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JOINT SUBMISSION ABOUT TRANSITIONAL JUSTICE AND THE WAR ON TERRORISM

BY

**Elma7rosa Observatory for
Transitional Justice**



**Egyptian Network for Public
Participation**



Egyptian Civil Democratic Pact



**Contact person for the
submission :**

Bassem samir awad

Bassem.samir.eda@gmail.com

00201023610028

INTRODUCTION

Elma7rosa Observatory for Transitional Justice (EOTJ), the Egyptian Network for Public Participation (ENPP), and the Egyptian Civil Democratic Pact (ECDP) submit the ensuring civil society report on the situation of Transitional Justice and the War on Terrorism in Egypt following the 21st session of the Universal Periodic Review (UPR) for the Arab Republic of Egypt, second round.

This report addresses the Transitional Justice and the War on Terrorism in Egypt after the January 2011 and June 2013 in the light of number of rights and freedoms guaranteed by international conventions and agreements Arab Republic of Egypt signed and ratified, along with the recommendations approved by the Egyptian state related to the prevention of torture, capital punishment, and corruption.

Organizations partaking in the report:

- Egyptian Democratic Organization (EDA)
- Elma7rosa Observatory for Transitional Justice (EOTJ)
- Egyptian Network for Public Participation (ENPP)
- The Egyptian Civil Democratic Pact (ECDP)
- Elma7rosa Network for Advocacy, Arts and Media

A SYNOPSIS ABOUT THE PARTICIPATING ORGANIZATIONS:

Egyptian Democratic Association:

Egyptian Democratic Association (EDA) established by a number of legal activists and politicians in the wake of the revolution of 25 January 2011 as an institution that operates legally within the framework of the Egyptian state and in accordance with the laws governing civil society organisation . EDA publicized (cited) under number 4564 of 2012 after procedures that lasted for more than one and a half years.



EDA espouses democracy as a method of development. Seeing as Egyptian citizens are the main beneficiaries of development, the EDA seeks to involve them at every step of the development process, including in the planning, implementation and evaluation stages.

Elma7rosa Observatory for Transitional Justice:

Elma7rosa Observatory for Transitional Justice (EOTJ) established on June 1, 2013 against the background of increased political tension due to the launching of a protest and signature-gathering campaign demanding early presidential elections.

EOTJ aims to document cases associated with the concept and practice of transitional justice. Additionally, in coordination and cooperation with international organizations, it seeks to formulate recommendations and practical solutions that have proven helpful in the application of transitional justice in various countries.



Egyptian Network for Public Participation

The Network was established in January 2012 with technical support from the Danish Institute for Human Rights. The organization was launched with an introduction to public participation, and a review of the role of legislative mechanisms, governmental practices and civil society activities in supporting public participation. By the end of 2012 the study had encompassed a network of institutions that aim to promote the values and foundations of public participation.



Egyptian Civil Democratic Pact

The Egyptian Civil Democratic Pact is an Egyptian bloc (coalition) formed in the wake of the March 19, 2011 referendum on the Constitution, with the purpose of persuading people to vote "Yes." In this campaign, religious propaganda, poverty, ignorance, and illiteracy were used to convince the electorate that voting "Yes" would be in line with their beliefs and conducive to national stability.



Elma7rosa for Media, Arts and Advocacy:

Established at the initiative of a few activists, the Elma Rosa was first inaugurated as a broadcasting station on the Internet. Elma7rosa then evolved into a news website and a documentary films channel on the Internet.

On October 6, 2013 Elma Rosa was established as a non-profit civil company that operates in the fields of advertising, production, printing, and publishing.



BACKGROUND:

President Mohammed Hosni Mubarak assumed power since October 1981, and was ousted in February 2011 in the wake of popular demands for his resignation.

The beginning was through the trial of the president and the figures of his political regime with various charges related to financial corruption and nepotism for a large number of years, and refraining from issuing instructions to protect the demonstrators who flooded the squares from 25 January until 11 February 2011.

The Egyptian Supreme Council of the Armed Forces assumed power temporarily from February 2011 until the holding of presidential elections in the mid of 2012. Many crimes violations happened under the rule of the Supreme Council of the Armed Forces. Some trials were conducted on the soldiers' level on the case of virginity checks, or on the cases of lethal clashes happened in front of Official Television Building (Maspero) in October 2011, in front of the Egyptian Cabinet Headquarters in December 2011, or around the Egyptian Ministry of Interior Headquarters in many occasions.

In the aftermath of the election of Dr. Mohamed Mursi as President of Egypt a number of violations occurred in his one year of ruling. For many of these violations he is being tried now in front of the court after he has been ousted after the demonstrations of 30 June.

