POMED PROJECT ON MIDDLE EAST DEMOCRACY

REPORT

The Role of the Public Prosecution in Egypt's Repression

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SUMMARY

- The Office of the Public Prosecution, a powerful entity within the Egyptian judiciary, has been a driving force in the vast crackdown on dissent that has unfolded since the overthrow of President Mohamed Morsi in July 2013.
- In theory, the Public Prosecution is an independent, impartial institution, defending the rights of all Egyptians before the law. In practice, it has used a variety of tactics to target those whom the regime considers enemies of the state, including opposition groups, human rights defenders, journalists, students, and other dissenting or critical voices.
- The Public Prosecution often brings criminal charges based on flawed evidence, including defective evidence and "confessions" obtained through torture and ill-treatment; such "evidence" has been used to convict innocent people.
- The Public Prosecution has played a key role in the forced resignation of dozens of independent judges, and has abused legal provisions for pretrial detention to keep thousands of citizens locked up unfairly, in many cases exceeding legal limits.
- The Public Prosecution generally has failed to pursue credible allegations of wrongdoing by police, security agencies, and other "protected groups."

INTRODUCTION

Egyptian President Abdel Fattah al-Sisi and senior Egyptian officials often respond to criticisms of controversial prosecutions or convictions by asserting that the country's judiciary is an impartial institution, independent of the executive branch.[1] This rosy picture is belied by two recent events in spring 2017, both highly illustrative: al-Sisi's push to bring the judiciary under control by usurping the power to nominate senior judges, and his transparent influence, confirmed by U.S. administration officials, over detained Egyptian-American children's rights activist Aya Hijazi's

1 See for example "Mohamed Fahmy Case: Egypt's Sissi Will Not 'Interfere in Judicial Rulings'," *Associated Press*, June 24, 2014, http://www.cbc.ca/news/world/mohamed-fahmy-case-egypt-s-sissi-will-not-interfere-in-judicial-rulings-1.2685341; "I Never Interfere with Egypt's Court System, Sisi Tells Judges," *Ahram Online*, April 23, 2016, http://english.ahram.org.eg/NewsContent/1/64/204255/Egypt/Politics-/I-never-interfere-with-Egypts-court-system,-Sisi-t.aspx

criminal proceedings.[2] These and many other incidents show how Egypt's criminal justice system is subordinate to presidential dictates and regime interests, and is routinely biased in favor of those who support the regime and against those whom the state considers opponents. This system of injustice has been at the center of the wave of repression sweeping Egypt since 2013. According to human rights organizations, no fewer than 60,000 Egyptians have been put behind bars, are languishing in pre-trial detention, or are imprisoned after trials that lack credible evidence and due process.[3] Detainees report suffering torture and other abuses.[4] Most of the victims of this repression are members or supporters of the now-banned Muslim Brotherhood, but Egyptians of many political colorations, not only Islamists, have been swept up in the crackdown.

This paper examines the central role of the Office of the Public Prosecution in the crackdown. Among its significant powers, the Public Prosecution has exclusive authority to investigate citizens for alleged crimes, to bring criminal charges, and to refer cases to trial. By law, the Public Prosecutor and his staff are impartial representatives of the state, but in practice their actions routinely deny justice to citizens whose actions the state deems criminal. Egypt faces genuine terrorism threats to which the criminal justice system must respond, but Egyptian law also criminalizes many peaceful political activities.

The Public Prosecution has wielded its powers to investigate, detain, bring charges against, and send to trial the country's top anti-corruption official; journalists; students; professors; youth activists who led the January 2011 uprising against former president Hosni Mubarak; human rights defenders; novelists; Muslim Brotherhood leaders and members; other Egyptians; and even foreign nationals. At the same time, the Public Prosecution has failed to bring charges against many policemen and other security officials involved in violence and other abuses against citizens, and has conducted incomplete or flawed investigations of members of Hosni Mubarak's ousted regime accused of corruption and rights violations.

Since its creation after the Free Officers Revolution of 1952, the Public Prosecution has always played an important political role in support of the incumbent regime, protecting its officials and pursuing opponents for political crimes while asserting it is impartial and professional. Its current powers and violations generally are similar to those of the past. The difference is that while during Mubarak's rule, the Public Prosecution sought to maintain a positive image before the public, there is today more repression and even greater excesses in violation of the rule of law, and the office no longer seems concerned about maintaining even the appearance of neutrality.

This paper describes the history of the Public Prosecution, the process of selecting the Public Prosecutor and his staff, and its powers and responsibilities, including the State Security Prosecution, with a focus on its role in the repression of dissent since July 2013.[5]

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2 Zachary Cohen, Jeremy Diamond and Jeff Zeleny, "Trump: 'We Are Very Happy to Have Aya Back Home,'" *CNN,* April 21, 2017, http://www.cnn.com/2017/04/21/politics/aya-hijazi-egypt-aid-worker-trump-administration/index.html

3 Arabic Network for Human Rights Information, "There is Room for Everyone…Egypt's Prisons Before & After January 25 Revolution," September 5, 2016, http://anhri.net/?p=173532&lang=en. The International Federation for Human Rights (FIDH) suggests that as many as 100,000 Egyptians have been detained on political charges since a military-backed government took power in July 2013: see FIDH, "Five Years After the Revolution: Egypt's Poorest Human Rights Record in its Modern History," January 22, 2016, https://www.fidh.org/en/region/north-africa-middle-east/egypt/five-years-after-the-revolution-egypt-s-poorest-human-rights-record

4 A human rights organization focused on police violations counts 474 cases of extrajudicial murder and 700 reports of torture in 2015 alone. See: Al-Nadeem Center for Rehabilitation of Victims of Violence, "2015 in Numbers," June 24, 2016, http://www.alnadeem.org/en/content/2015-numbers

5 The name of this office in Arabic is *al-Niyaba al-'Amma*, and the head of the office is *an-Na'ib al-'Amm*. This paper will use 'Public Prosecution' to refer to the office and 'Public Prosecutor' to refer to its head, except when quoting a source that uses different terms. "General Prosecution" and "Prosecutor General" are also commonly used in English to refer to the same office and position.

OVERVIEW

The Office of the Public Prosecution is an independent body within the Egyptian judiciary. It is headed by the Public Prosecutor, a senior judge, who is assisted by one or more deputy prosecutors, as well as by a number of prosecuting attorneys and office staff at various levels in offices throughout the country.[6]

In theory, the Public Prosecution is a neutral institution: its mission is to implement the Penal Code, without bias against any party. The Public Prosecution is supposed to ensure that arrests and detentions are carried out legally and that the rights of prisoners are upheld. But in practice, especially under the current political circumstances, the Public Prosecution is often adversarial towards the accused, implementing the intent of the police and other state agencies and pressing charges without evidence that a crime has been committed. In 'public interest cases' in which the defendants are part of the executive branch, there are shortcomings in collecting evidence, deliberate delays in initiating investigations, and deliberate destruction or suppression of evidence.

Legally, the Public Prosecution is not held accountable to any institution, but in reality its members are not politically independent. They are closely aligned with the policies of the Egyptian regime and work closely with the police and other security agencies to protect the state's perceived interests. One indication of the importance of the Public Prosecution to the current regime is that at a time of severe pressure upon public finances and austerity measures, the government has raised the salaries of prosecutors five times and awarded them bonuses. Similar benefits have been given to other pillars of the regime, such as judges, military officials, and police.[7]

The Public Prosecution has been central to Egypt's authoritarian system since the July 1952 Revolution. Before that time, under the monarchy, a permanent group of investigative judges held exclusive jurisdiction over the investigation of all crimes. After seizing power in 1952, the group of military officers who made up the Revolutionary Command Council (RCC) issued Law 353 by decree. This decree abolished the position of sitting investigative judges, instead appointing them on a temporary basis to investigate certain cases, and granted investigative powers to the Office of the Public Prosecution. The RCC, seeking to control the legal process in cases that could threaten the regime's power, combined investigation and criminal accusation powers into one office that it could more easily manage.[8]

The Public Prosecutor is one of the most senior (and most sensitive) positions in the Egyptian

6 Prosecuting attorneys and their subordinates are responsible for the operations of the Public Prosecution within specified jurisdictions. Each prosecuting attorney oversees a team that represents the government in court in criminal cases, tries cases, interviews witnesses or victims, evaluates police reports, and performs legal research to plan the prosecution of each case. There are about 80 prosecuting attorneys distributed around the 27 governorates of Egypt. Traditionally the Office of the Public Prosecution is a major feeder for judges, and prosecuting attorneys are eligible to be selected as judges after they reach the age of 30.

7 Ashraf El Sayed, "*Majlis alqada' al'aelaa ywafq ealaa manh mukafa'at hafiz minassat lilqudat walnniabat aleamm*" [Supreme Judicial Council agrees to grant a bonus incentive for judges and public prosecutors], *Misr 5*, September 28, 2014, https://goo.gl/BR6RYr; Karima Mohamed, "*Saba'at aimtiazat lil qudat fi a'ahd Elzend*" [Seven privileges granted to judges during al-Zend's era], *Al-Mesryoon*, September 14, 2015, https://goo.gl/oi4PqS; Ahmed Sa'd, *"300 milyun junayh mukafa't lil qudat wa a'eda' alnniaba khilal 40 yawman"* [300 million pounds in bonuses for judges and members of the prosecution within 40 days], *Shorouk News*, October 14, 2015, http://www.shorouknews.com/news/view.aspx?cdate=14102015&id=36133035-3c9e-4fcd-b81d-7d1c98d163b1; *"Al'aelaa lilqada' yuqarrir sarf mukafa'at lilqudat bimunasabat al'iijaza alssanawia"* [Supreme Judicial Decides to reward judges on the occasion of annual leave], *al-Bedaiah*, May 31, 2016, http://albedaiah.com/news/2016/05/31/114177; Ahmed Rabee', "*6500 junayh likull qad bimajlis alddawl bimunasabet Sha'ban*" [6500 Egyptian pounds (EGP) for each judge of the State Council in celebration of the Hijri month of Sha'ban], *El Watan*, May 10, 2016, http://www.elwatannews.com/news/details/1161896; Mohamed Ali, "*Sarf 6 alaf mukafa'at majhudat ghyr aedia lil qudat wa 'aeda' alnniaba*" [Supreme Judicial Council rewards 6000 Egyptian pounds to each judge and member of the prosecution for their unusual efforts], *Dotmisr*, March 6, 2016, https://goo.gl/17GDtn

