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Legalizing Repression

How repressive regimes use the law to legitimize civil and political rights violations, to ensure impunity and to undermine democracy and the rule of law
(The case of Egypt)

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Introduction:

Prior to the January 25, 2011 revolution, the Egyptian legislative structure was highly regulated in terms of the accuracy of legislative drafting of laws and its compliance with the constitutional principles established in successive Egyptian constitutions, most of which have always been in line with international human rights standards. Of course, the matter was not without defective laws that the authorities tried to issue from time to time to engineer their executive and legislative powers, but there were always those who confronted these violations, and this was represented in the Supreme Constitutional Court, whose history is replete; especially in the nineties, with many rulings in which it ruled the unconstitutionality of many flawed laws. Its rulings contained a real human rights philosophy and a rich interpretation of constitutional principles that it applied to the legislation issued by the legislator during that period.

Human rights violations always occurred by circumventing those legislations in violation of them or by searching for loopholes that ensure escaping the law as much as possible, until the main feature during Mubarak's rule was legalized corruption so that cinematic films in that period often contained satirical sentences describing the actions of politicians such as **“Even corruption must be legal”**.

In the aftermath of the January 2011 revolution, the Military Council managed the transitional period, faltering between its undeclared agreement with the Islamic currents that were trying to take over the reins of power, its genuine loyalty to the old regime, which it always formed part of and its hostility to the civil current represented by the revolution's youth and various ideological movements.

After the end of the transitional period and within the framework of a deal with the Military Council, the Muslim Brotherhood succeeded in assuming power after they managed to obtain a majority in Parliament and then they pushed a candidate for the presidential elections, which ended with Mohamed Morsi, who belongs to the Brotherhood, assuming the presidency on June 30, 2012. And for a year, The Muslim Brotherhood tried to control the

joints of the state, but the “**deep state**” represented in the army, the judiciary, and the sovereign bodies that were still ruling and controlling state institutions succeeded in deceiving the Brotherhood and pretending to ally with it while it was fueling popular anger against the way the Brotherhood and its allies from the Islamic currents were managing the state.

Popular anger against the Brotherhood led to the outbreak of large popular protests during the year 2012, and following calls for demonstrations on June 30, 2013, by civil and revolutionary currents, another popular revolution occurred that exceeded the number of people who participated in the January 25, 2011 revolution¹.

The Brotherhood refuses to call what happened on June 30 a revolution and insists on calling it a military coup, as it received the support and blessing of the sovereign state institutions such as the army, judiciary and police, as well as governmental media institutions that fully and explicitly supported the popular movement, unlike the behavior of those institutions at the beginning of the January 2011 revolution against Mubarak's rule, in which they accused the revolutionaries of treason and coercion. But the truth is that more than 30 million citizens, according to some local and international official estimates, took to the streets in protest against the rule of Mohamed Morsi and the Muslim Brotherhood, and this does not deny that on July 3, 2013, Abdel Fattah El-Sisi, the Minister of Defense at the time, took advantage of the opportunity and called on the people to go down once. Another for his mandate to confront the Muslim Brotherhood, and from here we can say that it was a revolution that the army exploited to legitimize the coup, just as the Muslim Brotherhood exploited the January 2011 revolution to gain power.

After the overthrow of the Muslim Brotherhood and the arrest of most of its leaders in 2013, the head of the Supreme Constitutional Court, Adly Mansour, assumed the interim president of the republic until a new constitution was prepared and presidential elections were held, which ended with Defense Minister Abdel Fattah al-Sisi assuming the presidency from June 3, 2014 until now.

¹ Patrick Kingsley, 30 Jun 2013, Protesters across Egypt call for Mohamed Morsi to go, The Guardian, <https://www.theguardian.com/world/2013/jun/30/mohamed-morsi-egypt-protests>

From 2013 until now, the Egyptian legislative authority has deliberately changed the Egyptian legislative structure to ensure the legalization of repressive practices and human rights violations and ensuring impunity. During that period, 447 laws were issued in the form of decrees for laws issued by interim President Adly Mansour and then current president Abdel Fattah El-Sisi in absence of parliament, according to an exceptional authority granted by the Constitution to the President of the Republic, which gives him the right to issue decisions that have the force of law until the Parliament is elected, provided that those laws are presented, discussed, and approved within fifteen days of convening the new parliament².

Parliament elections were obstructed for several reasons at the time until the end of December 2015, its first session began on January 10, 2016, to approve all laws issued in its absence after a formal review within the stipulated fifteen-day period and complete the issuance of new laws and amendments to previous laws, bringing the total of laws issued Since July 3, 2013, there are approximately 1,435 laws³.

During that period, the regime worked to suppress protests and voices opposing it. The cycle of repression and arrests extended to all political currents, whether the Islamic current in support of former President Mohamed Morsi or other civil currents and youth movements that had the largest role in the revolution against Mubarak's rule and the rule of the Muslim Brotherhood after him. The number of political prisoners in Egypt from 2013 to 2021 is about 65,000 political prisoners out of 120 thousand, which is the total number of prisoners, meaning that the number of political prisoners is more than half of the total number of prisoners, which is a disastrous figure⁴.

The permanent response from the Egyptian authorities to the international statements condemning the extensive arrests of politicians and activists is that they are criminal

² Art 156 of the 2014 Constitution issued on January 18, 2014 published on January 18, 2014 in force as of January 18, 2014 regarding the issuance of the amended Constitution of the Arab Republic of Egypt for the year 2014. Official Gazette 3 bis (a)

³ According to EastLaws website's inventory of the number of laws from July 3, 2013 to July 8, 2022

⁴ Ezzedine C. Fishere, February 24, 2021, Egypt's republic of fear has detained tens of thousands. It's cruel — and counterproductive, washington post
<https://www.washingtonpost.com/opinions/2021/02/24/egypt-political-prisoners-sissi-fear/>

prisoners who are legally arrested and criminally prosecuted and that there are no so-called political detainees in Egyptian prisons, which is an honest and real response given that flawed and loose texts are used in the Egyptian Penal Code And the laws that complement it, such as the Terrorism Law, to fabricate criminal charges against political opponents, in addition to undermining fair trial guarantees by using flawed provisions in the Code of Criminal Procedure or exceptional trials in accordance with the Emergency Law and the Military Judicial Law.

In addition, the regime has enacted new laws to restrict freedom of opinion and expression, such as the laws of the press and media and the law against information technology crimes, in conjunction with the expansion of the use of flawed punitive laws issued before the revolution, such as the accusation of spreading false news, especially after the regime realized the role of websites and social media pages in moving The revolution in 2011, where Twitter and Facebook played the main role in mobilizing the masses against Mubarak and bringing down his regime.

The biggest challenge before the state was how to restore confidence in the security authorities, which were broken at the beginning of the January revolution due to their support for the Mubarak regime and their participation in a large part of its crimes, which prompted them to withdraw from their positions on January 28, 2011 for fear of facing the popular anger that erupted at the beginning The revolution. some formal trials took place immediately after the revolution for some police officers who were involved in crimes of torture or the killing of protesters during Mubarak's rule.

Although all trials ended in acquittal due to the complicity of state institutions, the deliberate concealment of evidence and the length of the trials, the current regime tried to reassure the security authorities on more than one occasion and with explicit statements that none of them would be tried for their crimes in the future. The matter was not limited to political reassurances but exceeded this to ensure the legalization of impunity for the crimes of torture, enforced disappearance and extrajudicial killing in the laws themselves.

Not only that, but the current regime adopted constitutional amendments in 2019 that included changing the political map of the state by wasting the principle of rotation of power so that the state would return to the one-man rule and enable the current president to remain in office until 2030, subject to extension, which was one of the main reasons that led to the outbreak of the January revolution when the deposed president Mubarak remained in office for thirty years and wanted to pass the power to his son after him.

The constitutional amendments in 2019 also included a complete undermining of the independence of the judiciary and the restriction of its powers so that it became subordinate to and subject to the executive authority after it was a cornerstone for confronting the repression of the authority, a guarantee of rights and freedoms and an impenetrable barrier against attempts by the executive authority to overrun the foundations and principles of the democratic state during Mubarak's rule and the beginning of the rule of the current president.

More dangerous than that was the changing the status of the military institution so that it became a supra-constitutional authority above the three executive, legislative and judicial authorities, making the army the protector and interpreter of the constitution, in addition to the constitutionalization of military coups so that any future president would become subject to the military institution and implement its orders for fear of a coup against him if he tried to limit its powers or undermine its evils.

Study outline:

The current Egyptian system has been suppressed on four main axes that will be clarified during the study in four chapters.

This is the main research questions:

- How do repressive countries use legislation to undermine democracy, restrict civil and political rights, legalize human rights violations, legitimize international crimes and immunize their perpetrators from punishment?

Chapter I of the study will address examples of laws used to restrict freedom of opinion, expression and control over the Internet by analysing the crime of spreading false news that is currently being directed at all opponents and opinion holders, as well as analysing the Law against IT Crimes of 2018, through which the regime aims to introduce new crimes that ensure that it tightens control over the Internet and websites to prevent them from being used to criticize its policies or move the public against it, as it happened in January 2011 Revolution.

Chapter II of the study will explain how the Egyptian regime used laws to codify grave crimes such as torture, forced prostitution and extrajudicial killings to ensure impunity for perpetrators and restore confidence to security institutions that broke their cheques during the revolution so that they could return more fierce and criminal than during Mubarak's rule.

In Chapter III, the Law on Emergency and Counter-Terrorism is used in parallel to the right to a fair trial, the blessing of accusations and the issuance of absurd sentences that prevent mere appeals against them.

In the fourth and final chapter of the study, we will see how the current system strengthened its rule with constitutional amendments to ensure that the terms of office of the current President are extended and that he remains in office for unlimited periods, as well as tightening control over the judiciary and making it subordinate to the executive branch and restricting its power in the face of violations and abuse of the executive authority. as well as

addressing amendments relating to the armed forces and how they have become superior to the Constitution and its institutions.

Motivation for study preparation:

The first thing that motivated me to prepare this study was the feeling that I had a duty to the 25 January 2011 revolution, which I consider to be my second birthday. I am from the generation who lived under Mubarak's repression for 20 years until the January 2011 revolution came to write a new birth certificate for my life and motivated me to achieve my goals. I participated in all its events and dared the bitterness of its defeats after seeing it lost and exploited once under Islamist rule and finally under the military. It is my feeling that this great revolution will achieve its goals and will not go into oblivion and that this people who have descended on all of Egypt's streets and squares peacefully calling for freedom and democracy deserves better.

It is also my duty to detainees in Egyptian prisons, including close friends, whose rights have been violated by the existing Egyptian regime and who have been subjected to torture and slow death for years.

One of the reasons why I prepared this study is because I found after years of work in the field of human rights that international and local human rights organizations do not pay attention to the analysis of laws legalizing human rights violations in Egypt and focus only on violations on the ground, although all of them take place under the umbrella of the flawed laws promulgated by the Egyptian system to legalize their violations, So I found it better to confront those laws before facing their application on the ground.

Study sources:

There is not a lot of human rights and academic writings about the laws that will be addressed in this study, so the researcher will analyze the laws and their judicial applications in the Egyptian courts, based on facts that the researcher experienced closely due to his participation in the revolution and his closeness to the revolutionary, political and human rights movements and currents during the past twelve years.

In addition, the study is based on facts referred to in some studies, papers and articles published on international press websites and reports issued by human rights institutions, including what is published for the researcher in some Egyptian human rights organizations. Of course, we will not be able to analyze the huge amount of laws issued during the past six years, but rather some examples of laws that contain massive legalization of violations and undermining the principles of democracy and the rule of law.

Chapter One:

Restricting the Public Sphere ..“ Big Brother is Watching You”

First: Spreading false news .. a crime against anyone who expresses his opinion:

In the period from 2014 until now, the crime of spreading false news has become a main accusation among the accusations against opponents and opinion holders, as it is directed against politicians, human rights activists, researchers and students abroad along with the crime of joining a terrorist group, simply for publishing their opinions on their personal accounts on social media sites or for their articles published on newspapers or human rights websites.

There is no exact count of the number of accusations of the crime of spreading false news during the years from 2011 until now, but we can confirm that it is a repeated accusation in thousands of cases under investigation or that have already been referred to the courts, and it is the accusation that is expected to be directed against the writer of these lines upon return to his country.

The crime of disseminating false news from within is regulated by Article 102 bis⁵, and the dissemination of false news from abroad is regulated by Article 80d⁶ of the Egyptian Penal Code issued in 1937 during the monarchy of Egypt. The crime did not exist in the law before its amendment in 1956 and the addition of the two articles to it among a number of amendments issued by a decision of President Gamal Abdel Nasser at that time.

The articles added by the latter to the Penal Code included many defective texts, including the text of Article 102 bis and Article 80 d, which have recently been used as two main

⁵ Art 102 bis - Egyptian Penal Code - No. 58 of 1937 issued on 07-31-1937 published on 08-05-1937. Egyptian facts 71

⁶ Art 80 D - Egyptian Penal Code - No. 58 of 1937 issued on 07-31-1937 published on 08-05-1937. Egyptian facts 71

charges among several other charges, such as misusing social networking sites, joining a terrorist group, incitement to demonstrate and other broad accusations that are addressed to every person who has an opinion opposing the ruling regime.

The accusation of spreading false news is also directed against academic researchers and students abroad, such as the case of researcher Patrick Zaki⁷, a student at the University of Bologna, who was arrested while visiting his family in Egypt and was held in pretrial detention for a year and a half before being released on bail and he is still under trial at the moment of writing these lines. Also the researcher Ahmed Samir Santawi⁸, a student at the Central European University in Vienna who was arrested while on vacation in Egypt. He was tried in an exceptional trial and was punished by four years in prison, then retried and reduced to three years according to the same loose accusation of spreading false news.

Article 80 d, according to its original version before being amended, states: **“A penalty of imprisonment for a period of no less than six months and not exceeding five years and a fine of no less than 100 pounds and not more than 500 pounds, or either of these two penalties, shall be imposed on any Egyptian who intentionally spreads false news, statements or rumors abroad. Or malicious about the internal conditions of the country and this would weaken the financial confidence in the state or its prestige and prestige, or he embarked in any way whatsoever an activity that would harm the national interests of the country.**

While Article 102 bis stipulates, **“A penalty of imprisonment for a period not exceeding two years and a fine of no less than fifty pounds and not exceeding two hundred pounds, or either of these two penalties, shall be imposed on whoever deliberately broadcasts false or tendentious news, statements, or rumors, or broadcasts sensationalist**

⁷ Patrick George: The Egyptian authorities release the human rights activist while his trial continues on charges of "spreading false news", December 7, 2021, BBC News - Available at <https://www.bbc.com/arabic/middleeast-59562283>

⁸ Emergency court hands researcher Ahmed Samir Santawy 3 years' jail time- July 4, 2022- Mada Masr, Available at <https://www.madamasr.com/en/2022/07/04/news/politics/emergency-court-hands-researcher-ahmed-s-amir-santawy-3-years-jail-time/>

propaganda if this is likely to offend. public security, spreading terror among the people, or harming the public interest.”

It can be noted that the two articles correspond in the wording with the difference in the penalty imposed for each of them, the place of the crime and the effect resulting from it. Therefore, we will analyze Article 102 bis related to the dissemination of false news from within, as it does not differ much in terms of the flawed legislative wording with the crime of spreading false news from abroad, which is regulated by Article 80d, in addition to being more applied and used to indict opponents from within.

- **Analysis of Article 102 bis of the Penal Code (Dissemination of False News from within)**

The article was added to the Egyptian Penal Code on May 19, 1957, following the tripartite aggression against Egypt⁹ (the Suez Crisis between Egypt on one side and England, France and Israel on the other) with the aim of protecting the army from statements and publications that might have a bad effect on the morale of soldiers or harm the military situation during the war. It is clear from the circumstances of issuing the article in its original version that it was based on the state of necessity and exceptional circumstances to confront the turmoil caused by the state of war in the aftermath of the 1956 war.

The explanatory memorandum to Law No. 112 of 1957 amending the Penal Code on the justifications for the issuance of Article 102 bis stated that **“it had been enacted to strike at the hands of abusers who deliberately spread lies or broadcast sensational propaganda that would disturb public security, terrorize the people or harm the public interest. The purpose of this text is to ensure the stability of peace throughout the country”**¹⁰

⁹ The Suez Crisis: The Story of the Anglo-French-Israel Triple Attack on Egypt, November 5, 2021 BBC News Arabic, available at <https://www.bbc.com/arabic/middleeast-59166836>

¹⁰ Explanatory Memorandum of Law - No. 112 of 1957 Amending the Egyptian Penal Code / Issued on 05-19-1957 Published on 05-19-1957, Official Gazette

By analyzing the article in its original version, we can note that it was not only criminalizing the dissemination of false news and statements, but also the publication of statements even assuming their truthfulness if they were **sensational** or **tendentious**. On July 15, 2006, the article was amended¹¹ by deleting the phrase “**or tendentious or broadcasting sensational propaganda,**” which confirms that it included punishment for the crime of publishing data, whether it was true or false. The purpose of the amendment in 2006 was to delete the aforementioned phrase as it contains an explicit defect of unconstitutionality, which threatened the constitutionality of the text if it was challenged before the Supreme Constitutional Court.

It is also clear from the analysis of the text that its application depends on the occurrence of a future result represented in whether the dissemination of false or malicious statements or rumors would disturb public security, spread fear among people or harm the public interest; A result that may or may not be achieved, and without it, no offense may be applied. And even assuming its occurrence, it is not possible to deduce the future of its occurrence at the time of committing the crime, and it is difficult to determine whether the accused is aware of what may result from the publication, and he may not in any way expect that his publication may result in a disturbance of public security or terror among the people or harm the public interest.

- **constitutional breaches and violations of international human rights law**

Restricting the freedom of expression of opinion by penalizing the publication of statements according to whether they are false or not, and may result in a disturbance of public peace and security; It violates the current Egyptian constitution issued in 2014 in many respects; The first is what is stipulated in Article 1 of the Constitution, which affirms the establishment of the state system on a democratic basis¹², and the guarantee of rights and freedoms recognized in democratic countries. Accordingly, the constitution affirmed the guarantee of

¹¹ Law - No. 147 of 2006 Amending the Egyptian Penal Code - Issued on 07-15-2006 Published on 07-15-2006, Official Gazette

¹² Art 1, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

freedom of thought and opinion and the right of every person to express his opinion verbally, in writing, or by photographing, or by any other means of expression and publication¹³, In addition to guaranteeing the freedom of the press and publishing in paper, visual, audio and electronic formats¹⁴. The constitution also prohibits the imposition of freedom-depriving penalties for crimes committed by way of publication or publicity¹⁵, which contradicts the formulation of the crime of publishing false news explicitly.

