



**Egypt's Compliance with the International Covenant on Civil and Political Rights:  
The Death Penalty**

**Submitted by The Advocates for Human Rights**

a non-governmental organization in special consultative status with ECOSOC since 1996

**The World Coalition Against the Death Penalty**

and

**Reprive**

a non-governmental organization in special consultative status with ECOSOC since 2018

for the

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**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

**The World Coalition Against the Death Penalty** is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

**Reprive** is a charitable organisation registered in the United Kingdom (No. 1114900) in special consultative status with the United Nations Economic and Social Council ("ECOSOC") that provides free legal and investigative support to those who have been subjected to state-sponsored human rights abuses. Our clients belong to some of the most vulnerable populations in the world. In particular, we protect the rights of those facing the death penalty and deliver justice to victims of arbitrary detention, torture, and extrajudicial execution.

## EXECUTIVE SUMMARY

1. This report addresses Egypt's compliance with its human rights obligations with regard to the death penalty, building upon the report Reprieve submitted to the Committee in 2021 at the List of Issues stage, which reflected the situation in the country as of the end of 2020. Egypt still ranks in the top 5 countries for executions.<sup>1</sup> According to Reprieve, between January 2020 and March 2022, Egypt executed at least 230 people.<sup>2</sup> Egypt continues to use mass trials as a means to stifle dissent under the guise of combatting terrorism. Due process and fair trial guarantees continue to be lacking, particularly in capital cases. Reprieve reported that there had been at least 53 mass trials between 2011 and 2020, in which 2,182 people were sentenced to death.<sup>3</sup> Mass trials continue.
2. The concerns Reprieve set out in its List of Issues report persist. Egypt has not taken meaningful steps toward improving its death penalty practices. The country does not limit the death penalty to the most serious crimes, it is not taking steps toward a de jure moratorium on executions or ratification of the Second Optional Protocol, and it does not ensure that defendants in capital cases have a fair trial. Moreover, the expanding number of crimes eligible for the death penalty, particularly in cases of political dissent and terrorism, the high number of mass trials and evidence of due process violations, including the use of torture by state actors, raise significant concerns that Egypt is not making progress towards its obligations under the Covenant.

### **Egypt fails to uphold its obligations under the International Covenant on Civil and Political Rights**

#### **I. Egypt's death penalty practices are not in compliance with the Covenant (List of Issues Paragraph 11)**

##### *Egypt increasingly relies on the death penalty.*

3. The Committee requested, in light of its previous recommendations, data on death sentences and executions for the past five years and a response to reports of increasing executions since 2019. Egypt, in its Reply to List of Issues, referred to its previously submitted State Party Report and provided no additional information in response to this request.<sup>4</sup>
4. As Reprieve demonstrated in its List of Issues report, since the Committee's last session, Egyptian courts have stepped up imposition of death sentences and the number of executions has increased. Between January 2014 and February 2018, for example, courts recommended death sentences for at least 2,159 individuals.<sup>5</sup> In 2017, Egypt ranked third worldwide in

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<sup>1</sup> Reprieve, *The Death Penalty in Egypt – Ten Years After the Uprising*, (Jan. 28, 2022), 9 [hereinafter *Reprieve Report*]. Available online at <https://reprieve.org/uk/2021/05/24/the-death-penalty-in-egypt-ten-year-after-the-uprising/>.

<sup>2</sup> Reprieve and local partners collect and maintain data on the composition of death rows around the world, including Egypt. Figures referenced in this report were retrieved from that data or from the Reprieve Report, *supra* note 1.

<sup>3</sup> *Reprieve Report*, *supra* note 1, at 6.

<sup>4</sup> Human Rights Committee, *Egypt's responses to the list of issues for its fifth periodic report*, (Dec. 30, 2022), U.N. Doc. CCPR/C/EGY/RQ/5, ¶¶ 16–18 [hereinafter *Egypt's Responses*].