8 Mahmoud Mostafa Ali, "*Tatawur qanun al-igra'at fi Misr wa ghayriha min al-duwal al-arabiya*" [The development of criminal law in Egypt and other Arab countries], cited in *Al-qada' wal-islah al-siyasi* [The Judiciary and Political Reform] (Cairo, Egypt: Cairo Institute for Human Rights Studies, 2006), p. 133. http://www.cihrs.org/wp-content/uploads/2009/03/%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A9.pdf

state. Since 2011, as a result of the political turmoil after the Mubarak era, there have been four Public Prosecutors. Abdel Maguid Mahmoud was serving in the role at the time of the January 2011 uprising, having been appointed by Mubarak in 2006. Mahmoud's tenure was relatively uneventful until after Mubarak's ouster, when he was tasked with prosecuting Mubarak regime officials charged with inciting and facilitating the killing of protesters during the 18-day uprising. The 2012 trial ended in acquittals for most of the defendants.[9]

The ensuing public uproar over the exonerations led Mohammad Morsi, who by this point had become President, to try to push Mahmoud out by naming him as Egypt's Ambassador to the Vatican in October 2012.[10] Mahmoud refused the post, preferring to stay on as the Public Prosecutor. According to the Constitution, the President could not force the Public Prosecutor to resign.[11] Mahmoud stayed on in his position until Morsi took another opportunity to sack him a month later, in November 2012, after issuing a constitutional declaration expanding his powers, rendering his decisions immune to judicial review.

Morsi replaced Mahmoud with Tal'at Abdallah, a decision that met with protest from the influential Judges Club, which caused a schism within the Public Prosecution itself.[12] Morsi's appointment of Abdallah was invalidated by the Court of Cassation, the highest ordinary court, immediately after Morsi was overthrown on July 3, 2013. The following day, Abdel Maguid Mahmoud was returned to his position by the Supreme Judicial Council, a senior-level body that oversees judicial appointments, promotions, and administrative matters, confirming the Court of Cassation's decision. Mahmoud chose to step down on July 5, considering it "improper" to prosecute those who had forced him to resign.

On July 10, 2013, Interim President Adly Mansour appointed Hisham Barakat as the new Public Prosecutor.[13] Barakat was highly controversial, as he had served as an active partner to the military and police in the repression that unfolded after July 2013. As Public Prosecutor, Barakat presided over the sentencing to death of Muslim Brotherhood leaders, along with harsh sentences for thousands of cadres. He was also instrumental in rolling back the hard-won freedoms of protest and free expression that Egyptians enjoyed after the 2011 revolution. He zealously enforced a repressive new demonstrations law and imposed gag orders and other measures intended to interfere with independent journalism and civil society work.[14]

Barakat was assassinated on July 1, 2015, in a shocking car bomb attack in Cairo. On September 19, 2015, Nabil Sadiq was appointed as Barakat's successor, and remains at the post today. Sadiq is a former police officer who graduated from the Police Academy in 1976, and left the police service to join the judiciary a few years later. Egyptian authorities have charged 67 defendants in Barakat's

9 "Egyptian 'Battle of the Camels' Officials Acquitted," *BBC*, October 10, 2012, http://www.bbc.com/news/world-middle-east-19905435

10 "Morsi Dismisses Mubarak-era Prosecutor General Abdel-Meguid Mahmoud," *Ahram Online*, October 11, 2012, http://english.ahram.org.eg/NewsContent/1/0/55393/Egypt/0/Morsi-dismisses-Mubarakera-prosecutor-general-Abde.aspx

11 On the ability of the president to force the Public Prosecutor to resign, the general rule was found in Article 168 of the 1971 Constitution, which guarantees the independence of members of the judiciary, and Article 67 of the Judicial Authority Law. In a 1984 amendment to that article, the general prohibition on executive removal of members of the judiciary was confirmed as applying the Public Prosecutor as well.

12 "Mubarak-Era Prosecutor General Reinstated," *Mada Masr*, July 3, 2013, http://www.madamasr.com/en/2013/07/03/news/u/mubarak-era-prosecutor-general-reinstated/

13 "Hisham Barakat Appointed Egypt's Top Prosecutor," *Ahram Online*, July 10, 2013, http://english.ahram.org.eg/NewsContent/1/64/76160/Egypt/Politics-/Hisham-Barakat-appointed-Egypts-top-prosecutor.aspx

14 Omar Said, "Decision to Refer Journalists to Court Puts Prosecutor General at Odds with Journalists Syndicate," *Mada Masr*, May 26, 2015, http://www.madamasr.com/en/2015/05/26/feature/politics/decision-to-refer-journalists-to-court-puts-prosecutor-general-at-odds-with-journalists-syndicate/

assassination. The trial, which has resulted in 28 death sentences to date, has been marred by reports of torture of the defendants.[15]

ROLE AND POWERS

The Public Prosecution has significant powers as defined by Article 189 of the 2014 Constitution and Articles 21-27 of the Judicial Authority Law.[16] The most important of these duties and powers are:

- The Public Prosecution has exclusive power to investigate those accused of crimes, to bring criminal charges against them, and to refer cases to trial.
- The Public Prosecution can initiate a criminal investigation based on a complaint filed by a citizen or a government official, or on its own authority (it can decide independently to launch investigations of those whom it deems suspects). It also determines whether interrogation, searches, or arrest are necessary, and if so, technically it must issue a warrant, which police are generally sent to implement.
- Following an arrest, the Public Prosecution may keep a suspect detained for up to four days for interrogation. After the initial four days, prosecutors may seek approval from a judge to remand the suspect to pretrial detention to continue the investigation, or to decide whether to bring charges and take the case to trial.
- The Public Prosecution includes the State Security Prosecution, which handles the investigation and charging of political crimes—that is, crimes committed against the state and the public interest.
- The Public Prosecution prepares case files that include the charges and a summary of the evidence. The Prosecution is an inseparable part of the criminal court system, such that trials cannot proceed without the presence of its representative in the courtroom.
- It oversees and inspects detention centers and prisons and supervises the carrying out of sentences (the Interior Ministry is directly responsible for detention centers and prisons).
- The Public Prosecution can refer investigations to investigative judges in most cases. They have most of the investigative powers of public prosecutors but cannot initiate criminal proceedings.
- The Public Prosecution can issue travel bans and request that courts impose asset freezes against those under criminal investigation and defendants awaiting trial.
- The Public Prosecution can initiate disciplinary cases against judges and prosecutors. The Office offers its opinion regarding whether certain judges should be retired or reassigned to non-judicial duties.
- The Public Prosecution submits death sentences to the Court of Cassation for review, accompanied by briefs expressing its opinion concerning the sentences.

SELECTION OF THE PUBLIC PROSECUTOR

Prior to the overthrow of Mubarak, the president had the exclusive power to appoint the Public Prosecutor. The first post-2011 Constitution, ratified in December 2012, strengthened the judiciary's role in the process, in response to the

15 Adham Youssef, "Detainees in Hisham Barakat Assassination Case Subjected to Violations: Lawyer, Families," *Daily News Egypt*, July 30, 2016, http://www.dailynewsegypt.com/2016/07/30/detainees-in-hisham-barakat-assassination-case-subjected-to-violations-lawyer-families/; "Egypt upholds death sentences for Islamists over prosecutor killing," *Deutsche Welle*, July 22, 2017, http://p.dw.com/p/2h0Wy

16 Judicial Authority Law No. 46 of 1972.

judiciary's demands for greater autonomy.[17] The 2012 Constitution specified that the Public Prosecutor was to be appointed by presidential decree, based on the Supreme Judicial Council's selection from among the senior judiciary: the vice presidents of the Court of Cassation, the presidents of the Courts of Appeal, or the Deputy Public Prosecutors.[18] The 2014 Constitution continues this approach, and clarifies that the Supreme Judicial Council chooses the nominee for the President to *formally approve*.[19] The 2014 Constitution also specifies that the Public Prosecutor's term is four years, or until he reaches the age of retirement, and that he may not serve more than one term.[20]

Notably, the Judicial Authority Law has not yet been amended to conform to the Constitution. The law still states that the Public Prosecutor is appointed by the President, with no mention of Supreme Judicial Council's role. Nor has the term of office been amended; the Judicial Authority Law states that the Public Prosecutor may remain in office for life.[21]

Despite these changes in the appointment process, the position is still chosen with extreme care, based largely on the nominee's loyalty and obedience to the regime. In Egypt's current political system and configuration of power, it is difficult to imagine that the President would be asked to approve a nominee whom he did not view as fully loyal. The members of the Supreme Judicial Council who select him are themselves high-level members of the regime. The security agencies assess whether a nominee has the right qualities. Furthermore, according to reports in the Egyptian media, President al-Sisi himself played a determining role in the selection of the current Public Prosecutor Nabil Sadiq.[22]

Deputy Public Prosecutors and prosecuting attorneys also require approval by the Supreme Judicial Council prior to the issuance of a presidential decree confirming their appointment. Even though their appointment is contingent on the Council's approval, this does not grant them autonomy or independence. They are subservient to the Public Prosecutor, who is, as explained, appointed by a decree from the President.