In many of its rulings, the Egyptian Supreme Constitutional Court affirmed that **“the constitution was keen to impose restrictions on the legislative and executive authorities as it saw fit to guarantee the safeguarding of public rights and freedoms of all kinds, so that none of them would invade the area protected by right or freedom or interfere with it in a way that prevents its exercise. In this context, interest in public affairs has increased in its various fields, and presenting opinions related to their conditions, and criticizing the actions of those in charge of them has become covered by constitutional protection, and therefore it was necessary that criticism of public work through the press or other means of expression and its tools be a guaranteed right for every citizen, and that Empowerment is given to the freedom to present and circulate opinions in a way that prevents - as a public asset - from impeding them or imposing prior restrictions on their dissemination. It’s a freedom required by the democratic system, and it is not intended merely for the critic to express himself, but its ultimate goal is to reach the truth by ensuring the flow of information from its various sources. It is not likely that criticizing the conditions related to public work in order to provide insight into the shortcomings in it will lead to the harm of any legitimate interest. It is not permissible, therefore, for the law to be a tool that impedes the freedom of expression from manifestations of breach of the integrity of the public office or defects in the performance of its duties.”**¹⁶

¹³ Art 65, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

¹⁴ Art 70, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

¹⁵ Art 71, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

¹⁶ Case No. (37 - for the year 11) - the Egyptian Supreme Constitutional Court, session date 6/2/1992 - Technical Office 5 Part 1 - Page No. 183

On the other hand, Article 102 bis has linked criminalization to the fact that the published data is false, which cannot be ascertained in a country that lacks standards of transparency and information circulation, such as Egypt, as well as linking it to a future outcome that may or may not happen and the accused may not be aware of its verification or not. ; namely, that the crime is likely to disturb public peace and security, This is absolutely inconsistent with the principle of legality of crimes and penalties¹⁷ and the principle that the origin of human being is innocence¹⁸ established in accordance with the 2014 Constitution and which the Egyptian Supreme Constitutional Court addressed in many of its rulings regarding criteria for drafting criminal laws, saying:

“One of the principled rules required by the constitution in penal laws is that the degree of certainty that regulates its provisions is at the highest levels, and it is clearer in these laws than in any other legislation, because penal laws impose on personal freedom the most serious restrictions and most effective, and therefore must - In order to guarantee this freedom - that the acts that these laws convict be absolutely specific in a way that prevents them from being confused with others, and taking into account that they are always clear in clarifying the narrow limits of their prohibitions, because ignorance of them or their ambiguity in some aspects does not make the addressees aware of the reality of the actions which they should avoid. Likewise, the ambiguity of the content of the punitive text means that it is transferred between the trial court and the implementation of disciplined rules that define its pillars for each crime and determine its punishment in a manner that is not hidden.”¹⁹

The Constitutional Court also clarified the direct link between the ambiguity of criminal laws and the wasting of the right to a fair trial by saying: **“The ambiguity of penal laws was historically linked to the abuse of power, and it was imperative that the legislator relied on new methods of drafting that did not slip into those flexible, ambiguous or fluid expressions loaded with more than one meaning and with which the criminalization circle swarmed with what causes the courts to fall into clear prohibitions may lead - in**

¹⁷ Art 95, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

¹⁸ Art 96, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

¹⁹ Case No. (3 - for the year 10) - the Egyptian Supreme Constitutional Court, session date 2/1/1993 - Technical Office 5 Part 2 - Page No. 103

the application of the punitive texts - to inventing crimes that the legislator did not really intend to create, and to exceeding the limits that the Constitution considered a vital field for exercising the rights and freedoms that it guaranteed, which ultimately violates the essential controls upon which the fair trial is based.”²⁰

Internationally, Article 102 bis contradicts what has been affirmed by international covenants and charters regarding freedom of opinion, thought and expression, including Article 19 of the Universal Declaration of Human Rights, which stipulates that **“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”**²¹ Likewise, Article 19 of the International Covenant on Civil and Political Rights, which establishes the right of every person to hold opinions without prejudice to them, and his right to freedom of expression and to seek, receive and impart all kinds of information and ideas, regardless of frontiers, verbally, in writing, in print, in art, or by any other means. Another method he chooses.²²

It is worth noting that Egypt is internationally committed to these texts under Article 93 of the Egyptian Constitution, which requires compliance with international human rights conventions, covenants and charters that have been ratified, and that they have the force of law as soon as they are published²³.

In the end, the accusation of spreading false news to opponents became a codified means to restrict freedom of opinion and expression and control the cyberspace after the Egyptian regime realized the danger of circulating opinions and ideas through social networking sites, which had the first credit for gathering the masses at the time of the January 25, 2011 revolution.

²⁰Ibid

²¹ Art 19, The Universal Declaration of Human Rights (UDHR), 10 December 1948, UN General Assembly

²² Art 19, International Covenant on Civil and Political Rights, 16 December 1966, UN General Assembly

²³ Art 93, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

Second: Censorship on social networking sites .. The Law on Combating Information Technology Crimes:

One of the cycles of silence imposed on freedom of opinion and expression was through the issuance of the Law on Combating Information Technology Crimes²⁴ on August 14, 2018. These repressive methods began with blocking websites and closing independent media and journalistic platforms and ending with the issuance of new laws regulating the press and media²⁵ according to flawed texts that guarantee the state to muzzle critics. and prohibiting the circulation and dissemination of information.

In our study, we will focus on the law against information technology crimes, which was codified and formulated according to broad terms and excessive penalties, that paved the way for complete control over the internet and information technologies to include all users and visitors of cyberspace; in a way that undermines freedom of opinion and expression and impedes access to information. The Egyptian security authorities have resorted to this after the growing role of information technologies as a major player in the outbreak of the Arab revolutions. In recent years, the authorities have deliberately monitored and followed up Internet pages and personal accounts on social media, and used them to fabricate accusations against many activists and opponents²⁶.

By studying and analyzing the texts of the aforementioned law, it was found that it constitutes a real danger and undermines the most important basic freedoms, in addition to its waste of many constitutional texts, in a clear direction to finish off the freedom of information circulation and digital freedoms so that only the voice of the state and its media horns are heard. Not only did the issued law contain many legislative flaws and constitutional violations, but its analysis reveals ignoring or lack of awareness of the role of information technologies and the nature of their users.

²⁴Egyptian Information Technology Crimes Law, No. 175 of 2018, published on 08-14-2018, Official Gazette 32 "bis (c)"

²⁵ Egyptian law for regulating the press and media and the Supreme Council for Media Regulation, No. 180 of 2018, published on 08-27-2018, Official Gazette 34 "bis (e)"

²⁶ Muhammad Ebaid, September 2, 2018, Silence Legislations: Did not Spare the Internet, ANHRI, <https://www.anhri.info/?p=1181&lang=en>

- **Defining the term national security..A broad definition that prevents mere criticism of state institutions and those in charge of them:**

The first defective definition included in the Law on Combating Information Technology Crimes was the definition of the term “**national security**” included in Article 1, which defined national security and its authorities as: “**everything related to the independence, stability, security, unity and territorial integrity of the country, and what is related to the affairs of the Presidency of the Republic, the National Defense Council and the Security Council, The National Authority, the Ministry of Defense and Military Production, the Ministry of Interior, the General Intelligence, the Administrative Control Authority, and the agencies affiliated with those authorities.**”²⁷

Undoubtedly, the aforementioned definition of national security is broad and loose to the extent that it is impossible to determine what it is. Especially with the use of terms such as “**everything related to**” and “**what is related**”, which means that it is not permissible to address anything related to public affairs at all through information technologies and electronic media. Following the definition of the term, we will find that the law mentions the term national security in several punitive places as a pretext for tightening and excessive penalties.

- **Punitive tightening according to the terms (public order - disrupting the provisions of the constitution - harming national unity - social peace):**

The term “national security” is not the only term, but the circle of non-standard and loose words has expanded to define the aggravating circumstances of information technology crimes, covering a wide sector of information technology users, so Article 34 of the law came

²⁷ Art 1, Egyptian Information Technology Crimes Law, No. 175 of 2018, published on 08-14-2018, Official Gazette 32 “bis (c)”

to provide for aggravated imprisonment as a punishment for the perpetrators of any crime stipulated in it, if any of them occurred for the purpose of **“Disrupting public order, endangering the safety and security of society, harming the country’s national security or its economic status, preventing or obstructing the public authorities’ exercise of their functions, disrupting the provisions of the constitution, laws or regulations, or harming national unity and social peace.”**²⁸

By analyzing these words and the fact that they are stipulated in a criminal text, we find that they lack accuracy and clarity, the physical and mental elements (actus reus & mens rea) of the crime are not determined from them, and thus form a kind of trap to entrap the accused. We have already mentioned that the Supreme Constitutional Court, in many of its rulings, affirmed the necessity of the finality of the punitive texts in their indication of the physical and mental elements of the crimes clearly and in specific terms as one of the foundations of the principle of legality of crimes and penalties stipulated in Article 95 of the current constitution.

Undoubtedly, the terms disturbing public order and harming national unity and social peace and other terms mentioned in the law cannot define the punishable acts in a definitive way that would allow punishing a person for committing them with an excessive penalty such as rigorous imprisonment.

- **Criminalizing dancing on social media and imposing patriarchal control on the pretext of protecting “family principles and values.”**

One of the strangest terms that were used in the drafting of the law on combating information technology crimes is what is included in Article 25 of the law, which stipulates the penalty of imprisonment and a fine for anyone who **“attacked any of the family principles and values in Egyptian society.”**²⁹ It is one of the strangest terms used in a criminal law ; Especially

²⁸ Art 34, Egyptian Information Technology Crimes Law, No. 175 of 2018, published on 08-14-2018, Official Gazette 32 “bis (c)”

²⁹ Art 25, Egyptian Information Technology Crimes Law, No. 175 of 2018, published on 08-14-2018, Official Gazette 32 “bis (c)”

since the Egyptian society is a diverse society in nature that is not governed by unified family values, as there are many customs and traditions from the most conservative to the most open and receptive and cannot be limited in any way to one mold or to a specific family framework.

The first practical application of this article was in the case known in the media as the “**Tik Tok Girls**” case, in which a number of girls who were dancing on the Tik Tok application were arrested and accused of assaulting the values of the Egyptian family and sentenced to prison terms ranging between two and three years³⁰. Following the escalation of objections by public opinion and women's movements against the sentences issued, they were rescinded, and new charges of human trafficking were brought against the girls, and then new sentences were issued with more severe penalties³¹.

The accusations reflected the inherent patriarchy of the police, the Public Prosecution Office, and the judiciary, nothing but their attempts to court the conservative current of Islamists, especially to respond to the claims of opposition Islamic currents such as the Muslim Brotherhood and Salafist that the new regime is fighting Islam and spreading immorality.

- **Monitoring users’ data and information and sometimes allowing their disclosure.. Semi-permanent censorship and non-standard terms:**

The Law on Combating Information Technology Crimes obligated service providers to keep information related to users for a maximum period of 180 continuous days, according to Article 2 of the law, in a clear tendency for more control over users of information technologies. The danger doesn't lie in keeping the information, but rather in what that information is and what can be done with it, especially since the article has specified the information that must be saved and stored in five items, namely:

“A- Data that enables identification of the service user.

³⁰ Declan Walsh, July 28, 2020, Egypt Sentences Women to 2 Years in Prison for TikTok Videos, The New York Times,

<https://www.nytimes.com/2020/07/28/world/middleeast/egypt-women-tiktok-prison.html>

³¹ Egypt female TikTok star jailed for three years for human trafficking, 18 April 2022, BBC News, <https://www.bbc.com/news/world-middle-east-61139566>

b- Data related to the content of the dealing information system whenever it is under its control.

C - data related to traffic

D- Data related to the communication peripherals.

e- Any other data specified by a decision of the Board of Directors of the National Telecommunications Regulatory Authority.”³²

Adding the term “**others**” to clause (e) means that there is no specification of the data that must be preserved, so any data will be capable of preservation and storage by administrative decisions of the National Telecommunications Regulatory Authority, and there is no doubt that this opens the way for the administrative authority to intrude on the sanctity of the private life of citizens guaranteed by the Egyptian Constitution in Article 57 which is emphasizing that it is not permissible to infringe on it and its confidentiality and that it is not permissible to control it except by a reasoned judicial order and for a specified period³³.

Not only that, but the law permitted the disclosure of stored data, including personal data of users, by order of one of the competent judicial authorities³⁴, and did not specify whether the Public Prosecution or other judicial authorities, including the exceptional State Security Prosecution established in accordance with the emergency law (which we will analyze in a later section).

In addition, to complete the circle of restrictions and oversight; The article obligated service providers to provide national security authorities with all the capabilities ordered by those authorities at any time³⁵. there is no doubt that the purpose of the previous text is clearly to monitor and undermine the personal freedom of users as service providers do not have the luxury of accepting or refusing to provide those capabilities If requested by the national security authorities, even if it conflicts with the sanctity of the private life of users, and there is no means or criterion to determine what is a waste of that sanctity or not.

³² Art 2, Egyptian Information Technology Crimes Law, No. 175 of 2018, published on 08-14-2018, Official Gazette 32 “bis (c)”

³³ Art 57, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

³⁴ Art 2, Egyptian Information Technology Crimes Law, No. 175 of 2018, published on 08-14-2018, Official Gazette 32 “bis (c)”

³⁵ Ibid

- **Granting the status of judicial police to the employees of the National Telecommunications Regulatory Authority:**

The Law on Combating Information Technology Crimes granted judicial control to the employees of the National Telecommunications Regulatory Authority, as well as allowing others to be designated by the national security authorities³⁶. In accordance with Article 6 of the Law; These workers are granted broad powers, including seizing, withdrawing, collecting or retaining data, information or information systems, and tracking them in any place, system, program, electronic support or computer in which they are located, in addition to searching, inspecting, accessing and accessing computer programs, databases, and others. From information devices and systems to achieve the purpose of control, as well as the authority to order the service provider to hand over what he has of data or information related to an information system or technical device, which is under his control or stored with him, as well as the data of his service users and the communications traffic made on that system or technical device³⁷.

It is worth noting that these powers are granted to the aforementioned individuals based on broad terms such as “**when this is useful in revealing the truth**” or “**if that is justified**”, and these terms have no standard and make these powers unlimited and contradict the presumption of innocence principle and the right to personal liberty, which will be ignored on the basis of these terms.

- **Threatening national security as a pretext for blocking websites by Administrative decisions:**

Since May 2017, the Egyptian authorities have blocked more than 600 websites without disclosing the reasons and even without declaring their responsibility for the blocking.

³⁶ Art 5, Egyptian Information Technology Crimes Law, No. 175 of 2018, published on 08-14-2018, Official Gazette 32 “bis (c)”

³⁷ Art 6, Egyptian Information Technology Crimes Law, No. 175 of 2018, published on 08-14-2018, Official Gazette 32 “bis (c)”

However, indications have confirmed the current regime's desire to restrict freedom of thought, opinion and expression, especially that most of the blocked websites are owned by media channels hostile to the regime, or for independent human rights organizations³⁸.

After the issuance of the Law on Combating Information Technology Crimes, the blocking became an authority empowered by the investigation authorities to issue it at any time, without obligation to justify their decision and based on the same broad terms contained in the law, as Article 7 of the law stipulates in its first paragraph that **“The competent investigation authority, whenever there is evidence that a website broadcasting inside or outside the country has placed any phrases, numbers, pictures, films, any propaganda materials that are considered one of the crimes stipulated by law and constitute a threat to national security, or expose the security of the country or its national economy to risk, to order the blocking of the site or sites subject to broadcast, whenever this is technically feasible³⁹.”**

Not only that, but the law allows the police control authorities - and without the need to refer to the investigation authorities or the Public Prosecution - to inform the National Telecommunications Regulatory Authority to notify the service provider of the immediate temporary blocking of websites in case of urgency due to the presence of an immediate danger, with obligating the service provider to implement the content of the notification as soon as it is received.⁴⁰

While the law guarantees website owners to complain against blocking orders, but anticipating the issuance of judicial rulings and relying on pretexts of security and the national economy and other broad criteria to legalize blocking, completely contradicts the principles and constitutional texts that support freedom of thought and opinion guaranteed under the text of Article 65 of the Constitution⁴¹.

³⁸ NGOs call on Egypt's government to end internet censorship and websites blocking, November 04, 2020, EUROMED RIGHTS, available at <https://euomedrights.org/publication/ngos-call-on-egypts-government-to-end-internet-censorship-and-website-blocking/#:~:text=Article%207%20of%20the%20law.case%20of%20any%20imminent%20danger.>

³⁹ Art 7, Egyptian Information Technology Crimes Law, No. 175 of 2018, published on 08-14-2018, Official Gazette 32 “bis (c)”

⁴⁰ Ibid

⁴¹ Art 65, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

- **Using the term “necessity” to issue travel ban decisions:**

The Law on Combating Information Technology Crimes allows the public prosecutor or his authorized representative and the competent investigation authorities to order to prevent the accused from traveling outside the country or to put his name on the anticipation lists, **“when necessary or when there is sufficient evidence”** of the seriousness of the accusation of committing one of the crimes stipulated in the Law⁴².

While the law relied on the term **“necessity”** as a broad term that may not be relied upon to prevent a citizen from using his constitutional right to move and emigrate, it used the same word when it permitted the Public Prosecution and the competent investigation authorities to reverse the same order issued by it to prevent travel or to place on watch lists at anytime. Undoubtedly, this illogical contradiction contradicts the rights guaranteed by the constitution, foremost of which is the principle of the presumption of innocence and the right to personal freedom⁴³.