<sup>5</sup> Reprieve, *Stolen Youth: Juveniles, mass trials and the death penalty in Egypt*, (Mar. 28, 2018), 13. Available online at <https://reprieve.org/uk/2018/03/28/stolen-youths/>.

number of death sentences handed down.<sup>6</sup> In 2021, Egyptian courts sentenced at least 356 people to death, an increase from at least 264 in 2020.<sup>7</sup> At least 10 people sentenced to death in 2021 were sentenced for drug-related offenses.<sup>8</sup> According to Amnesty International, in 2021 Egypt carried out at least 83 executions, ranking third after China and Iran.<sup>9</sup> Of that number, eight of the people executed were known to be women.<sup>10</sup> 2021 figures mark a drop from at least 107 known executions in 2020.<sup>11</sup>

***Egypt does not limit the death penalty to the most serious crimes.***

5. As mentioned in Reprieve’s List of Issues report to the Committee, Egyptian law retains the death penalty for a long list of offenses which do not rise above the threshold of the “most serious crimes.”<sup>12</sup> Law No. 122 of 1989 identifies several drug-related offenses that are eligible for the death penalty, even if they do not result in death.<sup>13</sup> These crimes include exporting, importing, or producing any narcotic substances with the intent to trade or without legal authorization, forming or managing a gang to trade drugs, possessing, delivering, purchasing, or selling any drug with the intention of trading without legal authorization, and managing any premises for the use of drugs.<sup>14</sup> Such crimes are death-eligible if they have one or more of the following aggravating factors: using any person under the age of 21 or any relative under the accused’s care, or any person over whom the accused has authority; the accused has the duty to combat narcotic drugs; the accused uses the force of law to facilitate the offense; the accused commits the crime in a place of worship, an educational institution, or a public park; the accused offers or sells drugs to anyone under the age of 21 or induces such a person to use drugs by force or deceit; the narcotic substance is cocaine or heroin; or the accused person is a repeat offender of a drug-related offense.<sup>15</sup>
6. Even if no death results, a person may be sentenced to death for intentionally using explosives to commit crimes such as damage to public buildings or installations, or for other acts of terrorism not resulting in death, such as using terrorism to disturb the public order, damage the environment, cause detriments to communications or transportation or property, or preventing public authorities from working, or interrupting the order protected by laws or statutes.<sup>16</sup>

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<sup>6</sup> Human Rights Watch, *Egypt: Events of 2018*, (World Report 2019) [hereinafter *Events of 2018*]. Available online at <https://www.hrw.org/world-report/2019/country-chapters/egypt> (last visited Jan. 23, 2023).

<sup>7</sup> Amnesty International, *Death Sentences and Executions 2021* (2022), 12–13. Available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

<sup>8</sup> *Ibid.*, at 15.

<sup>9</sup> *Ibid.*, at 5.

<sup>10</sup> *Ibid.*, at 10.

<sup>11</sup> *Ibid.*, at 11.

<sup>12</sup> *Reprieve Report*, *supra* note 1, at 9.

<sup>13</sup> Law No. 122 of 1989 Amending Certain Provisions of Decree-Law No. 182 of 1960, Arts. 33–34.

<sup>14</sup> Law No. 122, Arts. 33–34.

<sup>15</sup> Law No. 122, Art. 34.

<sup>16</sup> Criminal Code Arts. 86, 102 C.

7. Military Rules Law No. 25 of 1966 authorizes the death penalty for 14 crimes, such as sedition and disobedience, destruction of property, disobedience, abuse of power or authority, and not reporting a crime listed in the first chapter of the military code.<sup>17</sup>
8. A variety of treason-related offenses are eligible for the death penalty even if they do not result in death.<sup>18</sup>
9. Egyptian law now includes several provisions which make the death penalty mandatory, an expanded list of offenses since the Committee last reviewed Egypt’s compliance with the Covenant. These provisions include: (1) any individual who acquires or possesses non-permitted weapons or related ammunition in a public place with intent to use the arms or ammunition in any act against public order and security or to undermine the system of government, the constitution, national unity and social harmony;<sup>19</sup> (2) using force, violence or intimidation to resist during or because of the law’s enforcement, resulting in the death of a person;<sup>20</sup> or (3) funding a terrorist group or terrorist act.<sup>21</sup>
10. The Confronting Terrorism Law No. 95 of 2015 introduced several new offenses that are eligible for the death penalty. The law broadly defines terrorism as “any use of force or violence or threat or terrorizing that aims to: Disrupt general order or endanger the safety, interests or security of society; harm individual liberties or rights; harm national unity, peace, security, the environment or buildings or property; prevent or hinder public authorities, judicial bodies, government facilities, and others from carrying out all or part of their work and activity.”<sup>22</sup> The law authorizes the death penalty for founding, regulating, managing, or being a leader of a terrorist group; financing terrorist groups; and collecting counterintelligence with the purpose of committing terrorist attacks, among others.<sup>23</sup> The law mandates the death penalty for funding a terrorist group or terrorist act,<sup>24</sup> as well as for several other offenses.<sup>25</sup>
11. Three different courts have jurisdiction over capital cases: civilian Courts of Appeal, Emergency State Security Courts, and Military Courts.<sup>26</sup> Death sentences issued by civilian courts are subject to a mandatory appeal to the Court of Cassation, but that court may consider only issues of law, including whether the lower court violated, misapplied, or misinterpreted the law, whether the verdict is legally invalid, and whether procedural irregularities had an effect on the verdict.<sup>27</sup> As Reprieve explained in its List of Issues report, 2017 amendments stripped the Court of Cassation of its authority to reverse convictions and remand for retrial, a