There was a sequence of events in the wake of 30 June through the suppression of the sit-in at Rabaa Adawiya square in Nasr City in Cairo, and Al-Nahda square in Giza like the security troubles in Sinai Peninsula, the attacks on number of security and army buildings, the attacks on a number of churches which caused many deaths and injuries among both civilians and security personnel.

In the framework of war on terrorism in Sinai it is announced on a daily basis that extremists are being killed and tunnels are being demolished where of these tunnels lie inside houses close to the eastern border.

This takes place without issuing an Anti-terrorism law which provides a clear definition of what is terrorism, who is the terrorist, what is a terrorist organization and a terrorist operation, and the methods of facing and combating terrorism politically, economically, socially, culturally and security-wise.

On a separate note, the corruption network that rise due to the dominance of a group on the government without a popular monitoring is needed to be dismantled in a scientific manner, not only accounting some persons who are linked to corruption, as it is popular in such cases to have a collusion and a willful destruction of evidences which indict the corrupted persons.

The Egyptian state her last Universal Periodic Review in February 2010 accepted a number of recommendations related to fighting terrorism and the necessity of issuing a legislation to combat terrorism while guaranteeing public freedoms and rights, and also to suspend the application of emergency law.

Even though the Egyptian state suspended the application of the emergency law and made its reinforcement a subject of a popular referendum, what the Arab Republic of Egypt is witnessing of the attacks of the security apparatus -police and army- comes away from the application of any law, as the laws currently enforced in Egypt are laws that can deal with traditional circumstances that may occur in a stable society that is not going through a transitional period. Hence, the situation is grave

and is intensely deteriorating due to the absence of a legal framework that details, elucidates, determines terrorism, and lays down principles related to how the law deals with terrorist attacks and those who perpetrate them. In the shadow of the absence of such legislation we may characterize what is occurring in Egypt as extrajudicial killing and a violation of the right to life and the right to a fair trial.

The current Egyptian Constitution of 2014 stipulates in its introduction that this constitution consists with the Universal Declaration on Human Rights. Chapter 3 of this constitution included guarantees for a large number of rights and freedoms.

Article 51 states that "Dignity is the right of every human being and may not be violated. The State shall respect and protect human dignity". Article 52 states that "Torture in all forms and types, is a crime that is not subject to prescription". Article 53 stipulates that "All citizens are equal before the Law. They are equal in rights, freedoms and general duties, without discrimination based on religion, belief, sex, origin, race, color, language, disability, social class, political or geographic affiliation or any other reason". Article 54 deals with personal freedom and the impermissibility of arresting a person except by a court order, not to mention other measures which should be taken against one who is charged and the terms of precautionary detention. The rights of the accused persons are stated in Article 55 which also provides the right to keep silence as one of the rights of the accused persons.

Notwithstanding all the preceding Egyptian legislations which exceed in their number 60 thousands laws needs in its majority major amendments to consist with the new constitution in keeping rights and freedoms.

Since March 2010 the Egyptian state had three presidents: former president Mohammed Hosni Mubarak who remained in power until 11 February 2011, former president Mohammed Morsi who assumed the power from the 1st of July 2012 till 3rd of July 2013, and the third president is the interim president Adly Mansour who ruled since July 2013 till now.

The Supreme Council of the Armed Forces assumed power in the transitional period after former president Hosni Mubarak, such from 11 February until handing over power on the 1st of July 2012. The Supreme Council of the Armed Forces contributed also in transferring power to the head of the Higher Constitutional Court after deposing President Mohammed Morsi on the 3rd of July 2013.

It was not within the power of the Egyptian State in the shadow of developments and the succession of events to effect many changes and reforms particular to actualizing transitional justice since the eruption of the revolution of 25 January 2011 whether due to the uniqueness of the Egyptian model in terms of transitional justice, or due to the fact that those who come to power in Egypt are not considering transitional justice as a priority that it deserves to be.

It is worthy of mention that a ministry was established after 30 June 2013, namely the Transitional Justice Ministry whose mere existence may be considered a beginning and a step requiring further steps to actualize the model of Egyptian Transitional Justice.

The United Nations has defined transitional justice as "The totality of the mechanisms and processes associated with the attempts made by a society to understand a legacy of former excesses and violations that are wide ranging with a view to ensuring accountability, the establishment of justice and the achievement of reconciliation." That is, it is a system of decisions that are made by society and the states in response to the systematic violations of human rights, with a view to obtain the necessary recognition of the damages and injuries sustained by the victims and to hold the culprits to account.