- **The crime of illegal entry and its conflict with the nature of the information space and the extent of professionalism and varying experiences of internet users**

The Law on Combating Information Technology Crimes punishes illegal entry, which means intentionally or unintentionally logging in a website, a private account, or an information system that is prohibited from being accessed, and it is clear that the term **“prohibited from being accessed”** extends to include the techniques used to bypass blocked sites, and the law punishes violating that with imprisonment for a period of not less than one year and a fine of not less than 50,000 and not more than 100,000 pounds, or one of the two penalties. And the

⁴² Art 9, Egyptian Information Technology Crimes Law, No. 175 of 2018, published on 08-14-2018, Official Gazette 32 “bis (c)”

⁴³ Muhammad Ebaid, September 2, 2018, Silence Legislations: Did not Spare the Internet, ANHRI, <https://www.anhri.info/?p=1181&lang=en>

penalty shall be increased in the case of copying or republishing the data or information on those websites to imprisonment for a period of no less than two years and a fine of no less than 100,000 pounds and not more than 200,000 pounds, or one of these two penalties.⁴⁴

In addition, the law, in Article 22 of it, criminalizes the possession of programs or codes that may be used to access prohibited sites⁴⁵ so if we assume that an administrative decision or a court ruling was issued to block a site, and the user acquired a VPN program that allows him to bypass the blocking, then this program, according to this article, is a crime.

There is no doubt that the formulation of these punitive texts according to these terms reflects the legislator's lack of consideration for the nature of the information space and the users' interaction with it, It punishes acts whose physical and mental elements cannot be limited, the extent to which the perpetrators have criminal intent, in conjunction with the extent of professionalism and varying experiences of users of information technologies, which varies from person to person.

- **Punishment for ridicule and creation of fake accounts to simulate officials:**

The Law on Combating Information Technology Crimes criminalizes artificial or fictitious accounts,⁴⁶ which include satirical pages that are created under pseudonyms to simulate the personality of an official in a cynical manner. That usually falls under the scope of freedom of opinion and expression and does not constitute a crime in the understandable sense, as these pages are often It is known to be artificial to its visitors.

It is clear that the text will extend its scope to punish those responsible for the satirical private pages and accounts of political and public figures, which they created for the purpose

⁴⁴ Art 14, Egyptian Information Technology Crimes Law, No. 175 of 2018, published on 08-14-2018, Official Gazette 32 "bis (c)"

⁴⁵ Art 22, Egyptian Information Technology Crimes Law, No. 175 of 2018, published on 08-14-2018, Official Gazette 32 "bis (c)"

⁴⁶ Art 24, Egyptian Information Technology Crimes Law, No. 175 of 2018, published on 08-14-2018, Official Gazette 32 "bis (c)"

of criticizing the political and economic conditions in the country. This absolutely contradicts the pillars of freedom of thought, opinion and expression, which presupposes the consent of state officials to criticize them, even if sarcastically, as long as they choose to work in the field of public service.

The nature of the internet and the information space requires the freedom to circulate and transfer information and express opinions and ideas through it, and it assumes a larger space to protect it, not to undermine and eliminate it. Also, imposing restrictions on ideas and opinions does not prevent their circulation, no matter how many attempts to gutter and restrict, and perhaps the behavior of the legislative authority in issuing The Law on Combating Information Technology Crimes greatly highlights the authorities' desire to eliminate every outlet through which ideas and criticism of the behavior of its officials can be put forward.

This reflects the legislator's attempt, through the law, to impose strict control over information technologies in all its forms, including social networking sites, which had the largest and most prominent role in mobilizing the masses against their governments and the outbreak of the first spark of the Arab revolutions. It is worth noting that most of the penalties and measures stipulated in the Law on Combating Information Technology Crimes, such as blocking, closing and fabricating charges, were carried out without legislative cover and informally before the law was issued, and the law comes in an attempt to legitimize it and further implement it on a larger scale.

Chapter Two

Legalizing Grave Violations and Ensuring Impunity

First: The Criminalization of Torture in Egyptian Law.. Artificial Criminalization and Procedural Obstacles to Ensure Impunity for Perpetrators

Ensuring legal impunity is not strange in Egyptian legislative policy, as the Egyptian legislative structure is rich in examples of laws designed to codify violations and ensure impunity for perpetrators, and one of the most prominent of these examples is the legal article on the crime of torture.

The importance of referring to the crime of torture in particular lies in the fact that it is a crime closely related to the two crimes of enforced disappearance and extrajudicial execution, which will be referred to later on how it was codified and legalized in the Anti-Terrorism Law issued in 2015; The fact that many of the cases of extrajudicial executions that were monitored are of persons subjected to enforced disappearance and torture for long periods in detention facilities before they were found killed in the sites of security attacks or alleged shootouts.

In this part of the study, we seek to try to answer the following question: **Is there a real criminalization of torture in Egyptian law?**

In fact, despite Egypt's signature and ratification of the International Convention against Torture⁴⁷, torture in Egypt is characterized by a systematic nature to the extent described by Egyptian human rights organizations to the point that it has become an official policy of the state, where torture in Egypt exceeded the limits of the individual responsibility of its perpetrators, and turned into a state policy that seeks to exact its grip on the public sphere, retracts its commitments to redefine the crime of torture in law in accordance with the

⁴⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, UN General Assembly

Egyptian constitution and the International Convention against Torture, and even prosecutes human rights activists who sought to do so⁴⁸.

- **The conditional criminalization of torture in the Egyptian Penal Code**

The article criminalizing torture in the Penal Code is the text of Article 126, which states:

“Any public official or employee who orders the torture of an accused person or does that himself in order to induce him to confess shall be punished with temporary hard labor or imprisonment from three to ten years. If the victim dies, the penalty prescribed for premeditated murder shall be imposed.”⁴⁹ ”

The perpetration of this crime requires a physical element, which is the act of torture, the presence of a special characteristic in the offender, which is to be an employee or a public servant, a special characteristic of the victim being an accused, as well as the mental element or criminal intent, which is the purpose of obtaining a confession.

At first glance, the text may appear to be an aggravating incrimination of a serious crime whose punishment is supposed to be severe; However, by analyzing the text, we find that its physical and mental elements enable the perpetrators to easily escape from criminalization and punishment; For criminalization according to the text, the victim or the person subjected to torture is required to be an **accused**, which means that he may not be a prisoner who has been convicted by a final judgment issued by a court, and the mental element of the crime presumes that the criminal intent or the purpose of torture is to compel the accused to confess.

If one of those pillars is missing, such as if the torture is inflicted on a prisoner serving his sentence in a prison, or if the torture is inflicted on an accused but without the purpose of obtaining confession, as if the torture was for the purpose of humiliation or discipline or

⁴⁸ Amr Magdi, Egypt's Response to Torture: Punish the Victims, June 10, 2022, Human Rights Watch, <https://www.hrw.org/news/2022/06/10/egypts-response-torture-punish-victims>

⁴⁹ Art 126 - Egyptian Penal Code - No. 58 of 1937 issued on 07-31-1937 published on 08-05-1937. Egyptian facts 71

to satisfy a sadistic desire in the psyche of the perpetrator; This will not be torture according to the definition of the text of article 126; Therefore, the perpetrator cannot be referred according to the crime stipulated in article.

What confirms the problematic formulation of Article 126 and its role in impunity for the perpetrators of the crime of torture, what was decided by several rulings of the Egyptian Court of Cassation in this regard; In a ruling issued in 2004, the court stated: **“The meaning of the term “accused” in the first paragraph of Article 126 of the Penal Code is anyone who has been accused of committing a specific crime, even if that was while the judicial officers were carrying out the task of searching for crimes and their perpetrators and collecting the necessary evidence to investigate ”**⁵⁰

Failure to comply with one of the conditions stipulated in the article protects the perpetrators from punishment, and prevents the Public Prosecution from charging them. In the best cases, the Public Prosecution uses another crime to be directed against them, which is the crime of using cruelty. This is a mitigating misdemeanor punishable according to Article 129 of the Penal Code by imprisonment for a period not exceeding One year or a fine not exceeding two hundred Egyptian pounds.⁵¹

Also, in the event that the victim of torture dies as a result of the use of cruelty mentioned here, the penalty shall be the penalty prescribed for the crime of beating that leads to death⁵², which ranges from aggravated imprisonment or imprisonment from three to seven years, contrary to what was stipulated in Article 126, which punishes the perpetrator of the crime of torture; in the event of the victim’s death, with the penalty prescribed for premeditated murder as previously stated.

⁵⁰ Case No. 36562 - for the year 73 - the Egyptian Court of Cassation - date of the session 17/2/2004 - Technical Office 55 page number 164

⁵¹ Art 126 - Egyptian Penal Code - No. 58 of 1937 issued on 07-31-1937 published on 08-05-1937. Egyptian facts 71

⁵² Art 236 - Egyptian Penal Code - No. 58 of 1937 issued on 07-31-1937 published on 08-05-1937. Egyptian facts 71

According to the foregoing, the substantive criminalization of torture in the Penal Code falls short of enumerating all aspects, forms and causes of torture, and requires a fundamental amendment to the article to guarantee the right to a remedy and narrow the cycle of impunity.

- **Legal Procedural Obstacles in Torture Cases:**

We rarely find criminal cases against law enforcement officers who have committed the crime of torture. Despite the large number of testimonies and investigations that bear the statements of a huge number of victims who were forced to confess to crimes they did not commit in order to escape torture, it is rare to refer cases of torture to Egyptian courts. This is due to the procedures for accusing public officials stipulated in the Code of Criminal Procedures, which do not allow ordinary citizens to accuse police officers of torture. Rather, the criminal case must be initiated by the Public Prosecutor or the Chief Public Prosecutor only, in accordance with Article 63⁵³ and Article 232⁵⁴ of the Criminal Procedures law.

In addition, the victim of torture is not entitled to appeal the orders issued by the Public Prosecution Office or the investigative judge not to file a case in the event that the accused is a public official⁵⁵, and this means that in the end the decision to refer to the court will be restricted to the decision of the investigation authorities, which in most cases leads to the filing of torture cases under the pretense of maliciousness. It is always known that investigations in this type of case are kept by the Public Prosecution, and it is very rare for them to reach the competent criminal court. Oftentimes, someone who goes to the prosecution to accuse an officer of torturing him is charged with spreading false news⁵⁶.

Although the 2014 Constitution stipulates in Article 99 of it the right of any person who has been harmed by the violation of any of his rights and freedoms to file direct prosecution⁵⁷, the

⁵³ Art 63 The Egyptian Code of Criminal Procedure. - No. 150 of 1950, published on 10-15-1951, Egyptian facts 90

⁵⁴ Art 232, The Egyptian Code of Criminal Procedure. - No. 150 of 1950, published on 10-15-1951, Egyptian facts 90

⁵⁵ Art 162, The Egyptian Code of Criminal Procedure. - No. 150 of 1950, published on 10-15-1951, Egyptian facts 90

⁵⁶ Amr Magdi, Egypt's Response to Torture: Punish the Victims, June 10, 2022, Human Rights Watch, <https://www.hrw.org/news/2022/06/10/egypts-response-torture-punish-victims>

⁵⁷ Art 99, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

procedural form stipulated in the Code of Criminal Procedure does not allow direct prosecution except in the case of violations and misdemeanours, not in cases of felonies such as the crime of torture.

- **The crime of torture from a constitutional and international perspective**

The crime of torture constitutes a serious violation of human rights; At the minimum, it undermines his dignity, and at the maximum, it deprives him of his right to life, which is the most important of all rights. The crime of torture in all its physical and moral forms, and other forms of cruel, inhuman or degrading treatment of the accused or those deprived of their freedoms, is one of the most serious violations of human rights, as it constitutes a clear violation of the constitution and international covenants that require respect for the human right to life and the integrity of his body, and to treat him with respect To preserve human dignity.

The 2014 Egyptian constitution affirmed in Article 51 that: **“dignity is a right for every human being, and it may not be violated, and the state is committed to respecting and protecting it⁵⁸”**. It also stipulates in Article 52 that: **“Torture in all its forms and manifestations is a crime without statute of limitations⁵⁹.”** The constitution also emphasized in Article 56 that prisons are a place of reform and rehabilitation, and that they and other places of detention are subject to judicial supervision, and that everything that violates human dignity or endangers his health is prohibited in them⁶⁰.

In addition, Article 55 of the Egyptian Constitution grants any accused the right not to be subjected to torture and to be treated with dignity, as well as the right to remain silent, and stipulates that any statement that is proven to have been made by the detainee under torture (including torture, coercion, physical harm or mental) is null and void⁶¹.

⁵⁸ Art 51, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

⁵⁹ Art 52, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

⁶⁰ Art 56, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

⁶¹ Art 55, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

International human rights law places limits on the power of the state and on individuals and imposes positive obligations on the state towards individuals. States voluntarily sign and ratify treaties that recognize and guarantee the rights of every person, and subject themselves to the control of judicial or quasi-judicial bodies that accept complaints from individuals. It is no longer possible for States to claim that their sovereignty over their territory precluded interference with respect to certain acts. The behavior of the state at the domestic level is now open to external scrutiny.

The prohibition of torture in international law is absolute, as is the prohibition of slavery or genocide, and torture is not permitted under any circumstances, including war, public emergency or a terrorist threat. The force of the embargo and its universal recognition made it a fundamental principle of international law. Therefore, the extent of states' obligations to prevent torture is largely determined by international treaties and by the bodies that interpret them.

The 1966 International Covenant on Civil and Political Rights was the first universal human rights treaty to explicitly prohibit torture and other cruel, inhuman or degrading treatment or punishment, which aims to protect both the dignity and physical and mental integrity of the individual. Article 7 of the Covenant states in its first paragraph that **"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.."**⁶²

Article 10, paragraph 1, of the Covenant states: **"All persons deprived of their liberty shall be treated humanely, with respect for the inherent dignity of the human person."**⁶³ The article prohibits prisoners from being treated incompatible with Article 7, but they also have the affirmative right to be treated with respect. This rule means that the life of prisoners may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty, and respect for the dignity of these persons must be guaranteed under the same conditions as for free persons.

⁶² Art 7, International Covenant on Civil and Political Rights, 16 December 1966, UN General Assembly

⁶³ Art 10, International Covenant on Civil and Political Rights, 16 December 1966, UN General Assembly

In 1984, in order to describe specific measures against torture, the United Nations Convention against Torture included a definition of torture as follows:

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions...⁶⁴”

The second article of the convention requires each state party to: **“1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.⁶⁵”**

This principle was confirmed by the Universal Declaration of Human Rights of 1948, which prohibited torture of the accused in its fifth article, which states: **No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.**⁶⁶ This right represents one of the basic values in a democratic society. The duty to respect human dignity “dignité humaine” derives from this right, and three outcomes derive from this right: that the accused may not be subjected to torture, that he may not be treated inhumanely, and that he may not be subjected to inhuman punishments.

There is no doubt that the lack of legislation or legal criminalization represents a major crisis, especially when societies need this legislation in crimes that constitute a societal danger, such

⁶⁴ Art 1, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, UN General Assembly

⁶⁵ Art 2, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, UN General Assembly

⁶⁶ Art 5, Universal Declaration of Human Rights, 10 December 1948, UN General Assembly

as those left by the crime of torture. But the situation is exacerbated when the text exists, but it is restricted by conditions, and there is no actual application of it on the ground, in an abstract and real way, in order for it to produce its results as a deterrent and peremptory rule that binds its perpetrators and prevents harm to its victims.

Torture by security men in Egyptian police and security places, and even in the streets in front of the public, is the dominant and well-known feature in many cases, and has remained so for many decades, which has made police stations and security institutions a scarecrow among many Egyptians, most of whom do not like mere Passing in front of it and not entering it for any purpose, because most of them carry in their collective memory stories about people who were subjected to the most horrific forms of torture in these places.

We should not forget that the January 25, 2011 revolution took place on this particular day to denounce police violations in places of detention, especially after Khaled Saeed, an Alexandrian citizen, was killed as a result of torture in late 2010 at the hands of two security men. Which was like the straw that broke the camel's back, and as a result, many Egyptian youths called for demonstrations on Police Day to denounce the deteriorating conditions practiced by the Egyptian police, including the systematic torture inside the security headquarters⁶⁷.

Despite the disapproval of the various groups of the people for the crime of torture, especially the victims and their families, the aforementioned article of torture has not been amended after the revolution to ensure that all criticism directed at it is avoided, and deterrent and firm articles have not been put in place that compel police personnel to stop torturing the accused or anyone they find an easy prey for practicing their sadism. The matter was limited only to adding the article on torture in the Egyptian constitution, which came after great pressure from civil society organizations and human rights campaigns.

⁶⁷ Lara Logan, February 2, 2011, The Deadly Beating that Sparked Egypt Revolution, CBS News, <https://www.cbsnews.com/news/the-deadly-beating-that-sparked-egypt-revolution/>

As for the penal code, it did not move a finger regarding the crime of torture, as the physical and mental elements of the crime still requires that torture be in order to obtain a confession and that it be imposed on an accused so that the crime can be committed against the public official, and therefore it is a loophole that leads to impunity for the perpetrators. As it is common that torture is not only focused on the person in order to get him to confess, but that the crime of torture is committed in every time and place for weak and feeble reasons. Victims of torture in Egypt are not only accused and prisoners, but also citizens who were never the subject of any accusation and were tortured due to personal disputes between them and a policeman.

Second: Legalizing enforced disappearances and extrajudicial killings and harnessing the law to ensure impunity

Enforced disappearance, torture and extrajudicial killings have become systematic behaviors and practices by the Egyptian police in recent years, as these cases have increased, according to the monitoring of many independent human rights organizations, in a way that confirms their becoming a traditional pattern in most political cases. the arrest of suspects in terrorist cases, while they are still alive, has become almost non-existent.

Following the January 25, 2011 revolution, trials were held for several officers of the State Security agency and other police agencies regarding incidents of torture during former President Mubarak's rule or incidents of killing protesters during the revolution. The trials were sham and unreal, and all of these officers were later acquitted by the current president taking power in 2013, however, he also wanted to restore confidence in the police and the army by confirming on more than one occasion that no one would be held accountable and using terms such as **“brute force”** in the face of those he always calls **“evil people”**.

The matter was not limited to political reassurances, but the authority legalized enforced disappearance, the use of excessive force and exempted police officers from criminal accountability for their actions in a way that guarantees legal impunity. On August 15, 2015, the President issued Decree-Law No. 94 of 2015⁶⁸ on combating terrorism, which implicitly legalizes enforced disappearances, extrajudicial killing while ensuring impunity for law enforcement officers to the point that they are not held criminally accountable for their excessive use of force, which gives legitimacy to extrajudicial killings and **“physical liquidation”**.