The system of choosing prosecuting attorneys is replete with patronage and favoritism. Most of those appointed are sons of judges, high-ranking police officials, and military officers, and can be chosen regardless of their legal credentials and merit.[23] As the former Minister of Justice Ahmed al-Zend said, "The appointment of the sons of judges will continue

17 Nathan Brown, "Why Do Egyptian Courts Say the Darndest Things?" *The Washington Post*, March 25, 2014, https://www.washingtonpost.com/news/monkey-cage/wp/2014/03/25/why-do-egyptian-courts-say-the-darndest-things/

18 The Supreme Judicial Council's seven members are President of the Court of Cassation, who serves as the Council's president; the two senior-most Vice-Presidents of the Court of Cassation; the Presidents of the Courts of Appeal for Cairo, Alexandria, and Tanta; and the Public Prosecutor. As Nathan Brown explains, "[T]he Council manages judicial appointments, promotions, and administrative affairs for the regular courts." Nathan Brown, "A Guide Through the Egyptian Maze of Justice," Carnegie Endowment for International Peace, June 6, 2012, http://carnegieendowment.org/2012/06/06/guide-through-egyptian-maze-of-justice-pub-48302. The current composition of the Council is described in Hoda Abu-Bakr, "*Nashr altashkil aljadid limajlis alqada' al'alaa bad alharaka alqada'iya*" [Publicizing the new composition of the Supreme Judicial Council after judicial reorganization], *Al-Youm Al-Sabea*, June 28, 2016, http://bit.ly/2ddRr5p

19 International Bar Association (IBA), "Separating Law and Politics: Challenges to the Independence of Judges and Prosecutors in Egypt," February 2014, p. 45, http://www.ibanet.org/Document/Default.aspx?DocumentUid=15887C66-917B-4456-9C02-56300CD66590

20 Constitution of Egypt, 2014, Article 189.

21 Judicial Authorities Law, Article 119.

22 Ahmed Shalabi, "*Nabil sadiq alna'ib al'aam aljadid…bada' shurtiaan wa'ueir li qatar*" [Nabil Sadiq, the new public prosecutor…started as a policeman and was loaned to Qatar], *Al-Masry Al-Youm*, September 19, 2015, http://www.almasryalyoum.com/news/details/813430

23 An overview of the backgrounds and qualifications of members of the judiciary can be found at Mohammed Meabed, "*Bel asmaa:…abnaa' alqudaa wal-dubat fil-jaysh wal-shurta yastawlun 'ala ta'yeenat al-niyaba*" [By name…the sons of judges and officers in the army and police monopolize prosecutorial appointments], *Al-Masry Al-Youm*, July 24, 2014, https://mmeabed.blogspot.com/2014/07/blog-post_24.html

and there is no power in Egypt that can stop this sanctified practice."[24] This practice runs contrary to the Constitution, which asserts the equality of all citizens in assuming public office.[25]

OFFICE OF THE STATE SECURITY PROSECUTION

The Office of the State Security Prosecution is one of the most important special prosecutorial offices. It was created in 1953 through a decision by the Minister of Justice.[26] State security prosecutors have unique jurisdiction over specialized areas such as:

> crimes and misdemeanors that are detrimental to the security of the government domestically and outside the country, as well as crimes involving explosives and bribery, misdemeanors concerning religion, misdemeanors involving the press and other media outlets, the crime of mounting labor strikes and inciting and promoting strikes, attacks on the right and liberty to work and work stoppages in government agencies of public utility, and crimes relating to gatherings, even if they are peaceful.[27]

The State Security Prosecution has the right to investigate these crimes throughout Egypt. According to the preamble of the 1953 ministerial decision, the reason for creating these special prosecutors was that crimes against state security, including those that occur through the press and other publications, require experts to supervise investigations and initiate criminal prosecutions. The real reason was to ensure that investigations into such political crimes would proceed based on the will of the state.

Notably, the establishment of the State Security Prosecution is in violation of successive constitutions because it was created by a decision by the Minister of Justice, not by the passage of a law. This places the office in conflict with many constitutional principles, among them the separation of powers, the independence of the judiciary, and the principle that the manner in which judicial bodies are established and their areas of specialization set must be in accordance with the law.

According to regulations, prosecutors are required to inform the State Security Prosecution when such crimes occur so that it may undertake an investigation. In the event that regular prosecutors decide to undertake the investigation, they may not refer the cases directly to the courts. They must first send their investigations to the State Security Prosecution to act on them and bring them to court.[28] In addition, regular prosecutors refer state security cases in which defendants have been acquitted to the State Security Prosecution immediately upon the court's verdict, to attempt to have the ruling overturned.[29]

The authority of State Security prosecutors exceeds that of regular public prosecutors. For instance, its prosecutors may detain an accused person for an initial 15 days, longer than the initial four days allowed to ordinary prosecutors. It is during this detention period that, many human rights groups allege, severe abuse, including torture, and other pressure is used to compel detainees to "confess" to crimes.

Members of the State Security Prosecution's office also have the power to obtain any information relating to bank accounts, deposits, or vaults belonging to those accused of terrorism

24 Mohammed al-Essawi, "*Ta'ayeen abna' al qodat saiastammer.wa lan tastaee' qowa fi maser eiqaf haza al zahaf*" [The appointment of the sons of judges will continue and there is no power in Egypt that can stop this sanctified practice], *Al-Ahram*, Septmeber 3, 2012, http://goo.gl/YpwQIt

25 Article 9 of the 2014 Constitution ensures "equal opportunities for all citizens without discrimination," and Article 53 defends the principle of equality of all citizens in assuming civil service posts and explicitly bans discrimination on the basis of origin, social class, or political affiliation.

26 General Guidelines of the Public Prosecution, Chapter XVII, Article 1587.

27 General Guidelines, Article 1588.

28 General Guidelines, Article 1594.

29 General Guidelines, Article 1596.

crimes. Regular public prosecutors require a special delegation of authority to view such data.

In recent years, reflecting the expanded criminalization of opposition in Egypt, the Public Prosecution has sent a large number of cases to State Security Prosecution. Some of these are:

- Hisham Geneina, the former top public auditor and a former senior judge, who was investigated by the State Security Prosecution for "disrupting security and public order" due to statements he made to an Egyptian newspaper in 2015 alleging massive government corruption.[30] Al-Sisi fired Geneina in March 2015 and in July 2016 a court sentenced him to prison for "spreading false news." (The sentence was suspended.)

- Mahmoud Mohamed, a 20-year-old arrested on the third anniversary of the 2011 revolution, was referred to the State Security Prosecution in February 2016 after being detained and investigated for more than two years for wearing an anti-torture T-shirt. His lawyer stated, "The Public Prosecution believes that Mahmoud is a threat to national security." He asked, "After two years, the Public Prosecution discovered [now] that Mahmoud's case falls outside its jurisdiction?"[31]

- Journalist and researcher Ismail Iskandarani, who has been detained since December 2015, accused of belonging to a terrorist organization and disseminating false information about unrest in the Sinai Peninsula.[32]

- Members of the "Street Children" satirical performance troupe, who were charged in 2016 with attempting to overthrow the regime, publishing offensive videos, inciting demonstrations, and spreading false news. The troupe had posted videos on Facebook about political events and officials, including President al-Sisi.[33]

ARRESTS AND INVESTIGATIONS: COLLABORATION WITH POLICE AND SECURITY AGENCIES

One major concern is that the Public Prosecution has brought criminal charges against many defendants without evidence or using flawed evidence, based on which innocent people have been convicted. The Public Prosecution works hand-in-hand with the police and other security agents in ways that violate the constitutional rights of defendants. Security forces have expansive powers before a case is referred to trial and during pretrial detention. *Al-Amn al-Watani* (the National Security Agency, or NSA), the successor organization to Mubarak's much-feared State Security Investigations Service, plays an especially pronounced role in this regard.[34]

In building a case, prosecutors often rely on information collected by police and NSA officers after an arrest. A person can be taken into official custody in three circumstances: if he or she is detained by security forces after being caught in the act of committing an (alleged) crime, if the Public Prosecution issues an arrest warrant and subpoena, or if a complaint is submitted against him or her at a police station. In some cases, security forces conduct their own preliminary

30 "Geneina Attends Investigation By State Security Prosecution over Charges of Disrupting Security," *Daily News Egypt*, May 24, 2016, http://www.dailynewsegypt.com/2016/05/24/geneina-attends-investigation-state-security-prosecution-charges-disrupting-security/

31 "Case of Young Man Arrested for Anti-Torture T-Shirt Sent to State Security Prosecution," *Mada Masr*, February 17, 2016, http://www.madamasr.com/en/2016/02/17/news/u/case-of-young-man-arrested-for-anti-torture-t-shirt-sent-to-state-security-prosecution/

32 Hend Kortam, "Journalist, Researcher Ismail Al-Iskandrani Interrogated by State Security Prosecutors," *Egyptian Streets*, December 1, 2015, http://egyptianstreets.com/2015/12/01/journalist-researcher-ismail-al-iskandarani-interrogated-by-state-security-prosecutors/

33 "Street Children Band Case Referred to Supreme State Security Prosecution," *Daily News Egypt*, June 21, 2016, http://www.dailynewsegypt.com/2016/06/21/street-children-band-case-referred-to-supreme-state-security-prosecution/

34 The NSA is sometimes referred to in English as "Homeland Security."

investigations and refer the accused to the Public Prosecution to press charges.

Within 24 hours of an arrest, the accused must be referred to the Public Prosecution, which conducts the investigation and may issue an order for pretrial detention for up to four days (or 15 days if the State Security Prosecution or an investigative judge is handling the case) to release the detainee or end the pretrial detention order, though the order may be renewed by a judge.[35] During this time, the accused may be interrogated by police or security agents. The officers then search for evidence and report on their findings.

The police and security agencies play an influential role in shaping the conduct and direction of investigations. The police are the only agency with the formal authority to conduct searches and to collect evidence and information for prosecutors to use in their investigations. In carrying out this role, it is not uncommon for police to coerce suspects or witnesses for evidence or confessions, tamper with evidence, conceal facts, or attribute crimes to people even in the face of evidence to the contrary. The NSA also reportedly exerts considerable influence over prosecutors, such as through the writing of annual reports assessing their performance.