VIOLATIONS:

Extrajudicial killing:

It occurred in the wake of the January 2011 revolution, and in the wake of 30 June 2013, and sometimes crimes of murder would occur in the presence of the police and the culprit would not be detained despite the fact that a number of crimes were live broadcasted on television.

Incitement to discrimination, hatred, and violence:

Hatred campaigns are performed through the media to incite against many groups from time to time. Foreigners were targeted in general in the wake of the 25 January 2011 revolution, and the Syrians were targeted in the wake of 30 June 2013, and Christian Egyptians were targeted in the wake of Maspero Clashes event in October 2011. The Egyptian state media, along with other independent media, were used in those campaigns which resulted in many killings and injuries among Egyptians and Foreigners visits or works in Egypt.

Unfair Trials:

In the wake of the 25 January revolution charges were leveled at a number of police officers and they were tried while still being in the service. Hence, they would attend their trial sessions and then would resume their job duties. This raised concerns that their colleagues from the security forces would help them by offering non accurate testimonies, and threatening witnesses and the relatives of the victims.

RECOMMENDATIONS:

Recommendations for moving forward on the path of transitional justice as relates to the Egyptian case:

- Fact finding through the formation of an Independent Commission that investigates past crimes, the way they were committed, those who were responsible, and to identify the victims. Such for the period from 25 January 2011 until the present time.
- Bring to justice persons who are responsible for crimes of the past, whether in terms of the violations of human rights or economic crimes related to cases of corruption, illegitimate use of influence, and bribery whatsoever their positions in the state and to suspend them from work during the trials.
- Compensation of the victims and their families for the damages they had due to past violations.
- Legislative and constitutional reform: this entails getting rid of the arsenal of previous laws which were enacted in order to ensure the hegemony of the ancien régime over the political arena, consecrating the principle of exonerating public officials and releasing them from retribution. It also includes the enactment of new laws and a new constitution that is consonant with the transition to democracy. Moreover, this involves what society views as necessary to deal with a legacy of oppression and violations of human rights, even if such

demands a change of the criminal law and the infamous laws which the ancien régime resorted to to justify its criminal actions.

- Inspection of records: such by reviewing the personal files of public officials and members of the security forces in order to reveal their crimes and violations and to evaluate them in order to achieve genuine reform of the security and judicial systems alongside institutional reform.
- Change the educational curricula: so that they are based on the instilment of the values of freedom and democracy, and to examine the old curricula particularly as relates to history, and to purify them of distortions and negative accretions, such through an independent commission.
- Memorialize the victims: by documenting and immortalizing events such through the creation of national museums whose revenues would be directed to supporting the immortalization of martyrs and the development of museums, whether digital interactive museums which describe what happened, parallel with museums that include the possessions of the Egyptian revolution and the revolutionaries.

To accomplish the foregoing the following elements should be present:

- 1) The political will: which is the fundamental driving force of the transitional justice system even if present are all the necessary technical means to actualize the said system. And if the political will is not present the new laws and decisions will not be effectuated or they will be utilized to suppress the political opposition, which connotes reproducing the old system.
- 2) Rule of law: the ruling powers consider as a priority the bolstering of the reigns of power, and are distracted from reinforcing the rule of law. Indeed, they may perceive the rule of law as a threat, which could be exacerbated if the new authorities (transitional) repeat the violations and transgressions which the old system committed. Thus it is urgently necessary to be extremely careful upon the enactment of special laws punishing the former regime, so that this does not increase the strength of the arsenal of despotic laws which stifle democratic life, such by keeping a distance from extraordinary laws which undermine the norms and standards of criminal justice, and which do not foster fair and justice trials. The purpose of implementing the paradigm of transitional justice is not to exact revenge against the former regime but to identify the reality of the leaders of the regime and the victims in order to achieve redress for them, within the framework of a broader aim which is to achieve justice.
- 3) Independence of the judicial branch of government: It is unimaginable to have any kind of purification of institutions or the dismissal of criminals or even trials without enacting a new law for the judicial authority, which ensures its independence and frees it from the domination of the ministry of justice and security quarters. What is required is not merely ensuring the independence of the courts but also the public prosecution, the helpers of the judiciary, and ministry of justice experts including forensic medicine experts.
- 4) Creation of a specialized court to punish the crimes of the former regime: It is incumbent on parliament, after providing immunity to the judicial authority to formulate a comprehensive draft law that ensures bringing to justice the former regime functionaries and officials through creating a specialized court for punishing the crimes of the former regime, provided that the law of its establishment is compatible with international fair trial standards, and the created court should not be considered a special or extraordinary court.