The Anti-Terrorism Law was not the only law issued by the president at that period under the legislative authority granted to him by the constitution on an exceptional and conditional basis. Rather, the law was issued along with a package of other laws that he issued to ensure tight control over the public sphere following the coup against the Muslim Brotherhood’s rule in 2013, And in the absence of Parliament. the law faces a problem in the way it was issued, especially since the constitution did not free the president in enacting laws, but rather restricted them with conditions, as if the law was to confront what necessitates expediting the adoption of measures that cannot be delayed, as well as the necessity of presenting and discussing them in a detailed discussion Within fifteen days of Parliament convening⁶⁹. This does not apply to the case of the anti-terrorism law, as there is no legislative vacuum that necessitates its issuance. On the contrary, the Egyptian Penal Code No. 58 of 1937 contains an entire chapter related to combating terrorism entitled “felonies and misdemeanors harmful to the government from the inside” and establishes deterrent penalties to limit Terrorist crimes, as well as Emergency Law No. 162 of 1958, which stipulates the measures to be taken to confront the exceptional cases that the country is going through, and therefore there was no need to issue it so quickly, which caused a major constitutional flaw to be attached to its provisions other than the legislative duplication that the law creates with the Penal Code .

We will discuss the terrorism law more in the third chapter of this study within the laws that establish an exceptional judiciary that lacks the simplest standards of fair trial, but we will focus here on the biggest problem in that law, which lies in its legitimization of the actions of

⁶⁸ The Egyptian anti-terrorism law - No. 94 of 2015, published on 15-08-2015, Official Gazette 33 bi

⁶⁹ Art 156, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

those who implement its provisions to the extent that they cannot be held accountable for their criminal acts During their implementation of the law.

That gives legitimacy to enforced disappearances and extrajudicial killings, and provides the legal cover for impunity, so that the judicial officer finds a ready excuse if he abuses his authority and uses excessive force that amounts to murder and “**physical liquidation without trial**”; This term has become common whenever we hear about thwarting an attempt of a terrorist crime by the police or raiding terrorist hideouts by the armed forces, especially in Sinai, until the arrest of suspects in terrorist cases while they are still alive is almost non-existent in a complete blow to the principle of presumption of innocence.

- **Legalization of Enforced Disappearance:**

Prior to the January 25, 2011 revolution, Egyptians were always chanting the phrase “**He went behind the sun**” to describe people who were arrested by the security authorities and disappeared for years that could reach twenty years without trial and without knowing their places of detention, a practice that began during the fifties and sixties under the rule of former President Gamal Abdel Nasser and continued until Mubarak's rule before the outbreak of the revolution. The cases of enforced disappearance were directed against those belonging to Islamic currents in particular, and when prisons were stormed and opened during the revolution in 2011, we discovered hundreds of individuals who had been forcibly disappeared in Mubarak’s prisons without trial or contact with the outside world for years.

After the removal of former President Mohamed Morsi from his position in 2013, enforced disappearances began to reappear, and more fiercely than they were during the rule of Gamal Abdel Nasser and Mubarak. Many human rights organizations assert that enforced disappearance has become a systematic practice by the Egyptian security authorities against opponents. It was not limited to Islamic movements as it was before, but all opponents of their different affiliations and ideological backgrounds, as well as human rights activists and

academic researchers, are exposed to it⁷⁰. The Egyptian Commission for Rights and Freedoms has monitored 2,723 cases of enforced disappearance from 2015 to 2020.⁷¹

The Egyptian Constitution issued in 2014 affirmed in Article 54 of it that no one may be arrested, searched, imprisoned, or restrict his freedom in any way except by a reasoned judicial order required by the investigation. It also required informing the arrested of the reasons for this, enabling him to contact his family and his lawyer immediately, and submitting to the investigation authority within twenty-four hours from the time of restricting his freedom, and that the investigation should not begin with him except in the presence of his lawyer. Likewise, the restricted person has the right to be free to file a grievance before the court against the procedure of his arrest, and this grievance must be decided within a week, otherwise he must be released immediately.⁷²

Despite what the Constitution stipulates, the Anti-Terrorism Law issued in 2015 allowed the detention of the accused for up to twenty-eight days under the command of the police officer⁷³, in accordance with Article 40 of it. Not only that, but making that reservation a codification of enforced disappearance, as it stipulates in Article 41 of it that **“The judicial officer shall inform each person who is detained in accordance with Article (40) of this law of the reasons for that, and he shall have the right to communicate with whomever he deems appropriate to inform him of his relatives of what happened. and the assistance of a lawyer, without prejudice to the interest of inference.”**⁷⁴

This article confers legal legitimacy on enforced disappearance, as the phrase **“without prejudice to the interest of inference”** opens the door to not allowing the accused to inform

⁷⁰ Enforced Disappearance In Egypt Turned From A Phenomenon To A Systematic Policy, CFJ , 2021-08-30, <https://www.cfjustice.org/enforced-disappearance-in-egypt-turned-from-a-phenomenon-to-a-systematic-policy-says-cfj/>

⁷¹ Egypt: 2,723 enforced disappearances in 5 years, September 7, 2020, Middle East Monitor, <https://www.middleeastmonitor.com/20200907-egypt-2723-enforced-disappearances-in-5-years/>

⁷² Art 54, the Egyptian Constitution of 2014, published on 01-18-2014 / Official Gazette 3 bis (a)

⁷³ Art 40, The Egyptian anti-terrorism law - No. 94 of 2015, published on 15-08-2015, Official Gazette 33 bi

⁷⁴ Art 41, The Egyptian anti-terrorism law - No. 94 of 2015, published on 15-08-2015, Official Gazette 33 bi

their relatives of the arrest and to seek the assistance of a lawyer during the investigation. Consequently, the article gave the police officers the right to invoke the interest of inference to deprive the accused of the first guarantees of a fair trial, which is to seek the assistance of a lawyer and inform their relatives.

Thus, it is possible to legalize the legal status of disappearance before the Public Prosecution office as soon as they appear in its premises for investigation. what usually happens is the disappearance of persons for long periods; And if there is media pressure to show one of the disappeared, he is brought before the competent prosecution and alleges that he was in custody with the security authorities for a period not exceeding the 28-day period stipulated in the Terrorism Law, contrary to the truth.

- **the use of excessive force, physical liquidation and extrajudicial killing;**
Are they individual cases or a habitual pattern and systematic behavior?

According to the monitoring of a number of local and international human rights organizations, physical liquidation has become a systematic pattern in the Egyptian security authorities' dealings with defendants, not only in terrorism cases; Rather, the use of excessive force appeared in dealing with demonstrators, which was monitored in the police and army's dealings with supporters of former President Mohamed Morsi who had staged a sit-in in Rabaa al-Adawiya and al-Nahda squares in the wake of the July 3, 2013 coup. The process of dispersing the sit-in resulted in a massacre that was classified as one of the largest massacres that Egypt has witnessed in its modern history, leaving at least 817 people dead, according to the state's official account, and possibly more than 1,000 people, according to Human Rights Watch, including women and children⁷⁵.

It was not limited to direct confrontations, but one of the other patterns of physical liquidation was monitored, which is the liquidation that follows cases of enforced disappearance and torture, which was mentioned in another report issued by Human Rights Watch entitled “**The**

⁷⁵ All according to Plan- The Rab'a Massacre and Mass Killings of Protesters in Egypt, 2014, Human Rights Watch
https://www.hrw.org/sites/default/files/reports/egypt0814web_0.pdf

forces dealt with them - suspicious killings and extrajudicial executions by the Egyptian security forces.” that a number of the dead in military confrontations are in fact forcibly disappeared from a period of time, their bodies are taken to the places of clashes and photographed next to firearms allegedly killed in an exchange of fire in a repeated pattern of suspicious killings and possible extrajudicial executions. The report confirms that the killed persons did not, upon their death, pose a potential threat to the security forces and that the documented cases show that individuals were in detention before they were killed, and some of them were forcibly disappeared by the National Security⁷⁶.

The report monitors the killing of 755 people in 143 shooting incidents in 19 Egyptian governorates between January 2015 and December 2020, and in most press statements issued by the authorities, the affiliation of the dead to the Muslim Brotherhood is always indicated, and the report indicates an increase in these incidents after the president El-Sisi referred to what he called “implementing justice” in the wake of violent terrorist attacks in 2015. The report documents the possibility of extrajudicial executions of 14 people in nine alleged shootouts, and analyses available photos and videos and interviews with acquaintances or relatives of 14 of the dead. All indicated evidence of possible extrajudicial executions.⁷⁷

After analyzing 123 official statements, the Human Rights Watch report confirmed that only one suspect was arrested alive in 143 alleged shooting incidents, and the data did not indicate that any security forces were killed or injured. The testimonies of the relatives of the dead reported that they saw clear signs of torture on the bodies of their killed relatives upon receiving them. They also confirmed that their relatives who were killed had been arrested and were in the custody of the security authorities sometime before their death. In three cases, the analysis of photos and videos published by the official page of the Egyptian Ministry of Interior showed that: The position of the bodies was changed before being photographed. In

⁷⁶ “Security Forces Dealt with Them” Suspicious Killings and Extrajudicial Executions by Egyptian Security Forces, September 7, 2021, Human Rights Watch, <https://www.hrw.org/report/2021/09/07/security-forces-dealt-them/suspicious-killings-and-extrajudicial-executions>

⁷⁷ “Security Forces Dealt with Them” Suspicious Killings and Extrajudicial Executions by Egyptian Security Forces, September 7, 2021, Human Rights Watch, <https://www.hrw.org/report/2021/09/07/security-forces-dealt-them/suspicious-killings-and-extrajudicial-executions>

one of the photos, it appears that the hands of three dead people were handcuffed or handcuffed immediately before their death, and in another photo, it appears that a firearm was placed near one of the dead to indicate an exchange of fire.⁷⁸

One of the famous cases of extrajudicial execution that was monitored was the liquidation of four people for their alleged involvement in the murder of the Italian researcher Giulio Regeni in 2016. The researcher had been forcibly disappeared by a security agency on January 25, 2016, and was tortured to death, then his body was found in a road on February 3. And in the face of the Italian authorities' demand to reveal the details of the researcher's murder, the Egyptian security authorities resorted to liquidating four people, claiming that they were involved in the killing of the researcher for the purpose of stealing. It was an attempt to cover up the real culprits of the crime of forcibly disappearing and torturing Giulio, but the Italian prosecutor Expose the falsehood of the Egyptian claim later after it had evidence that members of an Egyptian security agency were involved in torturing and killing the researcher.⁷⁹

All of those previously mentioned cases confirm that extrajudicial executions have become a systematic pattern in the Egyptian security authorities' dealings with their opponents, whether politicians or those suspected of involvement in terrorist acts; especially with the current president's assertion on more than one occasion that no one will be held accountable. That made the matter resemble a covenant between the presidency and the security men who view the law as a tool of revenge for their colleagues who were killed by terrorists. They are convinced that the liquidation of opponents is a way of Achieving justice that may be lost in the corridors of the courts, according to their point of view.

⁷⁸ "Security Forces Dealt with Them" Suspicious Killings and Extrajudicial Executions by Egyptian Security Forces, September 7, 2021, Human Rights Watch, <https://www.hrw.org/report/2021/09/07/security-forces-dealt-them/suspicious-killings-and-extrajudicial-executions>

⁷⁹ Egyptian police claim to shoot dead gang that killed Giulio Regeni, The Guardian, 25 Mar 2016 <https://www.theguardian.com/world/2016/mar/25/egypt-police-shoot-dead-suspects-giulio-regeni>

- **Legalizing the use of excessive force and immunizing criminal accountability for extrajudicial killings to ensure impunity:**

The biggest problem in the content of the Terrorism Law lies in legitimizing the actions of those responsible for implementing its provisions to the extent that they cannot be held accountable for their actions in accordance with their work, as Article 8 of the law stipulates: **“Those in charge of implementing the provisions of this law shall not be held criminally responsible if they use force to perform their duties, or to protect themselves from an imminent danger that is about to occur on the person, money or other assets, all when their use of this right is necessary and sufficient to ward off the danger.”**⁸⁰

By analyzing the text of the article, we find that the legislator has granted legal immunity to police officers in the event that they use force that may amount to physical liquidation just because they feel a danger that the legislator describes as **“about to occur”** which means that the criterion for determining the extent of the seriousness of the danger authorized to use excessive force is subject to the discretion of the police officer himself without any controls or limits.

As well, what the article referred to by stating that **“all of this is when their use of this right is necessary and sufficient to ward off the danger.”**; We can say that we are here in front of a case of legitimate defence stipulated in Article 245 of the Penal Code, which states **“There is no penalty at all for anyone who kills someone else.” or injured or beats him while using the right of legitimate defence for himself or his money or the life or money of others**”⁸¹

Also, Article 246⁸² of the Penal Code states that **“the right of legitimate self-defence is permitted for a person, except in the exceptional cases indicated after the use of force necessary to ward off every act considered a crime against oneself stipulated in this law.**

⁸⁰ Article 8, Egyptian anti-terrorism law No. 94 of 2015 issued on 15-08-2015, Official Gazette 33 bis

⁸¹ Article 245, Egyptian Penal Code - No. 58 of 193, issued on 08-05-1937, Egyptian facts 71

⁸² Article 246, Egyptian Penal Code - No. 58 of 193, issued on 08-05-1937, Egyptian facts 71

The right to legitimate defence of money allows the use of force to respond to any reaction which is considered as a crime”, Also Article 61⁸³ of the Penal Code, which is the article that monitors the reasons for permissibility and impediments to punishment, as it states that **“There is no punishment for a person who commits a crime that he has resorted to committing by the necessity of protecting himself or others from a grave danger to the self that is about to occur by him or others, and his will did not enter into its solution or his ability to prevent it in another way.”**

In my opinion, the provision that criminal accountability is not permissible differs from the impermissibility of imposing a penalty, as the inadmissibility of accountability means that a criminal case may not be instituted definitively against the user of excessive force, meaning that he may not be investigated or brought before a trial. while the impermissibility of inflicting a penalty means that it is permissible to question him, investigate him, and bring him to court. Here comes the court's role in assessing the state of legitimate defence and the availability of a state of necessity or danger that could not have been awarded without the use of force, and therefore the user of force is acquitted if the court deems it necessary.

Likewise, the judicial precedents of the Egyptian Court of Cassation have made it clear that the legitimate defence that is adopted must be within the limits of warding off aggression and not exaggerating the use of the right, as it said:

“It is decided that the state of necessity that extinguishes responsibility is the one that surrounds a person and pushes him to the crime of the necessity of protecting himself or others from a grave danger to the self about to fall into him or others, and his will was not involved in its solution. It is stipulated in the case of necessity that drops criminal responsibility that the crime committed by the accused is the only way to ward off the danger inflicted upon him.”⁸⁴

Therefore, we find that the legislator in the Anti-Terrorism Law was not in the need to enact such an article that gives legitimacy to extrajudicial killing, as murder should never be given a legal cover in law so that the judicial officer does not find a ready excuse if he abuses his

⁸³ Article 61, Egyptian Penal Code - No. 58 of 1937, issued on 08-05-1937, Egyptian facts 71

⁸⁴ Egyptian Court of Cassation, Case No. 1133 of Judicial Year 45, dated 11-02-75

authority and uses The excessive force, which may amount to killing and physical liquidation without trial until the arrest of suspects in terrorist cases, while they are still alive, is almost non-existent. This is what undermines the constitutional principle stipulated in Article 96 of the 2014 Constitution **“The accused is innocent until proven guilty in a fair legal trial, in which guarantees of self-defence are guaranteed.”**⁸⁵ Consequently, the said law guarantees the escape of a large number of security forces involved in hundreds - if not thousands of Cases of extrajudicial killings.

The other problem lies in the fact that impunity is perpetual since even if the aforementioned law is repealed at any time in the future or the Supreme Constitutional Court ruled unconstitutional, the document of innocence will remain in the hands of the user of excessive force in the application of the rule of "the best law for the accused", which means that if an officer is accused in the future of committing an extrajudicial murder that occurred during the validity of the current terrorism law, the court will be obligated to implement the terrorism law even after its abolition as it is the best law for the accused officer, which means his absolute impunity, whether now or in the future.

- **Enforced disappearance and the use of force in light of international controls and standards:**

The International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly in December 2010, defines the crime of enforced disappearance as **“ the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”**⁸⁶

⁸⁵ Article No. 96, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

⁸⁶Art 2, International Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010, UN General Assembly

The definition stipulated in the Convention coincides with the cases of enforced disappearance that occur in Egypt during the period from 2013 until now, while the Egyptian regime denies the allegations of local and international human rights organizations of the existence of the crime that the Convention considered a crime against humanity in accordance with international law⁸⁷. The convention also stressed that no exceptional circumstance may be invoked to justify the crime⁸⁸ and that the states parties take all measures to investigate the crime and bring those responsible to court⁸⁹, as well as the obligation to criminalize it in the criminal law of the state⁹⁰.