Police and security agents may fail to establish a complete evidentiary record, make claims that exceed what the evidence reliably can prove, fabricate or distort evidence, gather secret evidence or testimony, or disregard what the evidence actually shows. Ignoring these violations, prosecutors often rely on what police and security agents provide them when trying defendants, such as the following cases:

- In two well-known mass trials of defendants in a criminal court in Minya governorate in 2014, defendants were convicted of storming two police stations, resulting in the deaths of police officers and damage to the stations. While there was clear evidence that such crimes had in fact been committed by a small group of people, hundreds were accused of conspiring to commit the crimes. For instance, in one of the cases, more than 180 people were convicted of murdering one police officer, all based on police testimony.[36]

- Another prominent such case was the "Marriott cell case," in which al-Jazeera journalists were arrested in the Cairo Marriott Hotel in December 2013 and accused of belonging to a terrorist cell whose alleged aim was to spread false news in order to undermine national security. The "evidence" used to convict the defendants included videos of horses grazing and recordings of news broadcasts by other media organizations.[37]

- Aya Hijazi, an Egyptian-American humanitarian worker and co-founder of an NGO to help street children, her husband, and other defendants were charged in May 2014 with committing serious criminal acts, including sexually abusing children. These accusations were contradicted by official forensic reports that in some cases proved that no such abuse had taken place, and in others that abuse had taken place before the children found refuge with Hegazi's NGO. Children also reported that they were pressured to testify that they had been abused and forced to take part in anti-government protests. Aya and

35 As explained in a subsequent section, thereafter, pretrial detention can be extended up to two additional 15-day periods, amounting to a total of 45 days. If a judge determines preliminary investigations not to be complete at the 45-day mark, additional pretrial detention orders can be issued.

36 Human Rights Watch, "Egypt: Scant Evidence for Mass Convictions," April 14, 2015, https://www.hrw.org/news/2015/04/19/egypt-scant-evidence-mass-convictions; International Commission of Jurists, "Egypt's Judiciary: A Tool of Repression," September 2016, pp. 59-63, https://www.icj.org/wp-content/uploads/2016/10/Egypt-Tool-of-repression-Publications-Reports-Thematic-reports-2016-ENG-1.pdf

37 "Five Legal Controversies in the al-Jazeera Case," *Mada Masr*, July 23 2014, http://www.madamasr.com/en/2014/07/23/feature/politics/five-legal-controversies-in-the-al-jazeera-case/; Amal Clooney, "The Anatomy of an Unfair Trial," *Huffington Post*, August 18, 2014, http://www.huffingtonpost.com/Amal-Alamuddin/egypt-unfair-trial_b_5688388.html

her husband were detained for just short of three years, their acquittal and release in April 2017 was secured only through the direct intervention of U.S. President Donald Trump.[38]

The following examples describe accusations based on police investigations utilizing secret evidence:

- Accusations of belonging to non-existent terrorist groups: some Egyptians suspected of sympathizing with or participating in the 2011 revolution have been rounded up under the pretense of belonging to a 'January 25 Youth Movement' that called for protests and for overthrowing the state. But no evidence was provided to support the NSA's contention that such an organization exists or that all of the accused even knew one another.[39]

- Defense attorneys in the espionage case against former president Mohammed Morsi have alleged that the only evidence tying Morsi to the alleged espionage—passing state secrets to the government of Qatar—was from secret testimony from intelligence officials that was not entered into the record.[40]

There are also widespread reports that law enforcement and prosecutors collaborate in intimidating attorneys, restricting their access to their clients, or even charging them with crimes. An example is the case of Malek Adly, a prominent human rights lawyer who was detained in May 2016 on his way to meet a client and held for 115 days, mostly in solitary confinement.[41]

Distortions of evidence also take place through forced confessions obtained through torture and other physical and psychological pressure. Egyptian and international human rights organizations have documented police involvement since mid-2013 in thousands of cases of torture, sexual assault, death, and other forms of violence against detainees. The Nadeem Center for Victims of Violence and Torture documented 447 cases of torture and abuse and nearly 500 cases of medical negligence in places of detention from January 2015 through May 2016, with 156 deaths.[42] Allegedly hundreds of people have been held at the notorious Azouli detention center in order to coerce confessions.[43] Examples of confessions allegedly obtained through torture include:

- Mahmoud Hussein and Omar Ali, youth

38 Frontline Defenders, "Detention of Aya Hegazy," February 18, 2016, https://www.frontlinedefenders.org/en/case/detention-aya-hegazy

39 The Arabic Network for Human Rights Information, "*La lilttalfiqi.. 25 yanayir laysat tuhmatan 'aw tanzimaan bal thawrat shaeb - bayan mushtarak 20 maris 2016*" [No to fabrication ... January 25 is not a charge or an organization but it's people's revolution - a joint statement March 20, 2016], March 21, 2016, http://anhri.net/?p=160892; "*15 hizbaan wa munazzamat huquqia ystankirun tlafiq qadaya lil nnashata': 25 yanayir thawrat walaysat tuhma.. 'uwqifuu aistihdaf 'ashab alrray*" [15 parties and human rights organizations denounce the fabrication of cases against activists…January 25 is a revolution, not a charge…stop targeting thinkers], *Al-Bedaiah*, March 21, 2016, http://albedaiah.com/news/2016/03/21/109362

40 "*Munazzama huquqiyya: alssulutat almisriat lafaqat qadiat alttakhabur*" [Human rights organization: Egyptian authorities fabricated the spying case], *Al Jazeera*, http://bit.ly/2eleOtO

41 Frontline Defenders, "Court Orders Malek Adly's Release, But the HDR Remains in Jail," August 26, 2016, https://www.frontlinedefenders.org/en/case/court-orders-malek-adlys-release-hrd-remains-jail; Tony Gamal-Gabriel, "Thin Line Between Defense and Dock for Egypt Lawyers," *MSN News*, October 18, 2016, https://www.msn.com/en-za/news/world/thin-line-between-defence-and-dock-for-egypt-lawyers/ar-AAj5pCJ

42 Al-Nadeem Center, "*Hasad al-qahr lel a'am 2015*" [Harvest of oppression in 2015], January 10, 2016, http://ecesr.org/wp-content/uploads/2016/02/Opression-Harvest-2015-AlNadeem-Center-Ar.pdf; Al-Nadeem Center, "*Hasad al-qahr fi january 2016*," [Harvest of oppression in January 2016], February 2, 2016, https://goo.gl/Pyghx1; Al-Nadeem Center, "*Arsheev al-qahr fi mares 2016*" [Archive of oppression in March 2016], April 1, 2016, https://drive.google.com/file/d/0B2-QqOchi4gFV1RRVnpkX3c1TVE/view

43 Patrick Kingsley, "Egypt's Secret Prison: 'Disappeared' Face Torture on Azouli Military Jail," *The Guardian*, June 22, 2014, https://www.theguardian.com/world/2014/jun/22/disappeared-egyptians-torture-secret-military-prison

reportedly tortured and forced to confess to belonging to a terrorist group. Hussein was arrested for wearing a shirt bearing the slogan, "A country free of torture."[44]

- In the wake of a stampede during a 2015 soccer match in Cairo, suspects were allegedly tortured to force confessions that they had instigated the stampede, but human rights groups reported that the police had caused the riot by dispersing the crowd using excessive force.[45]

In addition, the state media have disseminated videos of coerced confessions. The filming and dissemination of forced confessions adds another level of humiliation to defendants, and makes recantations of forced confessions even more difficult.[46]

Defendants sometimes complain about forced confessions, but prosecutors rarely acknowledge such allegations. In other cases, victims prefer not to seek redress for torture and abuse out of fear of police retribution. When those accused of torture are put on trial--a rare occurrence--they typically are charged with lesser offenses such as using excessive force, the maximum penalty for which is a year in prison or a fine of no more than 200 Egyptian pounds, or with beatings leading to death, the maximum penalty for which is seven years. When convictions occur, they are usually overturned.[47]

COMPLICITY WITH FORCED DISAPPEARANCES

One of the more disturbing recent developments in Egypt is the widespread use of forced disappearances as a tool of repression. This involves the extrajudicial detention of citizens in order to pressure, intimidate, and extract from them "confessions" and other information for use in criminal cases.

As violence rose in the second half of 2013, more opponents of the regime began disappearing, mainly members of the Muslim Brotherhood or their supporters who had participated in protests; the phenomenon became so common that a group of families of the missing was formed. By 2015, forced disappearances began to include non-Islamist activists. Matters had escalated dangerously to the point that human rights groups were reporting the disappearance of several people a day. Security forces even began abducting children and adults who were relatives or friends of people with certain political affiliations, in order to pressure them for information.[48]

According to a detailed July 2016 report by Amnesty International, most of those abducted are activists, protestors, actual and perceived critics of the regime, and sometimes their family members and friends.[49] Amnesty and other human rights groups report that the

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44 Amnesty International USA, "20-Year-Old in Egypt Marks Two Years in Jail for Anti-Torture T-Shirt," January 26, 2016, https://www.amnestyusa.org/news/press-releases/20-year-old-in-egypt-marks-two-years-in-jail-for-anti-torture-t-shirt; Omar Mohammed Ali, "This Is How I Was Tortured to 'Confess' In Egypt," Amnesty International, July 27, 2016, https://www.amnesty.org/en/latest/campaigns/2016/07/this-is-how-i-was-tortured-to-confess-in-egypt/

45 Abdelhalim Abdallah, "Egypt Football Fans 'Tortured' into Confessions Over Stampede," *Yahoo Sports*, June 15, 2015, https://sports.yahoo.com/news/egypt-football-fans-tortured-confessions-over-stampede-030825347--sow.html

46 Ahmed Aboulenein, "In Egypt, the 'Disappeared' Resurface on TV as 'Terrorists'," *Reuters*, August 19, 2015, http://www.reuters.com/article/us-egypt-rights-idUSKCN0QO1MI20150819

47 El-Sayed Gamal El-Din, "Egypt Court Orders Retrial for 2 Policemen Convicted of Torturing Lawyer To Death," *Ahram Online*, October 2, 2016, http://english.ahram.org.eg/NewsContent/1/64/245047/Egypt/Politics-/Egypt-court-orders-retrial-for--policemen-convicte.aspx; Nour Youssef, "Egyptian Appeals Court Orders New Trial for Officer Convicted of Manslaughter," *The New York Times*, February 14, 2016, http://www.nytimes.com/2016/02/15/world/middleeast/egypt-officer-kill-shaimaa-el-sabbagh.html

48 Al-Nadeem Center, "*Arsheev al-qahr fi mayo 2016*" [archive of oppression in May 2016], June 1, 2016, http://www.alnadeem.org/en/node/409

