



المركز العربي لاستقلال القضاء والمحاماة

The Arab Center for Independence of the Judiciary and the Legal Profession (ACIJLP)
Centre Arabe de l'Indépendance des Avocats et de la Magistrature

(يتمتع بالصفة الاستشارية الخاصة بالمجلس الاقتصادي والاجتماعي للأمم المتحدة)

The report of the Arab Center for Independence of the Judiciary and the Legal Profession (ACIJLP) In the context of the Universal Periodic Review (UPR) of the status of human rights in Egypt for the year 2014



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Introduction:

This report tracks progress on the human rights situation in Egypt, and the Egyptian government's commitment to implement the recommendations of the International Council for Human Rights.

The government accepted, and therefore is bound to implement, recommendations stated in the International Council for Human Rights in the UPR that include: ensuring that administrative detainees are released or promptly brought to justice; amending the definition of torture in the Penal Code and ensuring the investigation and prosecution of all cases of torture; lifting the state of emergency and ensuring that any new counter-terrorism law complies with international human rights law; ensuring that the use of the death penalty meets the standards of international law; protecting the rights of human rights defenders and amending the NGO law to facilitate the registration and functioning of independent civil society; promoting and protecting freedom of religion and belief and adequately responding to sectarian violence, especially against Copts; ensuring freedom of expression, including for bloggers and other Internet users; and enhancing human rights education and training.

Egypt also accepted a number of recommendations relating to women's rights, including ending discrimination against women in general and in the workforce; combating violence against women, including domestic and sexual violence; enhancing the presence of women in the judiciary; and considering the withdrawal of reservations that Egypt places on some articles of the Convention on the Elimination of Discrimination against Women.

Moreover, Egypt accepted all recommendations in the field of economic and social rights, the majority of which appeared to be of a broad and vague nature. These recommendations related to promoting access to health, housing, food, education and social services; eradicating poverty, illiteracy and unemployment; and ensuring the protection of the rights of marginalized and disadvantaged groups.

Egypt also committed itself to protecting the rights of migrants in Egypt and abroad, as well as the rights afforded to refugees under international law. In an indirect reference to the shooting of

African migrants attempting to cross the borders to Israel, Egypt has agreed to ensure that the police act with restraint unless they are in danger.

Recommendations rejected by the government, include the repeal of articles 102 (bis), 179 and 308 of the Penal Code, which are often used to violate the right to freedom of expression. These articles stipulate prison sentences for “circulating false news to disturb public security”, insulting the President of the Republic and “assaulting the honor of families”, respectively. The government also rejected a recommendation to end imprisonment for the “incitement to discrimination” or “assaulting the honor of individuals.” The government further rejected calls to abolish or suspend the use of the death penalty; to invite international election monitoring; to remove references to religious affiliation from identity cards and other official documents; to end discrimination based on sex or gender and stop prosecution on the basis of sexual orientation or consensual sexual behavior; and to amend personal status laws to ensure gender equality in matters of marriage, divorce and inheritance.

Egypt deferred its decision with regard to a number of recommendations with regard to ending discrimination against Non-Muslims in their right to exercise religious rites, including the issuance of a unified law for the construction and repair of all places of worship; ending imprisonment for Internet users; inviting UN human rights rapporteurs to visit Egypt; ratifying the treaty establishing the International Criminal Court and other UN treaties establishing complaint mechanisms for victims of rights violations; expediting the provision of identity cards and other official documents to Baha’i Egyptians; and establishing an independent elections commission with the representation of all political parties.

Second: Assessing the fulfillment of the Egyptian government of its obligations in the field of human rights

Despite Egypt's ratification on the International Covenant on Civil and Political Rights on 14/01/1982 and entered into force on 14/04 of the same year, but they have yet to join any of the Optional Protocols to the Covenant, whether attached to the first Optional Protocol on the submission of complaints by individuals or the Second Optional Protocol on the abolition of the death penalty.

Egypt has also acceded to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 25/06/1986. The Convention entered into force on 26/06/1987; however, Egypt did not accede to the Optional Protocol to the Convention on the establishment of international and national commissions against Torture and visit prisons and lockups.

In the same context, the Egyptian government has signed the Rome Statute on the establishment of the International Criminal Court on 28 December 2000, but it has not yet ratified the Rome

Statute, a matter which resulted in the impunity of many of the perpetrators because national legislation are free from the crimes that are specific to the ICC.

The ACIJLP believes that the failure to join the protocols referred to, mainly led to the deterioration of the conditions of human rights, particularly the right to life and the right to physical integrity and the right to liberty and security of person.