Egypt has not yet signed the International Convention for the Protection of All Persons from Enforced Disappearance, despite its adoption by the United Nations General Assembly in December 2010. However, this does not negate Egypt's international obligations under the Universal Declaration of Human Rights⁹¹ and the International Covenant on Civil and Political Rights, which affirmed the necessity of Protecting personal freedom and setting specific controls and criteria to restrict their freedom in the event that they are accused of any crime

As for the crimes of extrajudicial killings and the use of excessive force that are legalized in accordance with Article 8 of the Anti-Terrorism Law, there is no doubt that they are categorically inconsistent with Article 2 of the International Covenant on Civil and Political Rights⁹², which states that each State party undertakes if its existing legislative or other

⁸⁷ Art 5, International Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010, UN General Assembly

⁸⁸ Art 1, International Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010, UN General Assembly

⁸⁹ Art 3, International Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010, UN General Assembly

⁹⁰ Art 4, International Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010, UN General Assembly

⁹¹ Universal Declaration of Human Rights, the United Nations General Assembly, 10 December 1948 (General Assembly resolution 217 A)

⁹² International Covenant on Civil and Political Rights, Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976

measures do not actually guarantee the implementation of the rights recognized in the Covenant, to take, in accordance with its constitutional procedures, what is necessary from legislative or non-legislative measures,” as well as Article 6, which states **“1. The right to life is an inherent right of every human being. The law shall protect this right. No one may be arbitrarily deprived of his life,”** and Article 14, which states **“2. Every person accused of a crime has the right to be considered innocent until proven guilty by law.”**⁹³

It also violated the Universal Declaration of Human Rights in Article 3 **“Everyone has the right to life, liberty and security of person,”** as well as Article 11 **“1. Every person accused of a crime is presumed innocent until proven guilty by law in a public trial in which all guarantees have been provided. necessary to defend himself”**.⁹⁴

Article 3 of the Code of Conduct for Law Enforcement Officials issued by the United Nations General Assembly in December 1979 stated that law enforcement officials may use force only when strictly necessary and to the extent necessary to perform their duty.⁹⁵

In the commentary on the article, the Code stressed that the use of force by public officials should be exceptional within the limits of necessity to avoid crimes or carry out the legal arrest of criminals, and not go beyond that, and the comment also emphasized that national law should restrict the use of force by law enforcement officials In accordance with the principle of proportionality and without transgressing this principle. The Code also considered the use of firearms as an extreme measure that should only be resorted to when the suspect displays armed resistance or endangers the lives of others, with the obligation to submit a report to the competent authorities in every case in which a firearm is fired.

In 2020, the Office of the High Commissioner for Human Rights also adopted Guidance on the use of less-lethal weapons in the context of law enforcement, requiring states to provide

⁹³Ibid

⁹⁴ Universal Declaration of Human Rights, the United Nations General Assembly, 10 December 1948 (General Assembly resolution 217 A)

⁹⁵ Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169, 17 December 1979, Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials>

law enforcement personnel with effective less-lethal means and to train them in their use. that law enforcement officials respect human rights and fundamental freedoms and must comply with the principles of legality, precaution, necessity, proportionality, non-discrimination and accountability.⁹⁶

Undoubtedly, the problem raised in the Egyptian case requires adherence to the aforementioned international standards at the local level and translating this into a legislative framework, that guarantees the criminalization of Enforced Disappearance and extrajudicial executions in accordance with the law categorically and identifies specific controls and cases for the use of force, with the necessity of repealing the anti-terrorism law because of the flaws it contains in its formulation and issuance a new law adopts a disciplined wording to define terrorism and ways to confront it.

Confronting terrorism should never be used as a pretext to pass articles that waste the freedom of citizens and undermine the guarantees of a fair trial for them and their right to resort to their natural judge and judicial remedy, as legal rules have already existed to confront criminals, and terrorism may not be confronted with counter-terrorism by the authority sowed by it. Fear in the hearts of its citizens and puts them under constant threat to their security and safety and even their lives, which expands the cycle of violence and makes us revolve in a vicious circle that has no end, and entrenches that every political faction in power adopts this approach and begins to take revenge on its opponents by enacting legislation that enables it to eliminate them and raise the hand of justice for them.

In this regard, the Supreme Constitutional Court said in one of its rulings:

“The judicial oversight exercised by the Supreme Constitutional Court regarding the constitutionality of punitive texts is governed by strict standards and sharp standards that fit the nature of these texts in their direct connection with personal freedom, which is the highest value of the constitution, which requires the criminal legislator to pursue

⁹⁶ Guidance on the use of less-lethal weapons in the context of law enforcement, United Nations for Human Rights Office of the High Commissioner, August 2021
https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/LLW_Guidance.pdf

sound legal means, whether in their substantive or procedural aspects, To ensure that punishment is not a tool that storms freedom. And that the punishment it imposes in connection with the crime crystallizes a concept of justice that is determined in the light of the social goals that it aims at, so it does not fall undery the desire of the group to quench its thirst for revenge or its attempt to oppress the accused, those who fall under it or mistake their positions, and the criminal penalty is not considered justified unless it is a duty to meet a social necessity that has weight and is proportional to the sinful act.”⁹⁷

⁹⁷ Case No. 114 of Year 21, Egyptian Supreme Constitutional Court, 06-02-2001

Chapter Three

Exceptional Trials.. Undermining the Independence of the Judiciary and Violating the Right to Fair Trial:

First: Arbitrary Detention and Exceptional Trials According to the Emergency Law:

In this part of the study, we will shed light on the emergency law as a cornerstone of repression and violations of constitutional rights and freedoms in Egypt, and as a common denominator in referring the accused in political cases and trying them according to an exceptional court in which litigation takes place on a single level, which become final rulings after the ratification of the President of the Republic.

In addition, we will discuss the recent amendments to the law after the Corona pandemic and how the state took advantage of the pandemic to introduce more amendments that undermine freedoms to a law that is by its nature notorious and does not need further amendments to make it more violating; Given the danger of its use, which has become perpetual by circumventing the text of the constitution regulating the state of emergency and the restrictions on its declaration.

- **History of the state of emergency in Egypt**

Egypt remained in a semi-continuous state of emergency for 140 years, and it did not stop except for a few intermittent years during the last century. This began on July 11, 1882, when the military rulings were announced for the first time during the British forces' attack on Egypt before its occupation. With the British occupation in Egypt, the state of restriction of freedoms remained in place without an official declaration of emergency until November 2, 1914, with the beginning of World War I, when England declared protection over Egypt and subjected it to military rule and martial law. This situation remained until it was abolished after the adoption of the 1923 Constitution, when Lord Allenby, the general of the British forces, ordered its abolition for a period of 9 years to be re-imposed again in 1939 during

World War II, then during the Palestine War in 1948 and during the Cairo fire in January 1952 and extended until the July Revolution 1952, which ended the monarchy and declared the republic⁹⁸.

The emergency law that is currently in force was issued in 1958 and was activated after the Six-Day War or what is known as the 1967 defeat between Egypt and Israel. And it remained active until the end of President Anwar Sadat's rule, then it stopped and was reactivated after his assassination in 1981. Since then, Egypt has been in a continuous state of emergency for 30 years throughout the rule of ousted President Mubarak until it was abolished in May 2012 after the January Revolution.⁹⁹

The declaration of a state of emergency in Egypt is currently regulated by the constitutional text of Article 154 of the 2014 Constitution, which grants the President of the Republic the right to declare it after consulting the Council of Ministers, with the need to submit this declaration to Parliament within seven days following the issuance of the decision to announce it for Parliament to decide on it. The text requires the approval of the majority of the members of Parliament to declare a state of emergency and that it be declared for a specific period not exceeding three months and extending only to another similar period. In the event of an extension, the approval of two-thirds of the members is required. And if Parliament is not in place, the matter is submitted to the Council of Ministers for approval, with the need to present it to the new Parliament at its first meeting.¹⁰⁰

The aforementioned article differs from its counterpart in the 2012 constitution, which was promulgated during the rule of the Muslim Brotherhood, as it approved declaring a state of emergency for a period not exceeding six months instead of three. And not just the approval of two-thirds of the members of Parliament, as it is in the text of the current constitution

⁹⁸ Abdel Halim Hefena, October 28, 2021, the end of a turbulent history in Egypt.. The story of 140 years of "emergency", Sky News Arabia, <https://www.skynewsarabia.com/middle-east/1474300-%D9%86%D9%87%D8%A7%D9%8A%D8%A9-%D8%AA%D8%A7%D8%B1%D9%8A%D8%AE-%D9%85%D8%B6%D8%B7%D8%B1%D8%A8-%D9%85%D8%B5%D8%B1-%D9%82%D8%B5%D8%A9-140-%D8%B9%D8%A7%D9%85%D8%A7-%D8%A7%D9%84%D8%B7%D9%88%D8%A7%D8%B1%D9%8A%D9%94>

⁹⁹ Ibid

¹⁰⁰ Article 154, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

issued in 2014, but the two texts agreed that Parliament may not be dissolved while the state of emergency is in effect.¹⁰¹

It is worth noting that setting a maximum limit for the duration of the state of emergency was not present in the republican constitutions prior to the 2012 constitution, beginning with the 1956 constitution and ending with the 1971 constitution, which differed slightly from it in its stipulation that the declaration of a state of emergency should be for a specific period without setting a maximum for it, And it is not permissible to extend it except with the approval of Parliament¹⁰². This ruling did not constitute a change in the continuity of the state of emergency, as it lasted for permanent periods, which made the Egyptian state in a state of emergency almost without interruption except for short periods until the revolution of January 25, 2011, which one of its most important demands was to end the state of emergency that the state has been experiencing for thirty consecutive years.

On the tenth of April 2017, following the two bombings that targeted the churches of St. George in the city of Tanta and St. Mark in the city of Alexandria, Presidential Decree No. 157 of 2017 was issued declaring a state of emergency throughout the country for a period of three months. As for the reason for the decision, it was stated in its preamble that it was taken due to the dangerous security conditions the country is going through, and on 7/4/2017 Parliament approved extending the state of emergency for another period.¹⁰³

Since that time, according to the current constitution, the state of emergency was supposed to have expired after the two periods referred to, but the constitutional text was circumvented by leaving a time interval after the expiry of the two expired periods of emergency for a period

¹⁰¹ Article 148, Egyptian Constitution - for the year 2012 issued on 25 / 12 / 2012, Official Gazette

¹⁰² Art 144, the 1956 constitution, issued on 01/16/1956, the official gazette/
Article 57, 1958 constitution, issued on 03/05/1958, the official gazette/
Article 126, 1964 Constitution, issued on 03/25/64, Official Gazette/
Article 148, 1971 constitution, promulgated on 09/11/1971, in the Official Gazette

¹⁰³ Egypt cancels extension of state of emergency, October 26, 2021, The Independent Arabia TV, <https://www.independentarabia.com/node/271311/%D8%A7%D9%84%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1/%D8%A7%D9%84%D8%B9%D8%A7%D9%84%D9%85-%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A/%D9%85%D8%B5%D8%B1-%D8%AA%D9%84%D8%BA%D9%8A-%D8%AA%D9%85%D8%AF%D9%8A%D8%AF-%D8%AD%D8%A7%D9%84%D8%A9-%D8%A7%D9%84%D8%B7%D9%88%D8%A7%D8%B1%D8%A6>

of one or two days and then declaring a new state of emergency for two new periods, and thus we became in a continuous state of emergency, as it was before the January revolution, and its continuity was not stopped by the text of the constitution, which prohibited extending it for more than two consecutive terms.

Recently, on October 25, 2021, the current president issued a decision to stop the state of emergency after 18 renewals during the last five years. In fact, this sudden abolition of the state of emergency was only for international propaganda, as days after the abolition of the state of emergency, parliament ratified three laws related to “**Protecting vital facilities,**” “**measures to combat terrorism,**” and “**preserving state secrets**”. The first Amendment assigns the protection of public and vital facilities to the army and police forces on a permanent basis and refers crimes of infringement on those facilities to the military judiciary. While the second amendment grants the president the powers to impose measures to counter terrorism, including curfews in some areas, the third punishes with imprisonment and a fine whoever tries to collect information on the personnel and tasks of the armed forces without their permission. All of those measures stipulated in the three laws are not much different from declaring a state of emergency.¹⁰⁴

- **About Law 162 of 1958 regulating the state of emergency**

The law regulating the state of emergency in Egypt and currently in force is Law No. 162 of 1958 known as the Emergency Law. It was issued on October 7 1958 in the form of a decree of law issued by Gamal Abdel Nasser, President of the Republic at that time; It allows declaring a state of emergency whenever security or public order in the territory of the Republic or in an area of it is endangered, whether that is due to the outbreak of war or the emergence of a situation threatening its occurrence, internal disturbances, public disasters or the spread of an epidemic.¹⁰⁵

¹⁰⁴ Was lifting the state of emergency in Egypt a formality?, November 2, 2021, BBC News, <https://www.bbc.com/arabic/middleeast-59138767>

¹⁰⁵ Article 1, Egyptian Emergency Law No. 162 of 1958, published on 09/28/1958

The declaration and termination of a state of emergency - in accordance with article two of the law - shall be by a decision of the President of the Republic that includes a statement of the state for which it was announced and the determination of the area it covers, the date of its entry into force and its prescribed period. and that it is not permissible to extend the period specified by the decision declaring a state of emergency except with the approval of Parliament and considering it to expire on its own in the event that approval is not taken before the end of the period.¹⁰⁶

It should be noted that all the powers stipulated in the law as powers of the President of the Republic during the declaration of a state of emergency, he may delegate someone to take his place in it, in whole or in part, or in all the territory of the Republic or in a certain region or regions. Accordingly, the Prime Minister and those close to him from among the members of the executive authority shall issue the same legislative and executive decisions and orders that the President of the Republic may issue during the validity of the state of emergency by virtue of a mandate issued by the President of the Republic¹⁰⁷.

The declaration of a state of emergency has always been away from judicial oversight, and appeals to the courts against decisions to declare a state of emergency have always been rejected. As the Egyptian administrative courts have settled in many of their rulings considering the decisions to declare and extend a state of emergency as acts of sovereignty, that distance them from Judicial oversight. Accordingly, it has always ruled that it does not have jurisdiction to hear cases filed to challenge the decisions to extend the state of emergency issued by the Prime Minister or the president of Parliament, the Administrative Court says in its 2008 ruling:

“The state of emergency is declared and extended by a republican decision, and this decision must be submitted to Parliament to decide what it deems in this regard. These courts may not consider any lawsuit related to the acts of sovereignty. the judiciary has established the theory of the acts of sovereignty, and neither the judiciary nor jurisprudence were able to establish a definition or standard for these acts. The final

¹⁰⁶ Article 2, Egyptian Emergency Law No. 162 of 1958, published on 09/28/1958

¹⁰⁷ Article 17, Egyptian Emergency Law No. 162 of 1958, published on 09/28/1958

say in it ended with the judiciary alone, which decides with its discretionary what is considered an act of sovereignty and what is not. The actions undertaken by the government as a governing authority are considered acts of sovereignty, in contrast to the actions that the government undertakes as an administrative authority. The wisdom of excluding acts of sovereignty from jurisdiction is that these actions are related to the sovereignty of the state at home and abroad because of the surrounding political considerations that justify authorizing the competent authority the authority to assess a broader and farther scope in order to achieve the interest of the country, its security and safety without authorizing the judiciary the authority to comment on the measures it takes in this regard. The matter is because considering it or commenting on it requires the availability of different information, elements and scales of assessment that are not available to the judiciary within the framework of its constitutionally defined role and guided by the principle of flexible separation of powers”¹⁰⁸

In its ruling, the court was guided by an old interpretation of the Supreme Court, in which it decided that **“the emergency system is a system that the constitution authorized its imposition whenever its reasons and motives are realized, the first and most important of which is exposing the country to a danger that threatens its safety and security, or the outbreak of war or the threat of its outbreak or security disturbance, in order to confront this danger with exceptional measures specified by law emergency in order to preserve the safety and security of the country, and the republican decision to declare a state of emergency is considered an act of sovereignty.”¹⁰⁹**

- **Emergency State Security Courts..Exceptional trials and undermining the right to a fair trial**

Under the law, the State Security Courts have been established to adjudicate on offences committed in contravention of orders issued by the President of the Republic or those acting in his place during the state of emergency. Their jurisdiction is determined by the type of

¹⁰⁸ Judgment No. 42479 - for the year 62, the Egyptian Administrative Court, session date 12/23/2008 - page number 212

¹⁰⁹ Case No. 22 of 6, Supreme Court, session 5/2/1977

penalties applicable to offences committed; partial courts are competent to adjudicate on offences punishable by imprisonment, fines or either of the two penalties. The Supreme State security courts determine their competence to adjudicate on offences punishable by a felony as well as offences established by the President of the Republic, whatever was its penalty¹¹⁰.

Trials in the above-mentioned courts are subject to the so-called exceptional judiciary, which lacks the most basic fair trial standards and the rights that derive from it. the simplest of which is the right to litigation which is presumed to be of two degrees, is lacking in the Emergency Act and its extraordinary trials of one degree. Judgements handed down by its courts may not be appealed in any way and become final after ratification by the President of the Republic. Not only this, but also the law authorizes the President of the Republic to file cases prior to their submission to the court, as well as to order the provisional release of arrested accused persons prior to the transfer of such cases to the courts.¹¹¹

The law authorizes the President of the Republic or a person acting in his office to refer to the State Security Courts offences punishable by public law. That means that any exception may be made during the proclamation of a state of emergency including the identification of certain offences under the Penal Code or other laws for consideration before the State Security Courts instead of referring them to the natural judge represented in the Criminal Courts Courts at their levels of appeals rights, which means that they are litigated to a single degree and without the possibility of being challenged in any way.¹¹²

- **The absolute powers of the President of the Republic during the declaration of a state of emergency**

The Emergency Law guarantees the absolute powers of the President of the Republic that he may take to maintain security and public order in case of emergency Article 3¹¹³ of the Act

¹¹⁰ Article 7, Egyptian Emergency Law No. 162 of 1958, published on 09/28/1958

¹¹¹ Article 12, Egyptian Emergency Law No. 162 of 1958, published on 09/28/1958

¹¹² Article 13, Egyptian Emergency Law No. 162 of 1958, published on 09/28/1958

¹¹³ Article 13, Egyptian Emergency Law No. 162 of 1958, published on 09/28/1958

provides, but is not limited to, 6 measurable items; Among them is the order to monitor messages of any kind and to monitor newspapers, leaflets, publications, editions, drawings and all means of expression, propaganda and advertising before publication, seizure, confiscation, disruption and closure of printing places. as well as the timing and closure of public shops, as well as the closure of all or some of these shops, It also mandates any person to perform any act and seize any transfer or property by the President of the Republic.

The most serious powers granted to the President of the Republic in accordance with article 3 of the Emergency Act were to place restrictions on the freedom of assembly, movement, residence and passage of certain places and times, to arrest, detain and authorize searches of persons and places without complying with the provisions of the Code of Criminal Procedure, which was invoked to arrest citizens from the issuance time of the law until the January 2011 Revolution, which was ruled unconstitutional by the Supreme Constitutional Court in 2013 and subsequently circumvented.

- **The Constitutional Court's landmark ruling that arbitrary arrest and indiscriminate searches are unconstitutional**

On 2/6/2013, the Supreme Constitutional Court ruled that article 3, paragraph 1, of the Emergency state law was unconstitutional¹¹⁴. **"Authorizing the President of the Republic to authorize arrest and detention and to search persons and places without complying with the provisions of the Code of Criminal Procedure"** This is the provision according to which the famous arrest warrants that were in force Throughout the era of the Republic until the January 25 Revolution were carried out in addition to the random personal inspection and arbitrary arrest of citizens, which was so customary that most citizens still believed it to be an inherent and natural right of security officers.