49 "Egypt: 'Officially, You Do Not Exist': Disappeared and Tortured in the Name of Counter-Terrorism," Amnesty International, July 2016, pp. 7-8, https://www.amnesty.org/en/documents/mde12/4368/2016/en/. According to Amnesty, most disappearances are carried out by NSA agents. Amnesty describes the NSA as the key agency involved in repression, torture, and suppressing dissent.

disappeared are abducted, without an arrest warrant, often from their homes in the middle of the night. They are held incommunicado, blindfolded and handcuffed, in various detention centers including facilities of the Interior Ministry, police stations (where they do not appear on the official list of detainees), and NSA facilities (which are not official places of detention). They reportedly are interrogated and subjected to torture and other abuse to get them to "confess," to implicate others, and to provide information.[50]

Those who have been disappeared recount harrowing experiences. A person is kidnapped, his eyes are bound, and he is taken to a police station, where he is detained for several days, after which he is moved to a national security post. Normally a person is held in a police station to obtain a confession implicating others, and he may be taken along on security raids so that he can lead security forces to the addresses of his friends. Upon arrival at the location where he is secretly detained, he is subjected to interrogation and is asked about his personal statements, his political affiliations, the reason he joined a "terrorist cell," and who finances demonstrations against the regime. Usually the victim denies all of these charges, at which point the first instrument of torture is used: being subjected to an electric current. The interrogation is repeated several times, using various methods of torture, including: being hung by one's feet upside down; being hung like a slaughtered animal, with one's hands and feet tied and being lifted by a stick between one's feet. The victim may be "interrogated" in this manner several times. The final choice is left to the officer in charge about whether to set him free or to fabricate a case with a recent date and turn him over to the Public Prosecution, accompanied by a statement by the Ministry of Interior, or sometimes by a video in which he confesses to joining a terrorist cell seeking to undermine stability and disturb the general peace.[51] All of this occurs without the person being registered anywhere in the criminal justice system. Disappearances can last days, weeks, or months with the disappeared having no communication with the outside world.

According to Amnesty International, the disappearances end when the abductees are released, or more commonly, when they are brought to the Public Prosecution for questioning. As described by Amnesty, victims, lawyers, and human rights groups consistently accuse the Public Prosecution of:

> ...helping to cover up time periods of enforced disappearance, and the torture that accompanied it, by failing to challenge and correct false arrest dates inserted in official NSA investigation reports [to indicate that detainees have been lawfully arrested and detained], which provide the basis for bringing criminal charges against detainees and justifying their continued detention before trial. Prosecutors continue to heavily rely on "confessions" that security officials obtain from detainees during their enforced disappearance, even when detainees retract them and allege they were coerced through torture. They also rely on such confessions when formulating charges and authorizing continued detention pending trial.[52]

Along with relying on confessions and other information obtained during disappearances, the Public Prosecution has been complicit in other ways in violation of its own obligations. It has not performed its assigned duty of responding to inquiries and reports filed by families of missing people, nor has it opened any investigations into these cases. It has not acknowledged the complaints and reports of the National Council for Human Rights, a quasi-governmental body that has documented many

50 *Ibid*., p. 8.

51 Egyptian Commission for Rights and Freedoms, "*Al-mukhtafun qasraan fi entizar 'iinsaf ala'dala*" [The Disappeared Waiting for Justice], December 2015, p. 17, http://www.ec-rf.org/wp-content/uploads/2016/04/Enforced-disappearance-report-AR-design.pdf

52 "Egypt: Officially You Do Not Exist," p. 9.

cases of forced disappearance.[53] Furthermore, it has failed to investigate allegations of torture and other abuse.

It is difficult to know exactly how many people have been subject to forced disappearance since mid-2013, as the secrecy of the crime makes investigation and documentation very difficult, and many victims and families are too afraid to come forward. Amnesty International states that "it is evident that at least several hundred Egyptians were disappeared since the beginning of 2015."[54] The Egyptian Commission for Rights and Freedoms reported 630 cases in the first five months of 2016.[55]

- An internationally suspected case of forced disappearance is that of the Italian doctoral student researcher Giulio Regeni, disappeared in January 2016 in Cairo. A week after he was reported missing, his body was found on the side of a road outside the city, showing signs of severe torture.[56] To date, the Public Prosecution has failed to identify the perpetrator of this crime, causing significant political and diplomatic tensions with Italy. Many observers believe that security agents abducted him and that he died while in custody.

- Another case is that of university student and amateur photographer Israa al-Taweel, who mysteriously disappeared from a Cairo street in June 2015. Two weeks later, al-Taweel was spotted in a prison near Cairo. She was charged with disseminating false news and belonging to a terrorist organization (the Brotherhood). In November 2015, after six months of pretrial detention, the court extended her jailing for 45 more days. Al-Taweel was suffering from a back injury inflicted by the police at a 2014 demonstration. Court footage of the ailing and terrified young woman caused a public outcry in Egypt demanding her immediate release. In December 2015, after seven months in detention, she was released by a court decision.[57]

ABUSE OF PRETRIAL DETENTION

Since mid-2013 the Public Prosecution, often with the complicity of judges, has widely abused the legal provision of pre-trial detention. Pre-trial detention has emerged as a tool for coping with the large numbers of people arrested for political crimes who are awaiting investigations or trial. It has also become used to freely target and punish critics of the government. Through pretrial detention, prosecutors can detain for up to two years those whom they are investigating for a crime, those whom they already have charged with a crime and await trial, and those who are on trial. Egyptian law describes pretrial detention as an exceptional legal measure, but the Public Prosecution is wielding it in many cases that appear to be far from exceptional. Drawing from numbers derived from Ministry of Interior reports, a conservative estimate of those currently being held in pretrial detention is 8,500; the real number could be much higher.[58]

To detain a person longer than the initial four days following arrest, or the initial 15 days when an investigation is being handled by the State Security Prosecution or investigative judge, a prosecutor requests extended detention from the court of first instance (either the court of appeals for a felony investigation

53 The National Council for Human Rights, "*Hasr halat eddea'at al ekhtifa' alqasri/al taghayub*" [Inventory of alleged cases of enforced disappearances/absenteeism], April 6, 2016, http://www.nchregypt.org/media/ftp/Hasr123456.pdf

54 "Egypt: Officially You Do Not Exist," p. 19.

55 Egyptian Commission for Rights and Freedoms, "*Al-mukhtafun qasraan fi entizar 'iinsaf ala'dala*" [The Disappeared Waiting for Justice], December 2015, p. 9, http://www.ec-rf.org/wp-content/uploads/2016/04/Enforced-disappearance-report-AR-design.pdf

56 Mohamed Abd El Ghany, "Exclusive: Egyptian Police Detained Italian Student Before His Murder – Sources," *Reuters*, April 21, 2016, http://www.reuters.com/article/us-egypt-regeni-exclusive-idUSKCN0XI1YU

57 "#FreeEsraa: Detained Photographer's Tears Spark Outrage In Egypt," *The New Arab*, November 3, 2015, https://www.alaraby.co.uk/english/blog/2015/11/3/freeesraa-detained-photographers-tears-spark-outrage-in-egypt

58 Robert F. Kennedy Human Rights, "Petition to United Nations Working Group on Arbitrary Detention," May 19, 2016, pp. 12-13, http://rfkhumanrights.org/media/filer_public/a7/59/a759af40-59a1-4499-a852-d8d6a9285caf/unwgad_petition-_hijazi_and_hassanein_1.pdf

or charge, or a misdemeanor court for a misdemeanor investigation or charge). The Code of Criminal Procedure sets forth the seven circumstances in which prosecutors can seek to extend detention: *in flagrante delicto*; flight risk; risk of 'impeding or harming' the legal process; evidence tampering; colluding to obscure the facts of a case; a security or public order case; or the defendant has no known residence in Egypt. The Code of Criminal Procedure defines these "exceptional" circumstances very broadly, giving prosecutors and judges plenty of leeway in applying them.

Detention can be extended for up to 45 days. After this period expires, if the investigation is ongoing, the prosecutor can request from a judge continued detention up to a total of two years. Different limits for pretrial detention apply, depending on the type of crime under investigation. By law, pretrial detention cannot be extended for more than six months for misdemeanors, 18 months for felonies, and two years for crimes carrying possible death or life imprisonment sentences.

Each step of the judicial process has built-in mechanisms by which prosecutors can continue to submit requests for the extension of pretrial detention orders. Provisions are vague and renewal of detention often is ordered hastily. The Prosecution's requests for detention (or for the renewal of detention) often lack sufficient detail or evidence. Many observers believe that political considerations are often the deciding factor in the approval of detention request. The Egyptian rights organization the Arabic Network for Human Rights Information cites several cases that suggest a double standard regarding pretrial detention. Former members of the Mubarak regime have been treated with extreme leniency when facing serious charges and released quickly from pretrial detention. Protesters and activists arrested under flimsy pretexts and charged on the basis of scanty or no evidence have faced long detentions through repeated renewals.[59] Pre-trial detention has become a way to detain individuals for an extended period of time without filing charges or providing evidence of criminal activity by the accused.

Human rights groups also report another disturbing trend: prosecutors, with the complicity of the courts, have kept more than 1,400 people in detention past the two-year limit, in violation of the law. These detainees have not been convicted of any crime.[60] For example,

- Those facing charges stemming from the sit-in at Raba'a al-Adawiya Square in August 2013, in which 334 people, primarily demonstrators, have been held under pretrial detention since their arrest.[61]

Journalists are being detained for long periods without trial, including photographer Mahmoud Abou Zeid (known as Shawkan), who was arrested while doing his job covering the breaking up of the sit-in; he has been in detention since August 2013—almost four years. He has been charged with a crime but his trial has been delayed repeatedly.[62]

- Egyptian-American humanitarian worker Aya Hijazi was held in pretrial detention for close to three years (May 2014-April 2017), exceeding the two-year limit. She and her fellow defendants faced several very serious charges, until they were acquitted in April 2017 of all of them, following the intervention of U.S. President Donald Trump with President al-Sisi and Aya and her husband Mahmoud Hassanein were

59 The Arabic Network for Human Rights Information, "Extended Pre-trial Detention... Disguised Incarceration," May 31, 2015, http://anhri.net/?p=145083&lang=en

60 Egyptian Initiative for Personal Rights, "*Habs bila nihaya: kayf tahwal al habs al aihtiati fi ghiab alttawari 'iilaa 'adat lileiqab alssiasi?*" [Detention without end: How pretrial detention became a tool for political punishment in the absence of emergency], April 2016, p. 24, http://eipr.org/sites/default/files/reports/pdf/endless_imprisonment_0.pdf

61 *Ibid*.