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<sup>17</sup> Law No. 25, 1966 on military rules (Al Ahkam Al ‘Askariya); *see also* Mohamed, Gaber, “Reforming the Death Penalty in Egypt: An Islamic Law Perspective” (Dec. 2017), 18 (Master of Laws Thesis, Indiana University Maurer School of Law), available online at <https://www.repository.law.indiana.edu/etd/52/>.

<sup>18</sup> Criminal Code Arts. 77, 78, 80, 1, 83, 91.

<sup>19</sup> Criminal Code Arts. 77, 78, 80, 1, 83, 91.

<sup>20</sup> Egyptian Initiative for Personal Rights, *The Death Penalty in Egyptian Law*, (Oct. 10, 2017), available online at [https://eipr.org/sites/default/files/reports/pdf/the\\_death\\_penalty\\_in\\_egyptian\\_law\\_final.pdf](https://eipr.org/sites/default/files/reports/pdf/the_death_penalty_in_egyptian_law_final.pdf); *see also* Mohamed, *supra* note 17, at 16–20.

<sup>21</sup> Human Rights Watch, *Egypt: Counterterrorism law Erodes Basic Rights*, (Aug. 19, 2015). Available online at <https://www.hrw.org/news/2015/08/19/egypt-counterterrorism-law-erodes-basic-rights> (last visited Jan. 23, 2023).

<sup>22</sup> Confronting Terrorism Law No. 95 of 2015, art. 2.

<sup>23</sup> *Ibid.*; *see also* Mohamed, *supra* note 17, at 19.

<sup>24</sup> Confronting Terrorism Law No. 95 of 2015, art. 13; *Counterterrorism*, *supra* note 21.

<sup>25</sup> Confronting Terrorism Law No. 95 of 2015, arts. 14, 16-17, 19, 22-27.

<sup>26</sup> Mohamed, *supra* note 17, at 23.

<sup>27</sup> *Ibid.*, at 22.

change which further undermines fair trial standards.<sup>28</sup> As Reprieve further explained, civilians are increasingly subject to the jurisdiction of Military Courts and can be charged in those courts simply if they are “accused of committing a crime on public property.”<sup>29</sup> Reprieve has observed that trials in military courts “are less likely to conform to international standards of due process and a fair trial.”<sup>30</sup> Decisions of the Supreme State Security Courts cannot be appealed and are irrevocable after being signed by the President.<sup>31</sup> Decisions of those courts may be appealed to the Supreme Military Court.<sup>32</sup>

## **II. Egypt’s death penalty practices are not in compliance with Articles 14, 19, 21, and 22 of the Covenant.**

### ***Egypt’s Emergency Law, State of Emergency and Emergency State Security Courts (ESSCs)* (List of Issues Paragraph 2)**

12. The Committee requested information on the Emergency Law (Law No. 162 of 1958), specifically 13 of the 18 amendments enacted in April 2020 that are not clearly related to public health development, but instead give the President additional powers to restrict civil liberties, expands the jurisdiction of military courts over civilians and gives security forces widespread detention and interrogation powers.<sup>33</sup>
13. Egypt, in its Reply to List of Issues, asserts a generic response that the amendments preserve the basic foundations of the state and serve to provide the legislative structure capable of confronting health pandemics, like COVID-19.<sup>34</sup>
14. The Emergency Law, and the Emergency State Security Courts (ESSCs) established under this law, give the Egyptian government extensive powers to suspend basic liberties and impose severe punishment, including the death penalty, with no right to appeal, in violation of Article 14 of the Covenant, which guarantees to every defendant the right to trial before a competent, independent, and impartial court, as well as a right to judicial review.<sup>35</sup>
15. On October 25, 2021, President Abdel Fattah al-Sisi announced that he would not extend the state of emergency in the country, which he originally declared in 2017.<sup>36</sup> Yet the effects of the state of emergency continue to this day. As Amnesty International reports:

This move will eventually end trials in Emergency State Security Courts (ESSCs), created under emergency laws, which among other things have imposed death sentences in grossly unfair trials. But while the end of the state of emergency meant that the authorities were not able to refer new cases to the emergency courts,

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<sup>28</sup> *Reprieve Report*, *supra* note 1, at 14.