The judgement affirms that the Emergency Act is a purely exceptional system designed to support the executive branch and provide it with certain mechanisms that limit public rights and freedoms, with a view to confronting emergency conditions that threaten the country's

¹¹⁴ Case No. 15, Supreme Constitutional Court, date of hearing 2/6/2013

public safety or national security; - Accordingly - it may not be extended, its provisions must be interpreted narrowly and the authority established by the Emergency Act -which is represented in the President of the Republic or his representative- must be respected to comply with the purpose set forth in the Emergency Act, which does not derogate from the means consistent with the provisions of the Constitution, when taking any of the measures provided for in article 3 of Decree-Law No. 162 of 1958. Otherwise, the measures taken by the President are contrary to the Constitution.

The judgement of the Supreme Constitutional Court held that the text was contrary to many constitutional principles. Foremost among them was the principle of the State's subordination to the law, which meant that the legal State was bound in all manifestations of its activity, regardless of the nature of its powers, by the above legal rules. the Court, in its judgment, stressed that the principle of the State's submission to the law in conjunction with the principle of the lawfulness of the authority was the basis of the legal State. and thus the law governing the state of emergency must comply with the regulations established for legislative action. The most important of these is the non-violation of other provisions of the Constitution, since the enactment of the Emergency Act on the basis of a provision of the Constitution does not mean that this Act is authorized to override other provisions of the Constitution. the Court held that the impugned provision allowing for arrest, arrest and search of persons and places without judicial authorization undermined citizens' personal freedoms and assaulted the inviolability of their homes in violation of the principle of the rule of law, which is the basis of government in the State.

As for the contention that the Emergency Act addresses exceptional situations of confronting serious threats to national interests that may undermine the stability of the State or jeopardize its security and integrity, and that the state of emergency, given its duration and the nature of the associated risks, is sometimes not suited to the State's measures in normal circumstances; The Constitutional Court's reply in this regard was unequivocal by affirming that the Emergency Act authorized by the Constitution may not be used as a pretext for negating, contravening and releasing its provisions. The Emergency Act, whatever its justification,

remains a legislative act that must abide by all provisions of the Constitution, foremost among which is the safeguarding of citizens' rights and freedoms.

- **Circumventing the Constitutional Court's ruling on amendments to the law in 2017**

Following a ruling of unconstitutionality, the article could not have been retained or applied, since the provisions of the Supreme Constitutional Court and its decisions of interpretation are binding on all State authorities¹¹⁵, which required that the article governed by its unconstitutionality should be repealed and not be applied from the day after the judgement was published; However, the unconstitutional sentence of detention was implicitly circumvented by the amendment of the Emergency Act in 2017¹¹⁶, adding two new articles 3 bis (b) and 3 bis (c); First, at the time of the proclamation of the state of emergency, police officers are permitted to place in custody any person who has any evidence of a felony or misdemeanour and of his own possession, in his home and in all places where he is suspected of concealing any dangerous or explosive substances, weapons, ammunition or other evidence of the commission of an offence, Without complying with the provisions of other laws such as the Code of Criminal Procedure. The text did not require a pre-reservation judicial order, but the Public Prosecutor's Office was subsequently notified within 24 hours of the reservation, with a permissible leave to detain the author for up to seven days to complete the collection of evidence.

The new text, although not used the same terms as those contained in the first paragraph of article 3, which was ruled unconstitutional, as wording "**Arrests, detention, personal inspection and house inspection**". The term "**reservation**" was used, but it was the same content that gave judicial control officers extensive powers to search and arrest on the basis of his own inquiries and opinion if he considered it from his own perspective "**Evidence of an offence or misdemeanour committed in respect of the reserved person**" In the same

¹¹⁵ Article 195, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

¹¹⁶ Law No. 12 of 2017 amending some provisions of Law No. 162 of 1958 regarding the state of emergency. Issued on 04-27-2017

way of exception from the provisions of other laws, such as the Code of Criminal Procedure, on which the procedure is one of the most important guarantees of a fair trial, have the effect of not being available from the outset the invalidity of all trial proceedings.

The amendment expressly contravenes article 54 of the Constitution, which is prohibited in the event of flagrante delicto; Arrest, search, imprisonment or restriction of liberty of any person only after the issuance of a reasoned warrant required by the investigation. It also requires that the restricted person be provided with the investigative authority within 24 hours of his arrest¹¹⁷. The reservation is not maintained with 24 hours' notice to the Public Prosecutor's Office. The amended text makes this a personal authority of the Judicial Police Officer at the time of emergency and without a prior judicial order from the Public Prosecutor's Office.

The amendment was not limited to that, but the article 3 bis (c) allows the State Security Magistrates' Courts to detain "anyone who has evidence of a danger to public security" for a period of one month, renewable at the request of the Public Prosecutor's Office, any persuasive detention without trial and from exceptional courts that are constitutionally prohibited and without any checks or guarantees of a fair trial.

- **Amendments to the emergency law to confront the Corona pandemic..**
Exploiting the pandemic for more repression

On May 6, 2020, Act No. 22 of 2020¹¹⁸ was promulgated amending certain provisions of the Emergency Act to address the consequences of the coronavirus pandemic. Article 1 of the Act replaces the text of the first paragraph of article 4 of the original Act, which dealt with the authorization of security and armed forces to enforce orders issued by the President of the Republic and his representative. The article defines the role of the armed forces during the execution by having their officers and non-commissioned officers from the rank appointed by

¹¹⁷ Article 54, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

¹¹⁸ Law No. 22 of 2020 amending some provisions of Law No. 162 of 1958 regarding the state of emergency, issued on 06-05-2020, Official Gazette No. 18 - bis (a)

the Minister of War with the authority to regulate records of violations of orders issued during the declaration of a state of emergency.

The new text, which was replaced by the original text, provides for judicial discipline to be granted to officers of the armed forces rather than only the authority to organize records, to hand over to the security authorities and to refer to the Public Prosecutor's Office. It should be noted that the granting of judicial officers to describe the armed forces has already been abolished by the Administrative Court when the Minister of Justice's decision was passed. The amendment to the law is an attempt to prevent it from being abolished by the Administrative Judiciary. The Administrative Courts are competent to appeal administrative decisions only and not laws.

The second amendment added to the article requires the Military Prosecutor's Office to always investigate all offences seized by the armed forces. The President of the Republic or those authorized by him to confer jurisdiction over the preliminary investigation of all crimes contrary to the Emergency Act on the Military Prosecutor's Office, even if they have not been seized by the armed forces; The latest amendment to the article limited the authority of the Public Prosecutor's Office to final action in investigations conducted by the Military Prosecutor's Office, either by referring to the trial or ordering that the proceedings should not be instituted and their papers preserved.

The above-mentioned amendments reinforce the aggression of the authorities and institutions of the armed forces within the civil structure of the State, which was reinforced in the amendments to the Constitution in 2019 (The statement will also be followed in the last chapter of our study) which imposed a new constitutional status for the armed forces to install as an institution above the Constitution, protector and interpreter of its provisions to make it an official State within the State and by virtue of those constitutional amendments, the role of the armed forces was reformulated by adding new functions to it in protecting and safeguarding the Constitution, civilization and democracy, with no clear explanation or perception of how the military institution assumes those functions, which could legitimize coups d'état under the pretext of protecting the Constitution, civilization and democracy in

accordance with the interpretation of those concepts by the armed forces (art. 200 after the constitutional amendment), the second amendment also granted the Supreme Council of the Armed Forces full administrative and executive independence of the President of the Republic by empowering the Council to choose and appoint the Minister of Defence on a permanent and continuous basis and not transitional for two presidential sessions as was in accordance with the Constitution before its amendment (art. 234 after the constitutional amendment), in addition to expanding the application of military trials of civilians and the scope of their military jurisdiction by extending the concept of assault on the military institution to include indirect, albeit by saying, aggression against the military institution, Besides adding a new provision that civilian State installations can be subjected to the protection of the armed forces and that any direct or indirect attacks on them are subject to military trials and more civilians are subject to military trials¹¹⁹. There is no doubt that the permissibility of subjecting civilians to investigation before the Military Procurator's Office, which is part of the military justice system, is contrary to the Constitution's prohibition of extraordinary trials and the legitimacy of further trials, rather than the abolition of those already existing in particular. State security courts ", not to mention the fact that the Emergency Act naturally enacts an extraordinary court and a State security court under which it is established in contravention of the constitutional prohibition of extraordinary trials because it lacks fair trial standards and, above all, the right to litigate in two degrees and necessarily infringes the rights to litigation and defence.

Article II of the amended Act adds 18 new clause to the clauses provided for in article 3 of the original Act, which, it has already been pointed out, contained 6 clauses relating to competencies and measures that the President and his delegate could have taken in case of emergency, some of which are prescribed, but not limited to, and which leave new measures to the supervision of discretionary courts and determine whether they are acts of sovereignty or administrative decisions subject to the control of lawfulness or legislative decisions.

¹¹⁹ Muhammad Ebaid, April 22, 2019, The Unconstitutional constitutional Amendments, ECRF, <https://www.ec-rf.net/%d8%a7%d9%84%d9%85%d9%81%d9%88%d8%b6%d9%8a%d8%a9-%d8%a7%d9%84%d9%85%d8%b5%d8%b1%d9%8a%d8%a9-%d9%84%d9%84%d8%ad%d9%82%d9%88%d9%82-%d9%88%d8%a7%d9%84%d8%ad%d8%b1%d9%8a%d8%a7%d8%aa-%d8%aa%d8%b7%d9%84-2/>

The amendments added to the provisions of article 3 of the original law contain many disadvantages and constitute a limitation on many constitutional rights and freedoms, including the right to personal liberty, the right to litigate and defence, the right to a public and private meeting, the right to demonstrate and the right to private property, which will continue to be applied even in the context of the coronavirus response, especially in a state of emergency that can always be declared unchecked and for almost life.

Second: The Anti-Terrorism Law..More repression and exceptional trials

We have already addressed the Anti-Terrorism law in chapter two of the study during our analysis of the legalization of enforced disappearances and extrajudicial killings. We will elaborate further on the law here with regard to the loss of constitutional rights and principles violated by the Act, in particular the right to a fair trial and the rights derived therefrom.

Countering terrorism requires dealing with the challenges dictated by the rule of law. These challenges not only affect the national aspect of States, but also affect the international community as a whole, emanating from the principles of democracy and human rights threatened by terrorism. The crime of terrorism has therefore occupied an important aspect of the legal system's responsibilities. This responsibility was based on the ability to balance two types of requirements: The first is the fundamental principles of the law, which essentially require respect for the fundamental rights and freedoms of citizens, and the second is the basis on which the fight against terrorism relies to prevent or punish crime for the protection of society and human rights.¹²⁰

The legal adaptation of the crime of terrorism in the national legislation requires a legal definition adopted by the legislator that defines its elements in accordance with the principle of legality of crimes and penalties, while adhering to the constitutional framework of

¹²⁰ Ahmed Fathi Sorour, 2008, The Legal Confrontation with Terrorism, Al-Ahram Center for Translation and Publishing, p. 21.

criminalization and punishment that is determined by necessity and proportionality. On the contrary, the Anti-Terrorism Law provided a broad definition of the concept of terrorist act in terms that lack accuracy, are tainted by ambiguity, and are subject to many interpretations such as **“disturbing public order,” “harming national unity and social peace,” “damaging the environment”** And other words from which the physical element of the crime is not specified, such as **“preventing”** and **“obstructing”**¹²¹. This is in stark contrast to the principle of legality of crimes and penalties and the principle of presumption of innocence as basic principles to guarantee personal freedom, which require the accuracy of drafting penal texts in a certain way that leaves no doubt about their constitutionality.

Punitive laws should not include vague words, so they must be clear, accurate and carry no more than one meaning in order to achieve the principle of legality of punitive texts. This was confirmed by the judicial precedents of the Egyptian Supreme Constitutional Court, which said in one of its rulings:

“The legislator must always make a careful balance between the interest of society and the concern for its security and stability on the one hand, and the freedoms and rights of individuals on the other. It was also decided that the punitive texts should be formulated in a clear, specific way that is not hidden or ambiguous so that these texts are not nets or traps that the legislator casts, preying on their wideness or concealment by those who fall under them or mistake their positions, and these are guarantees whose purpose is that those who are addressed by the punitive texts are aware of their truth so that their behavior is not contrary to them, but rather consistent with them and descending upon them.”¹²²

- **Criminalization according to the terrorism law and trial according to the emergency law.. speed and prompt justice from the regime point of view**

¹²¹ Art 2, The Egyptian anti-terrorism law - No. 94 of 2015, published on 15-08-2015, Official Gazette 33 bi

¹²² The Egyptian Supreme Constitutional Court - Case No. 13 of the Judicial Year 37 - 06-03-2017 Page No. 35

Several local and international human rights organizations have emphasized that Egyptian authorities are using the law of terrorism to prosecute activists, journalists and opponents for their peaceful criticism and that the Egyptian Government has used the scarecrow of confronting terrorism as a cover to prosecute those opposed to its policies, Especially in the run-up to the last presidential election in 2018, there was a wave of arrests of critics of the President of the Republic and continued beyond the elections¹²³, including the detention and trial of several prominent activists and journalists accused of joining a terrorist group included in the Terrorism Act, the dissemination of false news and their referral to the State Security Courts of the extraordinary emergency provided for in the above-mentioned emergency law. to become convicted in accordance with offences contained in the constitutionally flawed Terrorism Act in parallel with extraordinary trials formed in accordance with the notorious Emergency Act, That is, the combination of two of the worst laws passed by the Egyptian legislature in its history and the reliance on emergency courts adds a tool to a broader legal arsenal used by security forces in the name of counter-terrorism, including terrorism courts and urgent legal proceedings.

The common denominator in those cases was the charge of joining a terrorist group without naming that group. In many cases, the facts of that accusation were related to human rights work with international organizations such as Amnesty International or Human Rights Watch, or to the charge of joining the Muslim Brotherhood with Coptic citizens, who could not join the Brotherhood as an Islamic religious group. or to accuse different liberal activists of an unequivocal ideological difference with the Islamic Brotherhood's ideology, The Terrorism Act punishes the offence of joining a terrorist group with aggravated imprisonment in accordance with article 12¹²⁴.

Since 2013, Egypt has classified many revolutionary and political groups and movements as terrorist groups, including the Muslim Brotherhood and the April 6 Youth Movement, a

¹²³ Egypt: Intensifying Crackdown Under Counterterrorism Guise, July 15, 2018, Human Rights Watch, <https://www.hrw.org/news/2018/07/15/egypt-intensifying-crackdown-under-counterterrorism-guise>

¹²⁴ Art 12, The Egyptian anti-terrorism law - No. 94 of 2015, published on 15-08-2015, Official Gazette

peaceful group that was instrumental in moving protests against Mubarak's rule during the January 2011 revolution, along with the links of ultras of football fans, which played an important role during the protests during the revolution and the years that followed against the military council and the Muslim Brotherhood. Classification as a terrorist group was rendered by the Cairo Summary Court, which is not competent to issue such decisions¹²⁵

Over the past 12 years since the January 2011 revolution, the official Egyptian media, under the control of the intelligence services, have sought to portray a broad conspiracy against Egypt involving human rights activists, journalists and lawyers, along with terrorist groups. It is surprising and ironic that the Ministry of the Interior has published a video in 2018 under the name of "Cobwebs" bring together ISIS, the Muslim Brotherhood and human rights groups including Human Rights Watch as part of a union planning to conspire against Egypt's security.¹²⁶

One of the most serious problems in the use of the Terrorism Act is that it contains the death penalty in many of the articles contained therein, especially with trials in accordance with the Extraordinary Emergency law, the provisions of which are rendered on a single degree and may not be appealed. "According to a report issued by Amnesty International in 2022, Egypt ranks third globally after China and Iran and first in Arab world in the execution of the death penalty¹²⁷. The Anti-Terrorism Act contains only 12 articles containing death as punishment for the offences set forth therein¹²⁸. The law was used to prosecute thousands of supporters of Mohamed Morsi, former President of the Muslim Brotherhood, in mass trials, most of which ended in death as punishment¹²⁹.

¹²⁵ Egypt: Intensifying Crackdown Under Counterterrorism Guise, July 15, 2018, Human Rights Watch,
<https://www.hrw.org/news/2018/07/15/egypt-intensifying-crackdown-under-counterterrorism-guise>

¹²⁶ Ibid

¹²⁷ Death Penalty 2021: Facts and Figures, May 24, 2022, Amnesty International,
<https://www.amnesty.org/en/latest/news/2022/05/death-penalty-2021-facts-and-figures/>

¹²⁸ The Egyptian anti-terrorism law - No. 94 of 2015, published on 15-08-2015, Official Gazette 33 bi

¹²⁹ Egypt: Intensifying Crackdown Under Counterterrorism Guise, July 15, 2018, Human Rights Watch,
<https://www.hrw.org/news/2018/07/15/egypt-intensifying-crackdown-under-counterterrorism-guise>

- **Punishment for publishing trial proceedings or publishing something that contradicts the official state narrative .. “Don't listen to anyone but me”**

On more than one occasion the current President of Egypt insists on chanting a sentence **“Don't listen to anyone but me”**¹³⁰, expressing how disturbed he is by articles, statements and reports critical of his economic and security policies. This explains the issuance of many laws that undermine freedom of the press and freedom of opinion and expression and the use of accusations of false news as a means of suppressing and domesticating opinions, The Terrorism Act did not fail to include in many texts that penalize publication, including any publication or dissemination of any news related to terrorism if it contradicts the official statements of the Ministry of Defence¹³¹.

The Act also provides for a penalty of up to five years' rigorous imprisonment for anyone who has set up a website for what it termed **“the impact on the administration of justice”**¹³², which extends to all independent and human rights sites that may deal with or otherwise criticize the conduct of trials. In addition, an article has recently been added to the law prohibiting the recording, filming, broadcasting or presentation of any proceedings for terrorist offences except with the permission of the president of the competent court and punishing anyone who contravenes this by a fine of at least 100,000 pounds and up to 300,000 pounds¹³³, which prevents human rights institutions from observing such hearings and determining their application of fair trial standards.