62 "After Nearly 1000 Days In Prison, Hearing Adjourned for Photojournalist Shawkan," *Mada Masr*, April 23, 2016, http://www.madamasr.com/en/2016/04/23/news/u/after-nearly-1000-days-in-prison-hearing-adjourned-for-photojournalist-shawkan/

unceremoniously expelled to the United States.

With the complicity of the Public Prosecution, security agencies are using new excuses for prolonging the period of pretrial detention, such as claiming that it is dangerous to transport the accused from their places of detention to the courts for hearings. In addition, security agencies sometimes show a reluctance to carry out the orders of prosecutors or judges to set the accused free, and use red tape to prolong their detention unjustly.

In the relatively rare instances when the courts reject the prosecutor's request for extended pre-trial detention and order a defendant's release, intensive media and advocacy campaigns may play a role. One example is human rights defender and lawyer Malek Adly, who was arrested in May 2016 and detained for more than 100 days after being charged with attempting to overthrow the regime. On August 27, 2016, a court ordered his release from pretrial detention and rejected a second appeal by the Public Prosecution to keep him in detention. Adly's case had received domestic and international attention. A group of international lawyers had signed a petition calling for his release and urged the European Union (EU) "to take immediate steps to put pressure on Egyptian authorities to end practices of abduction, torture, and abuse against detainees."[63] But there are far more cases of detainees without such high-profile campaigns who are still in detention.

In addition to pretrial detention, according to Interim President Adly Mansour's September 2013 amendment to the Code of Criminal Procedure, a defendant who has been sentenced to death or life imprisonment by a first-instance court and is appealing the conviction or awaiting a retrial can be held in detention in unlimited 45 day-increments.[64] The amendment appears to target Muslim Brotherhood members, as they constitute most of those sentenced to death or life imprisonment since July 2013.

REPRESSIVE LAWS

The Public Prosecution has at its disposal multiple laws that deal with political crimes. These laws often are vaguely worded and have overly broad definitions of criminal activity that can be applied to many peaceful political activities. For those who are arrested and charged with breaking multiple laws, prosecutors typically seek the strongest possible penalty.

For instance, the Penal Code has many articles that criminalize actions such as insulting a "heavenly religion" – meaning one of the three Abrahamic religions (Article 98[f]), inciting rebellion (Article 174), indecency (Article 178), insulting the presidency (Article 179), or spreading false news (Article 188). The law stipulates harsh penalties. For example, spreading false news is punishable by up to a year in prison and a fine of up to 20,000 Egyptian pounds, indecency is punishable by up to two years in prison or a fine of up to 10,000 Egyptian pounds, and inciting rebellion carries a prison sentence of up to five years.[65] Following Morsi's ouster, Muslim Brotherhood sympathizers participating in sit-ins and protests were charged with "disturbing public security" and "inciting violence." Others who publicized the protests through the media were charged with spreading false news.[66]

Since July 2013, the government has promulgated new repressive laws and has made existing laws

63 "International Lawyers Sign Petition Calling for Release of Lawyer Malek Adly," *Daily News Egypt*, August 22, 2016, http://www.dailynewsegypt.com/2016/08/22/international-lawyers-sign-petition-calling-release-lawyer-malek-adly/

64 Egyptian Initiative for Personal Rights, "The New Emergency Law: Endless Pretrial Detention as Political Punishment at least 1,464 people in Four Governorates Held in Pretrial Detention Longer than the Two Year Legal Limit," May 10, 2016, http://eipr.org/en/pressrelease/2016/05/10/2600

65 For the text of the penal code, see this unofficial compilation: http://www.abonaf-law.com/download/GalleryServices/35_law%201.pdf

66 Amnesty International, "Arrests of Muslim Brotherhood Supporters," https://www.amnestyusa.org/sites/default/files/arrests_of_muslim_brotherhood_supporters.pdf

harsher. Some of these laws concern terrorism. Egypt faces a genuine terrorism threat, and requires legal measures to deal with this threat, but terrorism-related laws have been used extensively against real or presumed opponents of the regime, with the Brotherhood as the primary target, in addition to independent human rights organizations.

Egypt's terrorism statutes were first defined in Law 97 of 1992, which expanded the provisions under which a crime would be considered terrorism and set penalties ranging from five years in prison for those who join terrorist organizations to the death penalty for the founders or leaders of such groups.

In September 2013, the Cairo Court of Urgent Matters declared the Brotherhood an illegal organization and in December 2013, the Cabinet issued a resolution to implement the ruling.[67] The designation criminalized membership in the organization and allowed harsher penalties to be attached to crimes allegedly committed by Brotherhood members, including the possibility of execution for activities harming "the internal security of the state."[68] The Public Prosecution has charged thousands of actual and alleged Brotherhood members on the basis of the terrorist designation.

In 2015, the Egyptian government used Law 97/1992 as the basis for two new pieces of anti-terror legislation. The Terrorist Entities Law specifies the criteria by which prosecutors can designate organizations as terrorist groups, and the Terrorism Law sets the penalties for engaging in terrorism or being in any way connected to a terrorist organization. Together, these two laws have expanded the government's repressive powers.[69]

Terrorist Entities Law

On February 7, 2015, President al-Sisi issued Terrorist Entities Law 8 of 2015 by decree (at that time, as the Parliament had not yet been elected, al-Sisi was ruling by decree).[70] According to the law, the criteria for designation as a terrorist entity include: committing acts that would contribute to "disturbing public order, harming national unity and the safety and security of society, harming individuals, causing environmental harm, obstructing public or private transportation, or obstructing traffic."[71] These criteria could apply even to a person or organization calling for peaceful demonstrations to challenge a government decision or regulation.

The Public Prosecution can place a person or a group on the terrorism lists, subjecting them to immediate restrictions on their civil and political rights. The law does not require that a person actually commit a crime in order to be subjected to punitive measures such as restricting his rights or freezing his funds. It is only necessary for the Public Prosecution to bring the charges and for the appellate court to grant a provisional decree, which lasts for a maximum of five years and can be renewed if the court approves a renewal request by the Prosecution.[72] According to the Cairo Institute for Human Rights Studies, a provisional decree can be "issued based on a *prima facie* examination of the case files, evidence, and

67 "Egypt Court Bans All Muslim Brotherhood Activities," *Reuters*, September 23, 2013, http://www.reuters.com/article/us-egypt-brotherhood-urgent-idUSBRE98M0HL20130923; "Egypt Declares Muslim Brotherhood a Terrorist Group," *The Guardian*, December 25, 2013, https://www.theguardian.com/world/2013/dec/25/egypt-declares-muslim-brotherhood-terrorist-group. Prior to the court's ruling, the primary targets of repression were those in the top echelons of the Brotherhood and those directly involved in protests.

68 Mai El-Sadany, "Designating a Terrorist: Process Unchecked," Tahrir Institute for Middle East Policy, May 20, 2015, http://timep.org/commentary/designating-a-terrorist-process-unchecked/

69 Brad Youngblood and Noor Hamdy, "Why is Egypt Amending its Protest Law Now?" Tahrir Institute for Middle East Policy, August 16, 2016, http://timep.org/commentary/why-is-egypt-amending-its-protest-law-now/

70 The text of the law can be found at "*Al-Sisi yasdur qanun al-kayanat al-irhabiya*" [Al-Sisi issues terrorist entities law], *Aswat Masriya*, February 24, 2015, http://www.aswatmasriya.com/news/details/56473

71 Mai El-Sadany, "The Terrorist Entities Law: Egypt's Latest," Tahrir Institute for Middle East Policy, December 12, 2014, http://timep.org/commentary/terrorist-entities-law-egypts-latest/

72 The maximum period was extended from three years to five by Article three of Law 11/2017, which amends the Terrorist Entities Law.

charges brought by the Public Prosecution against the entity or persons; it is not based on a close examination of the charges and permits no defense."[73] Appeals must be filed within 60 days of the decision being issued. Once designated by the Public Prosecution as a terrorist entity, any state institution can impose the following penalties:

> Dissolving the entity and stopping its work, closing its designated locations, banning its meetings and participants from them by all means, banning direct or indirect funding, freezing its and its members' assets and capital, and funds raised by individuals for its support and activities, prohibiting membership, prohibiting promotion or publicity on its behalf, and the prohibition of activity under any name.[74] Persons placed on the list are prohibited from travel or, if they are foreigners, monitored upon arrival or denied entry. They may also have their passport revoked, their legal reputation tarnished (a requirement for holding positions in the civil service), their assets frozen, and their political rights temporarily abridged.[75]

The Terrorism Entities Law was amended by Law 11/2017, adding Article 8bis., which allows the Public Prosecution to take control over frozen assets unilaterally, albeit giving the judiciary the ability to assent to, or reject, the seizure.[76] This amendment was passed despite the Supreme Constitutional Court's decision against the unconstitutionality of Article 208(a) of the Code of Criminal Procedures, which grants the Public Prosecution essentially equivalent powers, due to the unilateral nature of this authority and the necessity of judicial authorization when seizing private property.[77]

The first application of this law was in March 2015, when the Public Prosecution issued decree No. 1, listing 18 people as terrorists. A subsequent decision of the Cairo Criminal Court (No. 1/2016) added 215 members of the Muslim Brotherhood to the list. This was followed by decision No. 2 in the same year, adding 35 people, including former president Mohammad Morsi and several members of the Muslim Brotherhood's Guidance Bureau.