<sup>29</sup> *Reprieve Report*, *supra* note 1, at 13.

<sup>30</sup> *Ibid.*

<sup>31</sup> Mohamed, *supra* note 17, at 26.

<sup>32</sup> *Ibid.*, at 25.

<sup>33</sup> Human Rights Committee, *List of issues in relation to the initial report of Egypt*, (June 27, 2022), U.N. Doc. CCPR/C/egy/Q/5, ¶ 2 [hereinafter *List of Issues*].

<sup>34</sup> *Egypt’s Responses*, *supra* note 4, at ¶¶ 16–18.

<sup>35</sup> Mohamed, *supra* note 17, at 22.

<sup>36</sup> Human Rights Watch, *Egypt: Ending State of Emergency a Start But Insufficient*, (Oct. 26, 2021). Available online at <https://www.hrw.org/news/2021/10/26/egypt-ending-state-emergency-start-insufficient> (last visited Jan. 23, 2023).

existing trials were set to continue to be heard before them. . . At the time the state of emergency was lifted, at least 36 men were under risk of execution, having been convicted and sentenced to death by ESSCs following unfair trials and with no possibility of appeal, while others remained on trial by ESSCs for offences punishable by death.<sup>37</sup>

16. In 2022, 65 NGOs called on President al-Sisi to immediately quash the 2021 verdicts imposed by ESSCs against seven arbitrarily detained human rights defenders, activists and politicians, convicted of allegedly fabricated charges and sentenced to long prison terms in unfair trials by emergency courts for peacefully exercising their human rights.<sup>38</sup>
17. Since March 2021, authorities have released dozens of people held for political reasons, but hundreds of human rights defenders, lawyers, political opponents, protesters, and others remain detained, and arrests of perceived critics and opponents continue.<sup>39</sup> Egyptian courts continued to impose the death penalty in cases of alleged political violence and terrorism in which defendants' claims of forced disappearance and torture frequently went uninvestigated by judges.<sup>40</sup> According to Reprieve and organizations on the ground, at least 56 out of 319 (17%) of executions known to have been carried out between January 2018 and March 2022 arose from events related to political opposition.<sup>41</sup>
18. Based on information gathered by Amnesty International, none of the people arrested in relation to the 2019 and 2020 protests have been referred to trial, and while authorities have released some protestors, they have not compensated people whom they arbitrarily detained.<sup>42</sup>

***Legislative Measures adopted to combat terrorism; Failure to respect due process guarantees for defendants in the terrorism circuit courts and the lack of impartiality of the judges in those courts (List of Issues Paragraph 4)***

19. In its 2002 Concluding Observations, the Committee voiced concern regarding Egypt's efforts to combat terrorism, noting that "the Committee considers that the effect of the very broad and general definition of terrorism given in Act No. 97 of 1992 is to increase the number of offences attracting the death penalty in a way that runs counter to the sense of article 6, paragraph 2, of the Covenant."<sup>43</sup> In the List of Issues, the Committee requested additional information on the various legal amendments to the Counter-Terrorism Law (No. 94/2015), the Law for the Securing and Protection of Public and Vital Facilities (No. 135/2014) and article 80 A of the

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<sup>37</sup> Amnesty International, *Egypt: Stop trials by emergency courts* (Oct. 31, 2021). Available online at <https://www.amnesty.org/en/latest/news/2021/10/egypt-stop-trials-by-emergency-courts/> (last visited Jan. 23, 2023).

<sup>38</sup> Central European University, *TIMEP Joins Coalition Calling on Egypt's President to Quash Emergency Court Verdicts* (Jan. 27, 2022). Available online at <https://www.ceu.edu/article/2022-01-27/timep-joins-coalition-calling-egypts-president-quash-emergency-court-verdicts> (last visited Jan. 23, 2023).