These articles directly violate the right to know, freedom of the press, freedom to publish data and circulate information Although the Information Circulation Act has not yet been enacted,

¹³⁰ Al-Sisi angrily: “Do not listen to the words of anyone but me, 24-02-2016, Al-Masry Al-Youm newspaper

<https://www.almasryalyoum.com/news/details/898621>

¹³¹Art 35, The Egyptian anti-terrorism law - No. 94 of 2015, published on 15-08-2015, Official Gazette 33 bi

¹³² Art 29, The Egyptian anti-terrorism law - No. 94 of 2015, published on 15-08-2015, Official Gazette 33 bi

¹³³ Art 36, The Egyptian anti-terrorism law - No. 94 of 2015, published on 15-08-2015, Official Gazette 33 bi

However, articles 66¹³⁴ and 68¹³⁵ of the Constitution provide for freedom of expression, whether by writing, photography or other means of expression and publication freedom of circulation of information, statistics and official documents, as well as article 70¹³⁶ guaranteeing freedom of the press, printing and publication in accordance with article 71¹³⁷, which prohibits the censorship or restriction of newspapers in order to prevent them from operating, as well as article 72¹³⁸, which obliges the State to ensure the independence of its own press institutions and media political, intellectual and social interests .

Such material makes information and data monopolized by the Ministry of Defence and puts press institutions and individuals under constant pressure to declare any data or information contrary to what the Ministry of Defence produces and makes it the only official source of the absolute truth. Anyone who publishes or writes information, data or statistics contrary to its own. Although the penalty is pecuniary and not deprivation of liberty, it is exaggerated and can affect any press institution or individuals, especially since it can be reduced to deprivation of liberty if the defendant is unable to pay the fine in accordance with article 511 of the Code of Criminal Procedure¹³⁹, which provides for up to three months' imprisonment for anyone who cannot pay fines in so-called physical coercion.

¹³⁴ Art 66, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

¹³⁵ Art 68, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

¹³⁶ Art 70, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

¹³⁷ Art 71, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

¹³⁸ Art 71, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

¹³⁹ Art 511 of the Egyptian Code of Criminal Procedure - No. 150 of 1950 issued on 09-03-1950
Egyptian Gazette 90

Chapter Four

Constitutional Amendments 2019:

Undermining democracy, the rotation of power and the independence of the judiciary .. placing the army above the constitution and constitutionalizing military coups

As already stated, the Egyptian legislator has numerous precedents regarding the use of the law to codify repression and restrict freedom of opinion and expression. He has always been in disregard of laws that can be challenged before the Supreme Constitutional Court; More serious is the tampering with the Constitution, which is the supreme law, the social contract between the Government and the people and the basis on which to criticize flawed laws.

In its rulings, the Supreme Constitutional Court established a well-established philosophy on which to interpret the principle of the supremacy of the Constitution and to override it on the grounds that legislation and the powers derived therefrom form the State's system of government, which is formed by its text and does not exist without it. and therefore those authorities may not extend their hand in such a way as to waste it, It must abide by the so-called constitutional legitimacy interpreted by the Court in many of its rulings:

"Constitutional legitimacy presupposes a constitution whose provisions are superior to the lower legal norms, since the Constitution already represents - Whenever it is in keeping with the evolution of democratic systems, it is aimed at protecting individual freedom and supporting its start to open perspectives, which in themselves are capitalized from power's ambition or deviation - Its main guarantee to enforce the people's will in its orientation towards its ideals and, in particular, in establishing a system of governance based not on the dominance and unilateralism of power but on its democratic distribution among the various branches it initiates to ensure their balance and mutual control, Its elements must be responsive to evolution, committed to the will of the public, establishing the responsibility of public actors before it in order to crystallize their shots and their property. inhibiting the intrusion of the logical limits of

their inalienable rights and their original freedoms, To deter any breach or denial of it, the Constitution is always above all important. The State party's limitations are restricted to any rule that prevents it from exiting it. sovereignty as a stable fact of conscience and collective conscience, After an intractable reality, the preamble to the Constitution of the Arab Republic of Egypt echoed it by announcing the intention of the People's Administration to defend, protect and ensure its respect. and no one hereinafter has to disobey or deny the provisions of the Constitution "¹⁴⁰

The Egyptian parliament, elected in 2015, spared no effort to shame the Constitution and its provisions from its codification of many flawed legislation, a fraction of which has already been analysed and criticized in this study and through the deliberate circumvention of the explicit transitional articles of the 2014 Constitution, including the granting of rights to ethnic minorities such as the Nubian minority, whose return is provided for in the Constitution to their lands of origin and religious minorities whose right to build churches is guaranteed by the Constitution, Following the proposal to amend the Constitution's provisions, which to some extent guaranteed the circulation of power and the independence of the judiciary in the face of the executive authority.

Indeed, the Parliament was not genuinely elected, but its elections saw great reluctance on the part of citizens to feel that it was a Parliament that had been appointed and its members selected by the security agencies. The report published by Mada Misr in 2015 revealed the role of the General Intelligence Service in carefully selecting parliamentary lists from among the candidates and forming a particular list called "In the love of Egypt" loyal to the President to obtain a parliamentary majority as it obtained all the 100 seats reserved for lists in the parliament elections.¹⁴¹

The poor performance of Parliament in the first two weeks of its convening can be seen by the ratification of all the 447 laws passed by the interim President of the Republic, Adly Mansour, and the current President, Abdel Fattah el-Sisi before the election of Parliament. Of

¹⁴⁰ Case No. 23 - for the year 15, the Egyptian Supreme Constitutional Court, session date 2/5/1994, Technical Office 6 Part 1 - Page No. 140

¹⁴¹ Hossam Bahgat, March 14, 2016, Anatomy of an election, Mada, <https://www.madamasr.com/en/2016/03/14/feature/politics/anatomy-of-an-election/>

course, the Parliament has not reviewed or debated these laws as stipulated in the Constitution. The hearings in which these laws were brought before the parliament were farcical and vulgar, in which members of Parliament appeared to be mere soldiers enforcing the orders of the security agencies that appointed them and ended within two weeks with the ratification of all these laws without any objection, despite the spate of unconstitutionality of most of them.

The implementation of the security authorities' instructions by Parliament did not cease thereafter, during which time nearly nine hundred laws were passed, most of which were submitted by the Government and others by members loyal to the President. Parliament's role was limited to formal review and debate, in which mere objection by opposition members was forbidden, followed by approval and promulgation of laws.

First: The constitutional amendments circulated in secret between the corridors of Parliament and withheld them from the people

On 3 February 2019, 150 members of Parliament loyal to the President applied to amend the articles of the current Constitution of 2014 on the grounds that there were factual and legal reasons for reviewing some of the provisions of the Constitution and adopting what they called reforms in the regulation of government powers. and the proposals for amendments were submitted together with the request for amendment annexed to a preliminary wording of the proposed new texts, It confirms that the whole matter was a representative one, produced by the security agencies, that the General Committee of Parliament, which is supposed to review and discuss the proposed amendments, approved them within two days, a period in which it is impossible to review constitutional amendments requiring a long review and response in normal circumstances. the report of the General Committee of Parliament cited the same justifications presented in the amendment request without any review or comment.¹⁴²

¹⁴² Muhammad Ebaid, April 22, 2019, The Unconstitutional constitutional Amendments, ECRF, <https://www.ec-rf.net/%d8%a7%d9%84%d9%85%d9%81%d9%88%d8%b6%d9%8a%d8%a9-%d8%a7%d9%84%d9%85%d8%b5%d8%b1%d9%8a%d8%a9-%d9%84%d9%84%d8%ad%d9%82%d9%88%d9%82-%d9%88%d8%a7%d9%84%d8%ad%d8%b1%d9%8a%d8%a7%d8%aa-%d8%aa%d8%b7%d9%84-2/>

The media blackout overcame the full content of the proposed text of the amendment and was only made public three days before the referendum. During the two months, all forms of opposition to the amendments were suppressed under the umbrella of the Emergency Act. This has come to the fears of opponents and preventing them from appearing in the media or merely deliberating opinions against them in the face of the favourable opinions that have been opened to all government media outlets. A campaign of enforced arrests and disappearances has been carried out by anyone who refuses to make amendments on social media sites or who unilaterally invokes them in the streets and squares.¹⁴³

On 14 April 2019, the final report on the amendments was issued by the Legislative and Constitutional Affairs Committee of Parliament, which is the final stage of parliamentary proceedings on the amendment of the Constitution in preparation for its submission to the referendum. It was not surprising that the Committee's report was merely copies of the request for the same-worded and justified amendments and merely formal amendments, including an article aimed at benefiting the current president from the amendments and giving him the possibility to run for two new terms after the expiry of his term. That article was one of the material disclosed for media consumption during the two months preceding the referendum to draw the public's attention to the rest of the amendments concerning the status of the army and the undermining of the judiciary. On April 17, 2019, the Egyptian information Authority announced the final drafting of the amended articles submitted to the referendum. The following day, the National Electoral Commission announced citizens' call for a referendum on constitutional amendments within three days of its announcement without giving citizens the opportunity to read and discuss the amendments.

It should be noted that the only study published on the amendments at the time was prepared by the author of those lines and in order to arrive at the official text of the amendments, he turned to a member of Parliament to divert a copy enabling him to analyse the amendments and criticize them with the undertaking not to publish them before the amendments were officially announced¹⁴⁴.

¹⁴³ Ibid

¹⁴⁴ Ibid

Second: How did the constitutional amendments process in 2019 violate the necessary procedures and conditions for amending the constitution?

Article 226 of the Constitution establishes the procedures and conditions for amending the Egyptian Constitution. s Constitution ", which defines its nature as Relatively rigid constitution. it is not totally prohibited to amend it, such as rigid constitutions, and cannot be amended by the same procedures as amending ordinary legislation as flexible constitutions, The provisions of that article are constitutionally presumed to be adhered to as a condition of requesting an amendment to the Constitution and as the framework to be adhered to meet the constitutional standards required for the validity of the amendment process.¹⁴⁵ Article 226 grants the right to request an amendment to the Constitution to the President of the Republic or at least five members of Parliament and the article in this request requires that the articles to be amended and the reasons for the amendment be mentioned together with several procedures relating to the requirement that two thirds of the members of Parliament accept the amendment within 60 days of the acceptance of the amendment request prior to its submission to the People's Referendum; The full wording of the amendments was therefore kept hidden from the public for two full months within the corridors of Parliament, as if it were a war secret simply because of the fulfilment of article 226's term requirement and so that there was insufficient time for public opinion to discuss or challenge them.

What was a constitutional crisis in the process of passing the amendments was the last clause of Article 226, which prohibits the amendment of the texts on the re-election of the President of the Republic, which was one of the gains of the January 2011 Revolution and was established in the Constitution to ensure the circulation of power and prevent any future President from remaining in office for more than two presidential terms after Mubarak remained in office before the Revolution for 30 consecutive years. The amendments proposed in 2019 included an explicit amendment to the articles of election of the President of the Republic to enable the current President to benefit from the amendment and remain in office

¹⁴⁵ Art 226, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

for two new terms ending on 2030, which had already occurred and had been circumvented by different interpretations of the word " "Re-election", provided for in the article, is justified by the fact that it means the number of terms of office that may be assumed by a single President and that what will be amended is the term of office of the President from 4 to 6 years, which is not prohibited in accordance with article 226.

Not only this but also the number of terms referred to in the article on the election of the President of the Republic has been amended, but without reference to it, by changing its wording in secret without declaring it, which will be clarified later.

Third: The content of the most serious constitutional amendments in 2019:

- **Elimination of the transfer of power .. Amending the presidential term from 4 years to 6 years and concealing the amendment of the maximum presidential term and passing it without announcing:**

The first amendment to the articles on the election of the President of the Republic was based on article 140, which regulates the term of office of the President and the maximum presidential term that one President may assume, which was concerned with the prohibition of the amendment provided for in article 226 of the Constitution. To circumvent and justify the prohibition of the amendment, the report of the Legislative and Constitutional Affairs Committee of Parliament states that the prohibition provided for in article 226 of the Constitution relates to the number of times one President may be elected, which will not be amended, and that the amendment will focus only on the term of office of the presidency to be six years instead of four. However, this was not real. The amendment extended the number of times for re-election, but without this being announced by changing the wording of the paragraph on re-election without mentioning it either in the request for amendments by members of Parliament or in the report of the parliamentary committee which approved it.

Prior to its amendment, the original article provided that **"the President of the Republic shall be elected for a term of four years, beginning on the day after the expiration of his**

predecessor's term, and may be re-elected only once..." After the amendment, it read:
"The President of the Republic shall be elected for a term of six years, beginning on the day after the expiration of his predecessor's term, and shall not hold the presidency for more than two consecutive presidential terms..."¹⁴⁶

We can note the amendment of the term of office in the first part of the article to four instead of six, which was announced and justified by members as not contrary to the prohibition of the amendment provided for in article 226, but if we look at the third part of the article on the maximum number of elections we will find that its wording has been changed and not referred to in any way in the reports issued by Parliament or in the media reports that spoke about the content of the amendments at the time.

The change may seem like a mere change in wording, but it is in fact a fundamental change with a different interpretation and categorically contradicts the prohibition set out in article 226 of the Constitution. The third part of article 140 prior to the amendment meant that a single President could only serve as President twice in his lifetime and could not run again thereafter, The new wording inserted in the amendment allows the President to assume the presidency for more than two periods, without a limit, but with time intervals; That is, two consecutive terms of office, and then the term of office of another President, and then he can run for President for two new terms. Thus, the prohibition provided for in article 226 of the Constitution was circumvented without the Order being made public, and it was contested either by the people or by constitutional jurists who, of course, would have objected to the amendment as an express breach of the Amendment's prohibition under article 226.

This was not the only amendment to the articles of election of the President, but a transitional article was added giving the current President the right to avail himself of the amendment to article 140 by expiring six years from the date of his election as President of the Republic in 2018 instead of four years¹⁴⁷, i.e., that his current session increase by two years and that he may run for a third presidential term. That is, the likelihood that he will remain for an

¹⁴⁶ Art 140, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

¹⁴⁷ Art 241 bis, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

additional eight years after the expiration of his original four-year term in accordance with the original Constitution and thus be able to remain in office until 2030, with no prospect of standing in the forthcoming elections, especially after those who tried to run against him in the 2018 elections, whether by arrest, residence determination, restriction or disrepute.¹⁴⁸

Ironically, all Sisi's competing candidates, the regime resorted at the last minutes before the closure of the candidacy, the President of a party was prompted to run formally before the President, despite his being a supporter of the current President, in an attempt by the regime to satisfy the legal and constitutional form of the elections.¹⁴⁹

- **Amendments to the articles of the judiciary.. Overcoming the independence of the judiciary and undermining its powers:**

The judiciary has always served as a wall against the encroachment of the executive and legislative power on constitutional rights and freedoms. The Supreme Constitutional Court played a major role in establishing philosophical interpretations of the principles enshrined in the Constitution by applying them to laws challenged during the period of Mubarak's rule prior to the January 2011 Revolution. It ruled that many of the defective legislative texts issued during that period were unconstitutional. Therefore, the executive authority has always tried to select the President of the Constitutional Court to be obedient and does not address violations of the executive and legislative power in the field of law.

Besides the Supreme Constitutional Court, Egypt's judicial system comprises the courts of the State Council of Administrative judiciary, which are competent to hear appeals against

¹⁴⁸ "The President Candidate"... Presidency hopefuls fall in front of Sisi, January 24, 2018, Arabic CNN, <https://arabic.cnn.com/middle-east/2018/01/24/egypt-presidential-elections-candidates>

¹⁴⁹ For the Egyptian presidential elections: the head of the "Al-Ghad" party is running against Sisi at the last minute, 29/01/2018, France 24, <https://www.france24.com/ar/20180129-%D9%85%D8%B5%D8%B1-%D9%85%D9%88%D8%B3%D9%89-%D9%85%D8%B5%D8%B7%D9%81%D9%89-%D8%AA%D8%B1%D8%B4%D8%AD-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D8%AE%D8%A7%D8%A8%D8%A7%D8%AA-%D8%A7%D9%84%D8%B1%D8%A6%D8%A7%D8%B3%D9%8A%D8%A9-%D8%AD%D8%B2%D8%A8-%D8%A7%D9%84%D8%BA%D8%AF-%D8%A7%D9%84%D8%B3%D9%8A%D8%B3%D9%8A>

administrative decisions of the executive branch and have had many prominent roles in addressing illegal executive decisions during the Mubarak rule. At the beginning of the current President's reign, there was a direct clash between the State Council and the Presidency after the Administrative Court of the State Council ruled null and void an agreement signed unilaterally by the Egyptian President to cede two strategic islands in the Red Sea to Saudi Arabia, an issue known informatively for the Tiran and Sanafir crisis¹⁵⁰. Although the Executive Branch and Parliament have legally circumvented the Court's judgment, approval and ratification, the conflict between the Presidential Institution and the State Council has become evident and the judiciary has to be constitutionally undermined in order to become subordinate to the Executive and to prevent future obstruction of the decisions of the Presidential Institution, as has already been done in the constitutional amendments.