Terrorism Law

On August 15, 2015, President al-Sisi issued Terrorism Law No. 94/2015 by decree.[78] The law designates as a terrorist act 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.[79]

This definition of terrorism extends far beyond international norms and can easily be made to fit many activities that the government finds undesirable.[80] Moreover, once the terrorist appellation has been attached to a crime, the

73 Cairo Institute for Human Rights Studies, "Law On Terrorist Entities Allows Rights Groups and Political Parties to Be Designated Terrorists," February 28, 2015, http://www.cihrs.org/?p=11031&lang=en

74 Law 11/2017, Article 4.

75 Nourhan Fahmy, "President Approves 'Terrorist Entities' Law," *Daily News Egypt*, February 24, 2015, http://dailynewsegypt.com/2015/02/24/president-approves-terrorist-entities-law

76 Official Gazette, Volume 17 (Supplement), April 27, 2017.

77 Supreme Constitutional Court, Case No. 26/October 5, 1996 Session; Official Gazette Volume 41, October 17, 1996.

78 "Egypt's Anti-Terror Law: A Translation," *MENA Source*, Atlantic Council, September 3, 2015, http://www.atlanticcouncil.org/images/EgyptSource/Egypt_Anti-Terror_Law_Translation.pdf

79 Law 94/2015, Article 2.

80 Human Rights Watch, "Egypt: Counterterrorism Law Erodes Basic Rights," August 18, 2015, https://www.hrw.org/news/2015/08/19/egypt-counterterrorism-law-erodes-basic-rights. See also EIPR and CIHRS, "The New Counterterrorism Law: Another Blow to the Constitution, Encourages Extrajudicial Killing," August 2015, http://eipr.org/sites/default/files/reports/pdf/the_new_counterterrorism_law.pdf

law makes it relatively easy for the prosecution to seek a death penalty. The law makes no fewer than 12 activities, from communication in planning a terrorist attack to funding a terrorist group, punishable by death, and specifies that attempted but unsuccessful actions are subject to the same penalty as completed crimes.[81] The law also fails to distinguish between public and private incitement to terrorism, which can make private expression of an opinion illegal.[82] Finally, the law equates incitement to terrorism to the completed act, with the two subject to the same penalties.

The law prescribes stiff penalties for those convicted of terrorist activities, ranging from death penalties for the twelve activities mentioned above to sentences of at least one year for preparing to commit a terrorist crime, "even if his work does not exceed the planning stage."[83]

Any person can be sentenced to prison for up to 15 years for denouncing a law or decision issued by the state or any of its institutions, because according to the law, this amounts to an obstruction of state institutions and forces them to make decisions they would not have otherwise taken.[84] This is what happened with the "Land Demonstrators," protestors who took part in demonstrations in April 2016 against the proposed transfer of two Red Sea islands to Saudi Arabia. They were charged with obstructing state institutions and interfering with the implementation of constitutional provisions.

In addition to the laws described above, the Public Prosecution has also utilized other new pieces of legislation as part of the regime's crackdown against dissent.

Demonstrations Law

Interim President Adly Mansour issued Law No. 107 of 2013, known as the Demonstrations Law, on November 25, 2013 by decree.[85] The law penalizes unsanctioned demonstrations with a prison sentence of two to five years and a fine between 50,000 and 100,000 Egyptian pounds. The law is used in conjunction with a 1914 assembly law prohibiting any gathering of five persons or more in a public place, on the pretext of maintaining public order. While the 2013 law purports to regulate the right to peaceful assembly, it in fact serves as a means by which this right is sharply curtailed.[86] The law requires notification three days before the staging of a protest, which effectively criminalizes spontaneous demonstrations. Moreover, the notification requirement serves as an approval mechanism for the Ministry of Interior, violating the spirit of the law and restricting the rights of free expression, peaceful assembly, and government petition. Finally, the law prohibits demonstrations that interrupt production, disrupt traffic, or "obstruct the course of justice." These restrictions are vague enough that they can be applied to almost any protest, especially considering the law empowers the security forces to determine whether public order has been breached.[87]

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81 Law 94/2015, Article 5, Articles 12-39.The crimes punishable by death are: establishing or assuming leadership of a terrorist organization; coercing an individual into participating in a terrorist organization in a manner that leads to the individual's death; financing a terrorist group or act; communication or espionage resulting in a terrorist attack; a lethal attack on any public space; a lethal attack on any foreign organization in Egypt; any lethal terrorist act; any lethal abduction intending to influence the State in any way; providing any weapon that is used in a lethal terrorist act; the lethal hijacking of any form of transportation; a lethal attack on any infrastructure; or any lethal attack on those responsible for the application and enforcement of the terrorism law.

82 *Ibid*., Article 6.

83 *Ibid*., Article 34.

84 *Ibid*., Article 2, Article 4.

85 Human Rights Watch, "Egypt: Deeply Restrictive New Assembly Law," November 26, 2013, https://www.hrw.org/news/2013/11/26/egypt-deeply-restrictive-new-assembly-law

86 For a comparison between Egypt's protest law and similar laws, see "Comparison of Egypt's Protest Law (Demonstrations Law) with Other Countries," *Egypt Justice*, November 23, 2015, http://egyptjustice.com/analysis/2015/11/23/egypt-protest-law-analysis

87 Article 7 of the Demonstrations Law warns demonstrators against taking any action that could be construed as threatening to "safety," "public order," "obstructing citizens' interests," or obstructing the course of justice, without providing clear definitions of these terms.

The demonstration law contravenes international norms, which do not allow undue restrictions upon the right of peaceful assembly. Daftar Ahwal, an Egyptian archival organization, reported in September 2016 that since the law was enacted, 37,054 people have been arrested or have warrants out for their arrest for violating the law, and 6,382 people have been convicted under it.[88]

Penal Code Amendment on Foreign Funding

On September 23, 2014, al-Sisi amended by decree Article 78 of the Penal Code to increase penalties for those receiving "illegal" foreign funding.[89] The amendments rendered the receipt of foreign funding intended to "undermine" the state a crime punishable by life imprisonment and a fine of no less than 500,000 Egyptian pounds and by execution for public servants or if the offense was committed in a time of war. That this amendment has been employed against the organizations and human rights activists facing trial in Case 173, the infamous "NGO trial" and investigation clearly demonstrates that its stated and intended purposes are at odds.

Law on Associations

The previous NGO law, Law 84/2002, severely constrained rights to association and assembly. Independent human rights organizations are being investigated on criminal charges stemming from Law 84 and the Penal Code amendments.[90] In May 2017, a new, even more restrictive law, Law 70/2017, was signed into law by President al-Sisi. According to the UN Special Rapporteur on Human Rights, it expands state restrictions on NGOs, such as limiting NGOs to "development or social activities" and placing severe controls on domestic and foreign funding. The new law effectively puts civil society groups under state control. It also contravenes international standards. The law has raised concerns that its main purpose is to curtail if not extinguish Egypt's human rights groups and other independent civil society organizations.[91]

Amendments to the Code of Criminal Procedure

In April 2017, President al-Sisi ratified Law 11/2017, which amends various articles of the Code of Criminal Procedure, taking advantage of the public's preoccupation with the furor surrounding the amendments to the Judicial Authorities Law in the same month, and utilizing concern over terrorist attacks to remove any remaining restraints on the activities of the Public Prosecution. These amendments represent a significant expansion of the Public Prosecution's power, contravening the Constitution. One amendment grants courts the right to refuse to hear witness testimony, basically depriving those accused of crimes of their right to defend themselves. Another amendment waives the requirement that police officers obtain a court warrant in order to search a private domicile or motor vehicle, at once trampling upon the right to privacy and guaranteeing the impunity of police officers who arbitrarily violate citizens' rights.

INVESTIGATIVE JUDGES

Investigative judges play a similar role as prosecutors in investigating and building cases for criminal indictment but they do not

88 Daftar Ahwal Center, "*halat alqabd walaistiqaf walaittiham ealaa khalfiat qanun alttazahur fi misr khilal thlath sanawat - taqrir shamil*" [Arrest, suspension, and the accusation cases based on the demonstration law in Egypt within 3 years – a comprehensive report], September 28, 2016, https://daftarahwal.wordpress.com/2016/09/28/arrests-accusations-protest-law-fullreport/

89 Patrick Kingsley, "Egypt's Human Rights Groups 'Targeted' By Crackdown on Foreign Funding," *The Guardian*, September 24, 2014, https://www.theguardian.com/world/2014/sep/24/egypt-human-rights-crackdown-foreign-funding

90 See EIPR et al., "Background on Case No. 173," March 22, 2016, http://eipr.org/sites/default/files/pressreleases/pdf/qa_-_public_document_-_final_english_march_22.pdf

91 United Nations Human Rights Office of the High Commissioner, "Egypt NGO Law: UN Expert Warns About Growing Restrictions on Civil Society," October 11, 2016, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20665&LangID=E

have the authority to refer cases to trial. They investigate and collect information for the Public Prosecution to use in pressing charges and prosecuting a case. Investigative judges can be brought into a criminal case in three ways: if the prosecutor submits a request to the court of first instance; if a defendant makes a request to the court of first instance; or if the Minister of Justice makes a request of the court of first instance to second one of its members.[92] As soon as an investigative judge is brought into a case, it becomes his exclusive responsibility until the investigation is completed. As with prosecutors, there are concerns that some investigative judges may show bias in favor of state agencies, especially security agencies, and pursue investigations in order to intimidate critics.

A politically-sensitive, controversial investigation currently being handled by investigative judges is Case 173 against Egyptian human rights NGOs, which is now in its second phase.[93] The first phase (2011-2013) focused on prosecuting international democracy NGOs operating in Egypt. The present investigation primarily is looking into charges of foreign funding of Egyptian groups, which could result in long prison sentences for their leaders. According to those involved, to date, the investigative judges assigned to the case have interrogated witnesses, including state security officers and other security officials, employees of banks whose accounts were allegedly used to receive foreign funding, and the directors and staff of several human rights organizations. On the basis of flawed evidence that portrays the activities of human rights organizations as "harmful to national security" because they highlight Egypt's social and political problems, investigators allege that funding received by these organizations is part of an international conspiracy to undermine Egypt.

One mechanism used by the investigative judges in the course of this investigation is asset freezes. Investigative judges and prosecutors can request an asset freeze from the criminal court.[94] While there are constitutional protections against the arbitrary seizure of assets, no such protections apply to asset freezes.[95] From June through September 2016, 14 individuals have had their assets frozen in connection with Case 173, in addition to the assets of some of the rights organizations they direct.[96] Gamal Eid, the director of the Arabic Network for Human Rights Information (ANHRI), was accused of receiving a deposit of foreign government funds directly to his bank account, a charge he easily disproved by presenting his bank statement, yet the hold on his account was not lifted.