<sup>39</sup> Amnesty International, *Disconnected from reality: Egypt's National Human Rights Strategy covers up human rights crisis*, (September 2022), 4 [hereinafter *Disconnected*]. Available online at [https://www.amnesty.at/media/10111/amnesty-report\\_aegypten\\_disconnected-from-reality\\_egypts-national-human-rights-strategy-covers-up-human-rights-crisis\\_nhrs-report\\_september-2022.pdf](https://www.amnesty.at/media/10111/amnesty-report_aegypten_disconnected-from-reality_egypts-national-human-rights-strategy-covers-up-human-rights-crisis_nhrs-report_september-2022.pdf).

<sup>40</sup> *Ibid.*, at 23–25.

<sup>41</sup> Reprieve and local partners collect and maintain data on the composition of death rows around the world, including Egypt. Figures referenced in this report come from that data or from the *Reprieve Report*, *supra* note 1.

<sup>42</sup> *Disconnected*, *supra* note 38, at 31.

<sup>43</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee: Egypt*, (Nov. 28, 2002), U.N. Doc. CCPR/CO/76/EGY, ¶ 16.

Criminal Code, all of which reportedly have the similar effects as did the state of emergency in restricting the enjoyment of rights under the Covenant and broadening the number of offenses attracting the death penalty.<sup>44</sup>

20. As described in paragraph 10, the Confronting Terrorism Law No. 95 of 2015 introduced several new offenses that are eligible for the death penalty. In addition, several terrorism-related crimes that result in death are subject to the death penalty, including intentionally resorting to terrorism to disturb public order, hijacking, resisting a law-enforcement officer, taking hostages, using or attempting to use explosives, wounding or beating a person, and deliberately killing a person without premeditation.<sup>45</sup>
21. Even if no death results, a person may be sentenced to death for acts of terrorism not resulting in death, such as using terrorism to disturb the public order, damage the environment, cause detriments to communications or transportation or property, or preventing public authorities from working, or interrupting the order protected by laws or statutes.<sup>46</sup>
22. Military Courts have jurisdiction over civilians accused of crimes related to terrorism and national security, as well as crimes committed in border areas and crimes against military production facilities.<sup>47</sup> Law No. 136 of 2014 for the Securing and Protection of Public and Vital Facilities expanded the jurisdiction of military courts by placing all public property under military jurisdiction.<sup>48</sup>
23. Prosecutors from the Supreme State Security Prosecution (SSSP) detain thousands for months and sometimes years, based on terrorism-related accusations on the basis of reports by the National Security Agency (NSA), investigations that defendants and their lawyers are banned from accessing, without allowing them to challenge the lawfulness of their detention.<sup>49</sup> In 2021 alone, the SSSP had opened at least 2,380 investigations into terrorism-related or other national security offenses. From January to 20 September 2022, the SSSP has opened at least 1,634 such investigations.<sup>50</sup>

***Anti-Terrorism legislation restricting freedom of expression and press (List of Issues Paragraph 23)***

24. The Committee requested information regarding the allegations of an increase in arrests of journalists following the adoption of the anti-terrorism legislation and the addition of human rights defenders and political opponents to the “terrorists list” established by the Terrorist Entities Law (No. 8/2015).<sup>51</sup>
25. In response to the Committee’s Issue List, Egypt states it is “keen to provide a healthy environment and climate to enhance the role of society, including civil society organizations,

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<sup>44</sup> *List of Issues*, *supra* note 32, at ¶ 2.

<sup>45</sup> Criminal Code Arts. 68, 88, 102, 168, 240-241, 234.

<sup>46</sup> Criminal Code Arts. 86, 102 C.

<sup>47</sup> Tahir Institute for Middle East Policy, *Egypt’s Court System 101*, (Oct. 22, 2018). Available online at <https://timep.org/transitional-justice-project/egypts-court-system-101/> (last visited Jan. 23, 2023).

<sup>48</sup> Human Rights Watch, *Egypt: 7,400 Civilians Tried in Military Courts*, (Apr. 13, 2016). Available online at <https://www.hrw.org/news/2016/04/13/egypt-7400-civilians-tried-military-courts> (last visited Jan. 23, 2023).

<sup>49</sup> *Disconnected*, *supra* note 38, at 2.