The amendments to the constitutional texts on the judiciary are as follows:

1- Placing the President of the Republic at the top of the administrative hierarchy of the judicial authority and granting him the power to choose the heads of judicial bodies and not only appointing them:

The first amendment focused on article 185 of the Constitution by adding two paragraphs, one of which gives the President of the Republic the power to appoint heads of agencies and judicial bodies from among the seven oldest deputies for a period of four years and then change them. The amendment differs from the situation prior to the amendment of the constitutional text, as the President of the Republic was limited to issuing the appointment decision only and was not competent to select the chairpersons of the judiciary and control their tenure. The President thus took control of the appointments of the entire judicial institution, which includes the Supreme Constitutional Court, the Council of State and the Court of Cassation. The second paragraph, which was added to article 185, provides for the

¹⁵⁰ Approval of the Tiran and Sanafir Agreement: A Saudi achievement, an Egyptian division... and an Israeli gain?, 06/22/2017, France 24, <https://www.france24.com/ar/20170622-%D9%85%D8%B5%D8%B1-%D8%A7%D9%84%D8%B3%D8%B9%D9%88%D8%AF%D9%8A%D8%A9-%D8%A5%D8%B3%D8%B1%D8%A7%D8%A6%D9%8A%D9%84-%D8%AA%D9%8A%D8%B1%D8%A7%D9%86-%D8%B5%D9%86%D8%A7%D9%81%D9%8A%D8%B1-%D8%AA%D8%B7%D8%A8%D9%8A%D8%B9-%D8%AC%D8%AF%D9%84-%D8%BA%D8%B6%D8%A8>

establishment of a Supreme Council of Judicial Bodies chaired by the President and the membership of Heads of Judicial Bodies, and that the Council shall control the appointment and discipline of members of judicial bodies. and that his opinion be taken in the bills governing the affairs of these bodies.¹⁵¹

2- Granting the President of the Republic the power to choose and appoint the Attorney-General:

The second amendment to the articles of the judiciary in the Constitution was to amend article 189 with regard to the appointment of the Attorney-General, who is the administrative head of the Public Prosecutor's Office responsible for investigating and initiating criminal proceedings. The amendment focuses on the selection and appointment of the Attorney-General by the president of three candidates to be determined by the Supreme Council of the Judiciary, which is presided over by the President of the Republic at the same time in accordance with the amendment previously explained; Thus, the Head of State became a controller of the Public Prosecutor's Office after his authority before the constitutional amendments was limited to issuing the decision to appoint the Public Prosecutor without controlling his choice.¹⁵²

This amendment is undoubtedly inconsistent with the role of the Public Prosecutor's Office as the Secretary of Public Prosecutions, turning it into a mere subordinate to the executive authority and the governing regime and an essential assistant in the politicization of the judiciary. It opens up the possibility of bringing opponents of the State to trial directly. This blows away the role of the Public Prosecutor's Office, which is supposed to be an integral part of the judiciary and is part of its autonomy and guarantee of rights and freedoms. It is of the essence that the former Attorney-General and all prosecutors refused when former

¹⁵¹ Art 185, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

¹⁵² Art 189, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

President Mohamed Morsi issued a constitutional declaration to remove the Attorney General from office in 2012.¹⁵³

3- Control over the selection and appointment of the President and members of the Supreme Constitutional Court:

As with other judicial bodies and the Public Prosecutor's Office, article 193 of the Constitution was amended to give the President of the Republic full power to choose and appoint the President of the Supreme Constitutional Court from among the five oldest Vice-Presidents of the Court after his power was limited to issuing the decision to appoint the President of the Court from among three chosen by the General Assembly of the Court. Not only that, the amendment include the President of the Republic's power to select and appoint all members of the Court, including the Vice-President of the Court and the Chairman of the Panel of Commissioners¹⁵⁴. The President of the Republic has thus become the sole controller of the highest court in Egypt's judicial structure and its most powerful authority. The court is the highest judicial authority and its rulings in accordance with the Constitution are binding on all State authorities; Of course, in the context of undermining the independence and impartiality of the judiciary, it was necessary to ensure that the Court did not confront the legislature's flawed laws from time to time.

4- Undermining the powers of the State Council... the last bastion of rights and freedoms:

Following the honourable position of the Egyptian State Council represented in the Administrative Court and the Supreme Administrative Court in addressing the agreement on the demarcation of the border between Egypt and Saudi Arabia under which the Egyptian

¹⁵³ Muhammad Ebaid, April 22, 2019, The Unconstitutional constitutional Amendments, ECRF, <https://www.ec-rf.net/%d8%a7%d9%84%d9%85%d9%81%d9%88%d8%b6%d9%8a%d8%a9-%d8%a7%d9%84%d9%85%d8%b5%d8%b1%d9%8a%d8%a9-%d9%84%d9%84%d8%ad%d9%82%d9%88%d9%82-%d9%88%d8%a7%d9%84%d8%ad%d8%b1%d9%8a%d8%a7%d8%aa-%d8%aa%d8%b7%d9%84-2/>

¹⁵⁴ Art 193, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

President ceded sovereignty over the islands of Tiran and Sanafir located in the Red Sea for Saudi Arabia and despite the fact that the Presidency and Parliament Foundation have been subjected to administrative judgements and have refused to implement them, However, it was the beginning of a declared conflict between the administrative judiciary and the presidential institution. The constitutional amendments were a final means of domesticating the Conseil and taming its leadership under the authority of the President.

The amendments did not simply control the selection and appointment of the Head of State council, but extended to diminish his constitutional powers, which were conferred upon him. Article 190¹⁵⁵, which provides for the powers and powers of the Council, has been replaced in several respects, First, the unilateral competence of the Conseil in legal matters was withdrawn, since the article provided for its sole competence in that authority. "**Alone**", which means the possibility of granting or participating in such jurisdiction to another party, which may render this competence completely ineffective. The Conseil fully deviates from this role, especially since its competence in this area has been limited by requests from administrative bodies for advisory opinions on legislation that causes conflicts in application or needs to be interpreted.

The second Council's mandate was to review and draft laws prior to their promulgation by Parliament. After the amendment, the word "**drafting**" was deleted, limiting the role of the Council in this regard to subsequent review of legislation and non-interference in the drafting thereof.

The third of the powers provided for in article 190 concerned the Council's authority to review draft contracts to which the State was a party and after the amendment, the phrase was added "**Contracts determined and valued by law**", which means the identification of certain types of State contracts to which the Council of State may consider appeals and involves a deliberate restriction of its authority in this regard, thereby neutralizing its control over that type of contract. In order to release the Executive's hand in concluding its contracts

¹⁵⁵ Art 190, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

without interference in its work, Especially after the abolition of the administrative judiciary of many of the State's flawed contracts, which was followed by numerous attempts to prevent the Council from considering that type of contract.

- **Amendments related to the armed forces are the most dangerous constitutional amendments .. Constitutionalizing coups and expanding the scope of military trials**

Constitutional amendments in 2019 included a package of amendments to the articles on the armed forces aimed at reformulating the task of the armed forces and imposing a new constitutional status for the army to set it up as an institution above the Constitution, its protector and an interpreter of its provisions and working to cover military coups d'état. The Supreme Council of the Armed Forces grants full administrative and executive independence from the President of the Republic by empowering it to select and appoint the Minister of Defence on a permanent and continuous basis and not transitional basis for two presidential sessions, as was in accordance with the Constitution prior to its amendment; as well as the wider application of military trials and the scope of military justice jurisdiction, which wastes constitutional rights and freedoms and, above all, the right to litigation and equality before the law.

1- Constitutionalization and legalization of military coups under the pretext of protecting the constitution, civil society and democracy:

In my view, this amendment is one of the most serious constitutional amendments. It relates to the reformulation of the role of the armed forces and the addition of new tasks to them. Article 200 of the Constitution was amended, which stipulated the role of the armed forces in protecting the country and safeguarding its security and territorial integrity. It is the natural role of the armed forces in all successive Egyptian constitutions.

After the modification, a sentence was added that states "**The preservation of the Constitution and democracy, the preservation of the fundamental elements of the State**

and its civilization, the gains of the people and the rights and freedoms of individuals¹⁵⁶

With no explication or explanation as to how the military assumed those functions, which could lead to a military coup d'état under the pretext of protecting the Constitution, civil and democracy in accordance with the interpretation of those concepts by the armed forces.

The new role added in accordance with the amendment makes the institution of the armed forces an official State within the State and makes it the guardianship of its institutions by virtue of the Constitution, but a watchdog of its application and interpretation of its provisions, It also constitutes a guardianship of the people and their will, empowers them to assume control by force and gives them jurisdiction over the three executive, legislative and judicial powers of the State. It would also have the right of coup d'état against any future elected President if the military were not to consent to him. Such a coup d'état would be based on the Constitution and not merely a customary military coup d'état with the logic of imposing force as before, which would legitimize military coups and give constitutional cover to military rule in Egypt.

Also, the words used in the amendment, such as "**preservation of the Constitution and democracy**" and "**the preservation of the fundamental elements of the State and its civilization**" and "**the gains of the people and the rights of individuals**" It has no clear standard or explanation to determine the extent of the armed forces' authority in this regard. Of course, the armed forces will have the binding interpretation and will decide what constitutes a threat to those principles and decide to address them.

It is noteworthy that the Supreme Constitutional Court, which has the inherent jurisdiction of constitutional control, It has no power to interpret the provisions of the Constitution and is prohibited by the Constitution¹⁵⁷, the Court Act and its explanatory memorandum¹⁵⁸ from

¹⁵⁶ Art 200, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

¹⁵⁷ Art 192, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

¹⁵⁸ The report of the Parliament's General Committee and the explanatory memorandum to the Supreme Constitutional Court Law No. 48 of 1979 issued on 08/29/79, published on 06/09/1979 in the Official Gazette

making interpretative judgements of its provisions. It cannot impose its constitutional control or its guardianship by applying it to any law it considers contrary to the constitution except in strict and restrictive circumstances and procedures. It may play its role in constitutional control only through complex procedures and specific and indirect conditions, contrary to the amendment to the role of the armed forces, whereby the army will make it a supra-constitutional authority which will interpret and apply the Constitution in accordance with its whims without requiring it to impose its guardianship on it and may accordingly interfere with and censor the actions of the three State authorities.

2- Expanding the scope of military trials for civilians:

Military trials represent the third aspect of the triangle of violation of the right to a fair trial along with the emergency courts and terrorism courts mentioned before in the study . thousands of civilians have been subjected to military trials in the past years since the January 2011 revolution to date, with a report by Human Rights Watch in 2011 stating that 12 thousand civilians had been tried militarily during the country's military council rule immediately after the revolution.¹⁵⁹ In addition, 7,400 civilians were tried militarily between October 2014 and March 2016.¹⁶⁰

Article 204,¹⁶¹ paragraph 2, of the Constitution, prior to its amendment, stipulated that "**... no civilian may be tried before a military court, except for offences that constitute direct aggression against military installations or military camps or their rule...**" This paragraph was amended by deleting the word "**direct**" to make any attack, whether direct or indirect, subject to military trial, which means broadening the scope and definition of

¹⁵⁹ Egypt: Retry or Free 12,000 After Unfair Military Trials, September 10, 2011, Human Rights Watch, <https://www.hrw.org/news/2011/09/10/egypt-retry-or-free-12000-after-unfair-military-trials>

¹⁶⁰ Menna Omar, 21-01-2018, Civilians before the Egyptian Military Court: Is there a margin for a fair trial?, Legal Agenda, <https://legal-agenda.com/%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A%D9%88%D9%86-%D8%A3%D9%85%D8%A7%D9%85-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A1-%D8%A7%D9%84%D8%B9%D8%B3%D9%83%D8%B1%D9%8A-%D8%A7%D9%84%D9%85%D8%B5%D8%B1%D9%8A-%D9%87/>

¹⁶¹ Art 204, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

aggression, which would result in wider criminalization and that any attack would be subject, even by saying, to military trials that lack the most basic guarantees of a fair trial and represent an exceptional judgement that should not be expanded by subjecting more civilians to that kind of unfair trial.

Not only that, but also the words "**Facilities that the armed forces protect**" were added to military installations and military camps. In my published study on constitutional amendments in 2019, I predicted that such an amendment would be followed by the promulgation of implementing legislation and decisions that would subject civilian State institutions to the protection of the army, which would necessarily result in any ordinary problem in any government interest being subjected to military prosecution and would lead to the criminalization of a new offender and more civilians being subjected to military trials.¹⁶² This was already the case in 2021, when the President of the Republic promulgated the Law on the Security and Protection of Public and Vital Installations and provided for the assurance and protection of public and vital installations by the armed forces including power plants, networks, towers, gas lines, petroleum fields, railway lines, road and bridge networks and other installations, utilities and public property, and that crimes against such installations should be subject to military jurisdiction.¹⁶³

3- the selection and appointment of the Minister of Defense is an exclusive authority of the Military Council:

Article 234 of the Constitution is one of the transitional articles which provided that the Supreme Council of the Armed Forces would be granted prior approval for the appointment of the Minister of Defence and, in its second paragraph, stipulated that its application should

¹⁶² Muhammad Ebaid, April 22, 2019, The Unconstitutional constitutional Amendments, ECRF, <https://www.ec-rf.net/%d8%a7%d9%84%d9%85%d9%81%d9%88%d8%b6%d9%8a%d8%a9-%d8%a7%d9%84%d9%85%d8%b5%d8%b1%d9%8a%d8%a9-%d9%84%d9%84%d8%ad%d9%82%d9%88%d9%82-%d9%88%d8%a7%d9%84%d8%ad%d8%b1%d9%8a%d8%a7%d8%aa-%d8%aa%d8%b7%d9%84-2/>

¹⁶³ Law No. 151 of 2021 amending some provisions of Law No. 136 of 2014 regarding insurance and protection of public and vital facilities, issued on 11-20-2021, Official Gazette 46 (bis)

be only to two presidential sessions after the introduction of the Constitution and then be null and void. In the amendment of the Constitution in 2019, the article was amended by deleting the second paragraph to become a permanent article with a general and continuing provision applicable throughout the period of entry into force of the Constitution¹⁶⁴, i.e. that the right of prior consent to the appointment or objection of the Minister of Defence becomes a special authority of the Military Council permanently rather than its previous status as a transitional provision. This implies the competence of the Supreme Council of the Armed Forces to have a special status different from all the State's authorities.

It is surprising that, although the judiciary presupposes independence from the executive, the selection and appointment of chairpersons of the judiciary becomes the authority of the President of the Republic. while the appointment of the army chief is outside the authority of the President of the Republic, although the army is presumed to be part of the executive branch, The amendment implies a full codification of the military junta's assumption of the army and its rendering it a non-State-administered institution as an accomplice to the Government of the State, and compels any future President of the Republic to comply with it forcibly and submit to its authority or the military council use its constitutional authority and reverse him.

¹⁶⁴ Art 234, Egyptian Constitution - for the year 2014 issued on 01-18 2014, Official Gazette 3 bis (a)

Conclusion

Repressive and dictatorial regimes always resort to twisted methods to tighten their control and strengthen their repression. The Egyptian regime, based on the founding of the pillars of its new repressive republic, has harnessed all its legal and political possibilities to entrench repression, undermine democracy and legalize human rights violations. It began by restricting freedom of speech and information circulation in conjunction with a series of legislation that ensures that it tightens its grip on the public sphere in order to prevent a new revolution, as it did in 2011.

The regime also used flawed pre-revolutionary laws to accuse opponents of spreading false news as a codified means of restricting freedom of opinion and expression and controlling the public sphere after the Egyptian regime realized the gravity of circulating opinions and ideas on social media sites, which was first credited with gathering the public at the time of the 25 January 2011 revolution, so that the crime of spreading false news became a common denominator in all cases fabricated to opponents of all times.

In addition, the regime has strengthened its legislative arsenal with new laws that undermine the right to a fair trial and the most basic principles enshrined therein, such as the presumption of innocence, the right to litigate and defend through terrorist and emergency laws, which are used in parallel, so that broad accusations from the provisions of the Terrorism Act are brought and prosecuted in accordance with the extraordinary emergency courts, in which are litigated to a single degree and unfair sentences are handed down without the slightest opportunity to challenge.

Furthermore, Egypt's legislation guarantees the legalization of serious crimes such as torture, enforced disappearance and extrajudicial killings to ensure the protection and impunity of perpetrators now and in the future. As far as the Penal Code is concerned, it has not moved in relation to the crime of torture, The physical element of the offence still requires that torture be in order to obtain a confession and that an accused person be charged so that the offence can be committed against the public official. and thus it is a gap leading to impunity for the

perpetrator since it is common that torture is not solely a person's focus in order to induce the person to confess, Indeed, the crime of torture occurs at all times and for meagre and flimsy reasons. Victims of torture in Egypt are not only defendants and victims within prisons and police stations, but also citizens who have not been charged and they have been tortured for personal disputes between them and a policeman.

The most serious of these is the legalization of crimes of enforced disappearance and extrajudicial killings classified as crimes against humanity through the Terrorism Act, so as to ensure that perpetrators are assured that they will not be prosecuted now or in the future and that the wheel of security repression is released more fiercely than during the pre-revolutionary period and the systematic use of that famous justification to confront terrorism, which had become a conduit for its crimes under the pretext of full and quick justice.

Authoritarian regimes have always resorted to getting rid of their political opponents by enacting laws full of hostile tendency and heavy criminalization and punishment to undermine individuals' rights and freedom of opinion and expression and to oppose State policy. And therefore, the existence of laws that lack constitutional legitimacy is not new practice of Egyptian legislative policy, which makes us insist that confronting terrorism is not an unjust law because such laws bring only more violence, hatred and extremism against the State.

In addition, the regime established its new state rule by amending the Constitution in 2019 to ensure that power was prevented from circulating and that the current President could remain in office for unlimited periods, as well as prejudice to the independence of the judiciary and ensure his full control of the judicial institution, which for decades had served as a barrier against the occupation and suppression of the executive branch and the immunity of freedoms.

Not only did the regime, by its constitutional amendments, create a new position for the military to make it a State above the State and above all its powers, so that the military would

become the supreme authority above the Constitution and its institutions, thereby cutting the way for political reform now or in the future in the event of the removal of the current President, so that any future President would be compelled to give loyalty and obedience to the military institution so as to ensure that he remained at the head of the State and not to be turned over by a Coup.

The violations enshrined in Egypt's legislation are incompatible with its international obligations under international human rights law, which oblige it to abide by the international covenants and instruments it has signed, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and others, to which the Egyptian regime circumvents its commitment and denies its continuing violations by codifying violations and repressive practices.

What has been analysed in this study is a very small part and does not constitute one per cent of the arsenal of repressive laws used by the regime to ascertain its violations over the past years. Through this study, we wanted to draw attention to what is happening in legislation, especially with human rights organizations and international institutions focusing on violations on the ground, without focusing on laws used to justify violations, where we found that confronting flawed legislation is the first to face its application on the ground.

It requires a constant struggle against the circle of repression, starting with raising the awareness of the Egyptian people about what is happening legislatively, in conjunction with international pressure and calling on the international community to recognize and see the violations and crimes of the existing Egyptian regime. To call upon its allies to fulfil their international human rights obligations and cease their narrow interests in the interest of the Egyptian people, who are at least suppressed by refraining from supporting Egypt's existing Egyptian regime and improving its image internationally or otherwise becoming partners in its crimes.

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