those injured in war, sedition or disobedience, violation of service or guard duties, looting, loss and vandalism, abuse of power, disobeying orders, and escape or absenteeism.

Anti-Narcotics Act:

- Articles 33 A (bis), 33 b, 33 c (bis), 33 d (bis), 34 b, 34 c, 34 (bis), 40, 41 of the Anti-Narcotics Act stipulates the death penalty for acquiring and exporting narcotics; producing and extracting narcotics; cultivating certain narcotic plants; forming, managing or participating in a gang with an illegal purpose; possessing, obtaining or dealing in narcotic substances for purposes of trade; using a drug for conditions other than those permitted; managing or preparing a place that permits narcotic consumption for a fee; paying to use cocaine, heroin or other listed substances; fatally assaulting employed enforcers of the anti-narcotic act; and premeditated murder of an official enforcing the act's provisions.

Anti-Terrorism Law:

- Articles 12, 13 and 14 of the Anti-Terrorism Law cites the death penalty as punishment for establishing, forming, organizing or managing a terrorist group, or holding a leadership position in such a group; coercing another to join a terrorist group, or preventing someone from leaving a group if this coercion or prevention has fatal results; financing a terrorist group or act; seeking to or actually spying for a foreign state or any association, body, organization, group, gang or other entity based inside or outside Egypt, or with any person acting in the interest of a foreign state or any of the said entities with the aim of committing or planning a terrorist crime inside Egypt or against any of its citizens, interests, property, or the premises or offices of its missions or institutions abroad, or against anyone employed in such a mission or institution, or against any person enjoying international protection – if the offense is committed or attempted.

- Articles 16, 17 and 19 of the Anti-Terrorism Law state that arresting, abducting, detaining, imprisoning or depriving a person of liberty in any form, if the purpose is to compel a state authority or body to undertake or refrain from an action, or to achieve an aim or facilitate a gain of any kind, if this results in the death of a person; or making or designing a weapon, possessing such a weapon or giving one away or facilitating the acquisition of one to be used or prepared for use in a terrorist crime, is punishable by the death penalty if its use results in the death of a person.
- Articles 25, 26 and 27 of the Anti-Terrorism Law states that capital punishment is also applied for deliberately damaging, vandalizing, destroying, disrupting, cutting or breaking a network, tower, line, building or installation of electricity, petroleum, natural gas or water, or forcibly assuming possession of any such installations if any of these crimes result in a person's death; and for attacking enforcers of the implementation of the provisions of the Anti-Terrorism Law, or using force, violence or intimidation to resist during or because of the law's enforcement, resulting in the death of a person.

The list of crimes punishable by execution in accordance with the Egyptian Penal Code, Anti-Narcotics Act and Anti-Terrorism Law is worryingly expansive. More importantly, in 2015, amendments were made to the Anti-Terrorism Law (No. 94 of 2015) which have excessively broadened the definition of “terrorist entity” and “terrorist act”. The direct and very flagrant consequence has been the multiplication of arbitrary detentions, enforced disappearances, and intensified crackdown against fundamental freedoms of ordinary citizens and the outlawing and labelling of opposition groups and human rights organizations as “terrorist groups”. The most emblematic example lies in the case of the Muslim Brotherhood, Egypt's largest opposition group, which was outlawed and labelled a “terrorist” organization in the aftermath of President Abdel Fattah El-Sisi's military takeover in 2013, ousting his democratically elected predecessor Mohamed Morsi, who hailed from the Muslim Brotherhood¹⁹. Members or those suspected of membership or support for the group have been subjected to arbitrary detention, torture, mass trials, executions, and mass killings during protests.

CFJ has documented a number of cases relating to the use of the systematic use of the death penalty in cases of political nature²⁰. Most recently, in February 2020, CFJ documented a case, No.165 of 2017²¹, in which the Egyptian authorities sentenced eight individuals to death, pursuant a mass trial delivered by a Military Criminal Court. As previously highlighted, military courts lack independence and impartiality and do not abide by international fair trial standards. Their ability to convict civilians to death is therefore worrying.

¹⁹ <https://www.middleeasteye.net/news/saudi-arabia-egyptian-turkish-man-risk-deportation-pleas-turkish-help>

²⁰ <https://www.cfjustice.org/stop-the-death-penalty/>

²¹ <https://www.cfjustice.org/state-terrorism-and-armed-groups-terrorism-how-does-the-society-survive-both/>

Shortcomings of this nature highlight the urgent need for Egypt to take steps to ensure that offences carrying the death penalty are restricted to those which fall within the category of the “most serious crimes” and after trials that fully comply with international fair trial standards.

Recommendations

- a) Establish a permanent moratorium on the death penalty.
- b) Commute death sentences to prison sentences.
- c) Pending commute, ensure that the death penalty is only imposed for those crimes that fall within the category of the “most serious crimes” and after trials that fully comply with international fair trial standards.