<sup>50</sup> *Ibid.*

<sup>51</sup> *List of Issues*, *supra* note 32, at ¶ 23.

in contributing to the advancement of human rights. On the other hand, legal protection, as well as guarantees for the exercise of rights guaranteed by law and the Constitution, extends to the criminalization of any attack or intimidation of any citizen because of the exercise of those rights.”<sup>52</sup>

26. In practice, Egyptian authorities have used terrorism as a pretext for stifling criticism. As Reprieve demonstrated in its List of Issues report, Egyptian authorities have “used the criminal justice system, and the death penalty in particular, as a tool of retaliation and oppression to silence dissent.”<sup>53</sup> A 2022 Amnesty International report notes that, “[s]ince 2017, thousands including activists, protesters and human rights defenders have been convicted by ESSCs, and sentenced to long prison terms and the death penalty, following grossly unfair trials.”<sup>54</sup>
27. People detained on charges of crimes related to political or security issues are sometimes detained separately and subjected to verbal or physical abuse or punitive solitary confinement.<sup>55</sup> As Reprieve observed in its List of Issues report, “[t]he removal of fair trial protection and escalating death sentences and convictions is happening in the context of the systemic use of torture in the criminal justice system.”<sup>56</sup> A 2018 Amnesty International report documents “that dozens of detained human rights activists, journalists and members of the opposition held in solitary confinement are being targeted with horrendous physical abuse, including beatings by prison guards and having their heads repeatedly dunked into a container [with] human excrement. The intentional mental and physical suffering being inflicted on them[] results in panic attacks, paranoia, hypersensitivity to stimuli, and difficulties with concentration and memory.”<sup>57</sup> According to the report, six prisoners have been held in solitary confinement for more than four years.<sup>58</sup> On some occasions, solitary confinement is “used to discipline prisoners who complain of ill-treatment, as well as those caught sending letters communicating poor prison conditions.”<sup>59</sup>

### **III. Egypt’s death penalty practices are not in compliance with Articles 2, 6, 7, 9 and 16 of the Covenant.**

***Egypt continues to use confessions obtained through enforced disappearances in prosecuting crimes eligible for the death penalty and fails to properly investigate and prosecute officers engaging in this unlawful activity (List of Issues Paragraph 10).***

28. The Committee requested a description of the specific measures taken to: (a) explicitly criminalize the crime of enforced disappearance in domestic legislation; (b) investigate all allegations of disappearance, ascertain the whereabouts of disappeared persons and, if they are dead, return their remains to families, including information on the number of complaints

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<sup>52</sup> *Egypt’s Responses*, *supra* note 4, at ¶ 93.

<sup>53</sup> *Reprieve Report*, *supra* note 1, at 8.

<sup>54</sup> *Disconnected*, *supra* note 38, at 4.

<sup>55</sup> United States Department of State, Egypt 2021 Human Rights Report (2022), 6. Available online at [https://www.state.gov/wp-content/uploads/2022/03/313615\\_EGYPT-2021-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2022/03/313615_EGYPT-2021-HUMAN-RIGHTS-REPORT.pdf).

<sup>56</sup> *Reprieve Report*, *supra* note 1, at 15.

<sup>57</sup> Amnesty International, *Egypt: The use of indefinite solitary confinement against prisoners amounts to torture*, (May 7, 2018). Available online at <https://www.amnesty.org/en/latest/news/2018/05/egypt-the-use-of-indefinite-solitary-confinement-against-prisoners-amounts-to-torture/>.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*



registered, investigations and prosecutions of those found responsible for disappearances and the outcome of those prosecutions; and (c) establish a central public registry of all places of detention.<sup>60</sup>

29. Egypt asserts that a number of the claims of enforced disappearances are due to efforts of the terrorist group, the Muslim Brotherhood, pushing individuals into the ranks of other terrorist groups abroad, and then promoting allegations of the enforced disappearance of these individuals to exert pressure on the government.<sup>61</sup> This account is consistent with what Egypt reported to the National Council for Human Rights in 2016.<sup>62</sup>
30. Through its investigation of enforced disappearances in Egypt and reflected in its 2016 report, the National Council for Human Rights concluded that, although Egypt's Ministry of the Interior and other government officials aided in the investigation of 266 alleged cases of enforced disappearances, information sources claiming the whereabouts of the absentees were unclear and hindered the investigatory efforts.<sup>63</sup> There were also unexplained time gaps, ranging from days to months, between the disappeared person's official detention period and the time period during which absentees were, and in many cases remain, unaccounted for as described by family members of the disappeared persons.<sup>64</sup>
31. Human Rights Watch reports that judicial authorities have investigated very few officers (and prosecuted even fewer) for abuses, including enforced disappearances.<sup>65</sup> Amnesty International notes that prosecutors and judges have routinely failed to order investigations into complaints of torture and enforced disappearance by detainees or their relatives and lawyers, as well as into the causes and circumstances of deaths in custody.<sup>66</sup> Most judges reject arguments that forced confessions should not be presented as evidence by the prosecution.<sup>67</sup>
32. In the case of one woman arrested and accused of terrorism-related offenses in March 2019, Amnesty International reports that security forces falsified university teacher Manar Adel Abu el-Naga's arrest date and pressured her to say that she was arrested two days before her appearance in front of the Supreme State Security Prosecution (SSSP).<sup>68</sup> Manar Adel Abu el-Naga has not been allowed contact with her family, and "despite a July 2019 administrative court ruling ordering the Ministry of Interior to reveal [her] whereabouts, the ministry repeatedly