Third: an overview of the situation of human rights in Egypt:

A- The right to life

Through extrapolation of different Egyptian laws, such as the Penal Code No. 58 of 1937 and its amendments, martial law No. 25 of 1966, Weapons and Ammunition Act No. 394 of 1954, anti-drug law No. 182 of 1960 and entailed amendments of legislation, it appears that there are 105 criminal act punishable by death in a clear reference to the excessive use of applying this sever penalty by Egyptian legislator. The seriousness of this excessive use of applying this sever penalty is that many of these acts are not within the scope of "most serious crimes" and according to what is mentioned in and international conventions and legislation and issued by the "UN Commission on Human Rights".

Many of the texts that provide for the application of the death penalty in Egypt, constitute a clear breach of the principle of "the legitimacy of the offenses and penalties" because it does not put a precise and specific definition of criminal act punishable by death penalty and contradict what settled upon by the Egyptian judiciary on the need to put a clear and precise texts¹.

B- The right to physical integrity:

Egypt has ratified the International Convention against Torture under Presidential Decree No. 154 of 1986, which was published in the Official Gazette on 01/07/1986 to be enforced as of June 25, 1986. Despite, the Egyptian government is committed to this convention and it is published in the Official Gazette, as part of the national legislation, including the consequent criminalization of any form of torture or ill-treatment, and to take positive measures to protect victims of torture thorough conducting fair and prompt investigations in the allegations of torture and ill-treatment, and to bring criminal charges and hold criminal and disciplinary trials when necessary, no serious measures have been taken to implement this Convention within the legislative and judicial systems of Egypt and the necessary measures are not taken to put an end to the behaviors of the police against the victims of torture whether accused or defendants or suspects in order to get confessions , both on themselves or on others.

¹ Please see the ACIJLP Report on the Death Penalty in Egypt" Reduction of the Judgements of the Death Penalty issued by the natural justice in Egypt" Monitoring of the Judgments of the Death Penalty for the years (2009-2010-2011)

Egypt also has not signed the Optional Protocol to the International Covenant on Civil and Political Rights, which provides for setting up a mechanism to receive individual complaints, under Egypt's reservations to articles 21 and 22 of the Convention against Torture, which affirm the right of States Parties to the Convention to file a torture-related complaints against other countries, and on the right of torture victims to file their complaints directly to the supervisory committee to monitor compliance with the Convention.

Although the current constitution set forth the definition of torture, but the definition of the crime of tortures still limited in ordinary legislation, which stated in Article 126 of the Egyptian Penal Code and it is not aligned with the definition contained in the first article of the Convention against Torture and Other Cruel, Inhuman cruel, inhuman or degrading treatment. In addition to the lack of access to a lawyer at the stage of detention and not applying the principle of confession of guilt as an excuse to the penalty and not adopting the defendant's right to silence, and the difficulty of moving the criminal case by the direct prosecution for public servants, including police officers involved in the crimes of torture and the small amount of compensation adjudged to victims of torture.

Egypt is currently undergoing an important stage of development and reform in all fields, and the promulgation of the Constitution in 2014, which requires several amendments in the political, economic, social and judicial systems, and creating conducive climate to make the necessary legislative amendments and all judicial and administrative measures to curb this phenomenon, represented in the exposure of citizens and detainees and prisoners in jails and lockups to torture and cruel and degrading treatment.

C-Independence of the judiciary and the right to a fair trial

The dominance of the executive authority and its interference continues, represented by the Minister of Justice, in judicial matters, and breach of many of the safeguards guaranteeing the independence of the judiciary. This interference is supported by the legislation of the judiciary, which are not consistent with international standards for the independence of the judiciary, particularly the UN Basic Principles on the independence of the judiciary as stated in Article 9 of the law referred to which grant and Minister of Justice considerable power to dominate the courts of first instance , such as decision of the assignment of the president of court of first instance without the participation of the general assembly of the court to which he belongs. Moreover, the opinion of the Supreme Judicial Council on the decision is advisory opinion and can be violated. The assignment lasts for one year and can be renewed according to the desire of the minister. This matter constituted a constant pressure on the person holding the office. The text of Article 36 of the same law allows the Minister of Justice to usurp the judicial administration of the courts and gave the Minister of Justice the power to manage these courts,

where the said article enables the minister of justice to interfere in the order and form of courts and distribution of lawsuits on the various departments and to interfere in all other related issues relating to the system of courts and their internal affairs. Moreover, Articles 45, 78, 79 and 121 stated that the judicial Inspection Department of the courts and judicial Inspection Department of the Attorney General is formed in the Ministry of Justice. It is well known that the inspection departments are following the work of the judiciary and prosecutors and are responsible for preparing the reports, which would have an impact on the long run on the judiciary and the prosecution and gave the Ministry of Justice enormous influence on members of the judiciary. In recent years, security services expanded its raids, especially in the aftermath of bombings or criminal or sectarian attacks. These campaigns are often followed by detention of various numbers of citizens randomly under a large excess in the use of custody for the accused.