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<sup>60</sup> *List of Issues*, *supra* note 32, at ¶10.

<sup>61</sup> *Egypt's Responses*, *supra* note 4, at ¶47.

<sup>62</sup> National Council for Human Rights, *Report on Enforced Disappearance in Egypt* (Attachment No. 11), (June 2016), 13. Available online at [https://nchr.eg/Uploads/publication/en/NCHRreportonEnforcedDisappearanceinEgypt\(EN\)1577618137.pdf](https://nchr.eg/Uploads/publication/en/NCHRreportonEnforcedDisappearanceinEgypt(EN)1577618137.pdf).

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Events of 2018*, *supra* note 6.

<sup>66</sup> *Disconnected*, *supra* note 38, at 4.

<sup>67</sup> *See, e.g., ibid.*, at 25 (the judge in each of the Wael Tawadros and A.A. and al-M.A. cases convicted defendant(s) in reliance upon "torture-tainted confessions").

<sup>68</sup> Amnesty International, *Egypt End and redress shocking crimes against toddler and family forcibly disappeared for 23 months*, (Mar. 4, 2021). Available online at <https://www.amnesty.org/en/latest/press-release/2021/03/egypt-end-and-redress-shocking-crimes-against-toddler-and-family-forcibly-disappeared-for-23-months/>.

denied having [her] in its custody.”<sup>69</sup> Her husband, Omar Abdelhamid, remains forcibly disappeared since March 2019.<sup>70</sup>

***Egypt continues to use of torture and ill-treatment of prisoners in police custody to extract confessions, some of which are used to convict defendants of crimes punishable by death (List of Issues Paragraphs 11-13).***

33. The Committee requested, in light of its previous recommendations, response to reports of the widespread torture and ill-treatment of prisoners in police custody and detention centers, leading to death in many cases, and the use, in court, of confessions obtained under torture.<sup>71</sup>
34. Egypt claims the reports of torture and ill-treatment of prisoners are untrue and lack credibility, as the competent authorities initiate accountability measures against any violator and failure to support any transgressor if he violates the provisions of the law.<sup>72</sup> These accountability measures include investigation of these claims by “competent judicial authorities.”<sup>73</sup> Egypt also asserts that all detainees, whether serving a criminal penalty or executing pretrial detention, enjoy rights including receiving visits from their families, correspondence with them, and visits by their lawyers, no matter the charge.<sup>74</sup> Egypt’s criminal procedure requires people on death row, and their families, to be notified of their execution dates in advance.
35. Notwithstanding the foregoing, Reprieve in its List of Issues report documented the recent practice of executing people suddenly and without notifying their families,<sup>75</sup> and at least one case in which Egyptian authorities have subjected a child to torture and subsequently sentenced him to death.<sup>76</sup> According to Reprieve, Egypt engages in the “[s]ystemic use of torture” in its criminal justice system.<sup>77</sup>
36. Civil society organizations continue to document widespread use of torture in Egypt, including reliance on evidence obtained through torture. Sixteen men sentenced to death in July 2021 are at imminent risk of execution, including two brothers, A.A. and al-M.A., who were subjected to enforced disappearances and torture by the NSA.<sup>78</sup> The judge relied on torture-tainted “confessions” and testimonies by policemen to convict them.<sup>79</sup> It is routine for judges and prosecutors to ignore allegations of torture during investigations, before trial, or during trial, despite defendants’ assertions and descriptions of the methods of torture used, especially in cases involving torture by National Security Agents.<sup>80</sup>

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<sup>69</sup> *Ibid.*

<sup>70</sup> Amnesty International, *Report 2021/22: The State of the World’s Human Rights* (2022), 154, available at <https://www.amnesty.org/en/location/middle-east-and-north-africa/egypt/report-egypt/>.

<sup>71</sup> *List of Issues*, *supra* note 32, at ¶13.

<sup>72</sup> *Egypt’s Responses*, *supra* note 4, at ¶ 54.

<sup>73</sup> *Ibid.*, at ¶ 54.

<sup>74</sup> *Ibid.*, at ¶ 61.

<sup>75</sup> *Reprieve Report*, *supra* note 1, at 4.

<sup>76</sup> *Ibid.*, at 11–12.

<sup>77</sup> *Ibid.*, at 15.

<sup>78</sup> *Disconnected*, *supra* note 38, at 25.

<sup>79</sup> *Ibid.*

<sup>80</sup> Giorgio Caracciolo et al., *Torture in Egypt: Systemic and Systematic*, (Dignity Publication Series 2021), 17. Available online at <https://www.dignity.dk/wp-content/uploads/publication-series-38.pdf>.

#### IV. Suggested recommendations for the Government of Egypt

37. The coauthors of this report suggest the following recommendations<sup>81</sup> for the Government of Egypt:

- Abolish the death penalty and replace it with a sentence that is fair, proportionate, and in compliance with international human rights standards and in the interim;
  - immediately institute a de jure moratorium on executions;
  - prohibit judicial authorities from sentencing any person to death for an offense in which the defendant did not intentionally kill another person;
  - repeal the mandatory death penalty and ensure that all defendants may present evidence in mitigation at the time of sentencing.
- Review all death sentences issued or recommended by Egyptian courts since 2002 with a view to the following recommendations:
  - Immediately order the retrial and resentencing of any person sentenced to death who may have been under 18 years of age at the time of the alleged offense under provisions of the Child Law;
  - Fully investigate any allegations of torture and set aside any death sentences resulting from evidence tainted by torture;
  - Quash all death sentences handed down by ESSCs and order retrials in front of civilian courts;
  - Commute all death sentences resulting from mass trials;
  - Ensure that any person sentenced to death on a mandatory basis is entitled to a resentencing hearing where the defense can present evidence in mitigation;
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights;
- Conduct a comprehensive review of all criminal laws and amend them to ensure that the death penalty is available as a penalty only for crimes in which the defendant committed an intentional killing;
- Ban ESSCs from handing down death sentences and ensure that every person sentenced to death has the right to appeal the judgment to an independent appellate court;
- Immediately end the use of mass trials;
- Immediately review all death sentences to identify people sentenced to death who were under the age of 18 at the time of the alleged offense;

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<sup>81</sup> Some of these recommendations are adapted from the *Reprieve Report*, *supra* note 1, at 18.

- Establish procedures to prohibit all courts from sentencing any person to death for an offense committed when under the age of 18, and require the prosecution to prove beyond a reasonable doubt that a defendant was at least 18 years of age before seeking the death penalty;
- Prohibit military courts from sentencing civilians to death;
- On at least an annual basis, publish comprehensive data on death sentences and executions, disaggregated by sex, age, nationality, race/ethnicity, date of offense, date of conviction, crime of conviction, sentencing authority, number of codefendants, relationship (if any) to the victim, number of minor children of the person sentenced to death, status of any appeal or petition for clemency/pardon, and current location;
- Repeal overly broad provisions of the Emergency Law that are not directly applicable to protecting the State's legitimate public health interests;
- End the use of torture and ill-treatment, including enforced disappearances, in compliance with the Covenant, and establish independent mechanisms to hold perpetrators accountable;
- Render inadmissible any evidence obtained through use of torture and ill-treatment, including enforced disappearances, except when used to prove that a person has engaged in torture or enforced disappearances;
- Implement and maintain credible record-keeping of all detained prisoners to aid proper investigation into claims of enforced disappearances;
- Conduct credible, independent, and impartial investigations into all allegations of torture, prioritizing allegations raised by persons who have been sentenced to death and by persons who are charged with crimes that are subject to the death penalty;
- Ensure that all persons potentially facing a sentence of death are represented by their own counsel at all stages of judicial proceedings, including during all interrogations, and at trial have the opportunity to present witnesses and other evidence in their defense and question witnesses offered by the prosecution;
- Ensure that detention conditions comply with the Nelson Mandela Rules;
- Ensure that the use of solitary confinement complies with Rules 43-46 of the Nelson Mandela Rules.