Asset freezes also occurred immediately following the removal of Mohamed Morsi from power in July 2013. The assets of some Brotherhood leaders were frozen two weeks later in what appeared to be a unilateral move by the Public Prosecution. After the Brotherhood was banned in September 2013, an administrative council was tasked by the Ministry of Justice with freezing the assets of the group and any organizations connected to it. Under the 2015 Terrorist Entities Law, organizations and individuals placed on the lists of terrorists can have their assets frozen.[97]

Another tool used by investigative judges is travel bans. Travel bans are more often being imposed upon those who do not

92 The General Assembly is the collective body of sitting judges of a particular court. There is no stable of investigative judges; they are drawn from courts on a case-by-case basis. See the 2014 amendments to Articles 64 and 65 of the Code of Criminal Procedure: http://bit.ly/2daHVQA [Arabic].

93 For detailed background, see Cairo Institute for Human Rights Studies, et al., "Imminent Risk of Prosecution of HRDs Accused of Committing Human Rights Work," September 15, 2016, http://www.cihrs.org/?p=19002&lang=en

94 It is necessary to distinguish between asset freezes, which occur during the investigative portion of a case, and asset seizure or forfeiture, which is a penalty imposed upon a convicted defendant after a trial.

95 Constitution of Egypt, 2014, Article 40.

96 "Court Reviews Recommendation to Freeze Bahgat, Eid's Assets, Case Adjourned to April 20," *Mada Masr*, March 24, 2016, https://www.madamasr.com/en/2016/03/24/news/u/court-reviews-recommendation-to-freeze-bahgat-eids-assets-case-adjourned-to-april-20/

97 Amira El-Fekki, "Assets of Morsi, 100+ Muslim Brotherhood Figures Frozen," *Daily News Egypt*, August 15, 2016, http://www.dailynewsegypt.com/2016/08/15/assets-morsi-100-muslim-brotherhood-figures-frozen/

represent a legitimate flight risk, as a form of intimidation.[98] According to the Egyptian archival organization Daftar Ahwal, during the 2011-2013 period of rule by the Supreme Council of the Armed Forces (SCAF) and President Morsi, the state issued only ten departure bans; by contrast, from July 2013 to early 2016, 69 departure bans were imposed by judicial order, and many more through extra-judicial procedures.[99]

According to the Code of Criminal Procedure, citizens can be banned from leaving the country in two circumstances: to prevent a suspect under investigation or on trial from leaving the country before the investigation or trial is complete, or when a court issues a final ban on travel as part of the sentence in a criminal conviction.[100] There is no requirement to notify someone that he or she is under a ban. This results in the phenomenon of the "shadow ban," in which a person is unaware that she is even under a ban until she arrives at the airport.[101] In Case 173, investigative judges issued bans on at least 12 human rights directors and their staff. Judicial authorities also imposed travel bans in criminal investigations of alleged Brotherhood members. In addition, the well-known politician and academic Amr Hamzawy, Abdelrahman Youssef, a poet and son of the prominent Islamist preacher Yusuf al-Qaradawi, and others were banned from travel when they were investigated as a group on charges of "insulting the judiciary."[102]

The process for issuing departure bans is murky. Article 64 of the 2014 Constitution requires a "reasoned judicial order" for the imposition of a ban. As a Human Rights Watch analysis explains, however, there is no relevant law governing travel bans. According to a Ministry of Interior decree (not a law), prosecutors, investigative judges, courts, the Ministry of Interior and security and intelligence agencies are allowed to issue bans. According to Daftar Ahwal, state security and other extra-judicial authorities have issued bans on more than 100 people.[103] As Human Rights Watch notes, the authorities often fail to provide justification for the ban, and when they do it is usually sweeping, vague, and lacking evidence or a specified time period. This violates Article 62 of the 2014 Constitution, which guarantees freedom of movement and states that "no citizen may be prevented from leaving state territory...except by a reasoned judicial order for a specified period of time and in the cases defined by the law." Moreover, Article 54 states that anyone "whose freedom is restricted shall have the right to file grievance before the court against this action."[104]

Although the method of imposition differs, the purpose of travel bans appears the same: to target and punish dissenting voices or critics of the regime.

98 Human Rights Watch, "Egypt: Scores Barred From Traveling, Security Officials Turn Back Activists, Journalists, Academics," November 1, 2015, https://www.hrw.org/news/2015/11/01/egypt-scores-barred-traveling

99 Daftar Ahwal Center, "*Ijra'at alqabd wamane alssafar walddukhul, fi matarat musr, ealaa khalfiat alnnashat bialmajal aleammi, khilal khms sanawat baed thurat 25 yanayir - taqrir shamil*" [Arrest and travel ban procedures at airports in Egypt based activities in general, within five years after the revolution of January 25 - A comprehensive report], February 25, 2016, https://daftarahwal.wordpress.com/2016/02/25/ban-travel-arrest-airports-fullreport/

100 Mohamed Hamama, "The Law, Politics and Thuggery Behind Travel Bans," *Mada Masr*, June 2, 2015, http://www.madamasr.com/en/2015/06/02/feature/politics/the-law-politics-and-thuggery-behind-travel-bans/

101 Egyptian Initiative for Personal Rights et al., "Background on Case No. 173," March 22, 2016, http://eipr.org/sites/default/files/pressreleases/pdf/qa_-_public_document_-_final_english_march_22.pdf; see also Elissa Miller and Margaret Suter, "Case No. 173: The State of Egypt's NGOs," March 29, 2016, http://www.atlanticcouncil.org/blogs/menasource/case-no-173-the-state-of-egypt-s-ngos

102 Details of the case can be found in "26 People Referred to Criminal Court for 'Insulting Judiciary'," *Mada Masr*, January 19, 2014, http://www.madamasr.com/en/2014/01/19/news/u/26-people-referred-to-criminal-court-for-insulting-judiciary/

103 Daftar Ahwal Center, "*Ijra'at alqabd wamane alssafar walddukhul, fi matarat musr, ealaa khalfiat alnnashat bialmajal aleammi, khilal khms sanawat baed thurat 25 yanayir - taqrir shamil*" [Arrest and travel ban procedures at airports in Egypt based activities in general, within five years after the revolution of January 25 - A comprehensive report], February 25, 2016, https://daftarahwal.wordpress.com/2016/02/25/ban-travel-arrest-airports-fullreport/

104 All constitutional citations are from Human Rights Watch, "Egypt: Scores Barred from Traveling."

DISCIPLINARY MEASURES AGAINST JUDGES

Since July 2013, nearly 80 judges have been forced into retirement, transferred to a non-judicial job, or banned from travel as penalties imposed by judicial disciplinary boards.[105] Many of these judges are well-known for opposing interference by the executive branch in court decisions and for supporting the independence and integrity of the judiciary. The Public Prosecution has played a significant role in these episodes.

Judicial disciplinary boards are specialized courts that hear cases of alleged professional misconduct by judges authorized to impose disciplinary measures.[106] There are first-level disciplinary boards (with five members) and a Supreme Disciplinary Board (with seven members), which hears challenges to the boards' verdicts and issues final decisions. The Supreme Judicial Council appoints judges to the boards and enforces their decisions. The Ministry of Justice can initiate disciplinary actions against judges and supervises the process overall, but the Public Prosecution has a role as well. The Public Prosecutor is one of the seven members of Supreme Judicial Council. The Public Prosecution also has the power to bring disciplinary charges against judges and delegate investigative judges to investigate them.[107]

The judges disciplined since 2013 have been charged with involvement in political activity. The Judicial Authority Law prohibits judges from taking part in political activity without first resigning from the bench. In March 2016, the Supreme Disciplinary Board expanded the prohibition to include a ban on judges commenting on decisions by Parliament or the government.[108]

In the so-called "Judges for Egypt" case, the Public Prosecution filed charges in September 2014 against 15 judges for forming the "The Independence of the Egyptian Judiciary Movement," and appointed investigative judge Mohammed Sherin Fahmi to the case.[109] According to the charges, the Movement violated the law by: announcing that Mohamed Morsi had won the June 2012 presidential election run-off without having the authority or jurisdiction to do so; by participating in the summer 2013 sit-in in Raba'a al-'Adawiyya Square and declaring their support for the Muslim Brotherhood; and by challenging legislative authority and inciting people against the Egyptian army and Interim President Adly Mansour.[110]

Based on these accusations, a first disciplinary board issued a verdict on February 21, 2015, giving five judges a warning and forcing the remainder to retire. These judges, along with four of the judges who received a warning, challenged the verdict, and the case was sent to the Supreme Disciplinary Board for a final decision. On March 21, 2016, the Supreme Disciplinary Board ruled that all 14 judges who challenged the verdict must be forced into retirement.

The Public Prosecution also played a role in the disciplining of senior judge Tal'at Abdullah, the Public Prosecutor during the Morsi's presidency. In September 2013, the Cairo Appeals Court ordered an investigation into Abdallah. Hisham Barakat, Abdallah's successor as Public Prosecutor, accused Abdallah of planting bugging devices and surveillance cameras in the Public Prosecutor's office in order to spy on him and record his meetings. In February 2014, then-Minister of Justice Adel Abdel Hamid referred Abdallah and his assistant, Judge Hassan Yassin,

105 Reports in the Egyptian media confirm that 50 judges have been disciplined, but many experts believe that there are additional cases that have not been documented in the media and therefore that the total may reach 80 judges since July 2013.

106 Disciplinary boards are defined by Article 98 of the Judicial Authority Law.

107 The Minister of Justice also can assign investigative judges.

108 Cairo Institute for Human Rights Studies, "A New Purging of the Judiciary: 32 Judges Forced into Retirement For Expressing Their Opinion," March 30, 2016, http://www.cihrs.org/?p=18415&lang=en

109 Egyptian Initiative for Personal Rights, "Rights Groups Condemn Forced Retirement of 41 Judges for Expressing their Opinions," March 18, 2015, http://eipr.org/en/pressrelease/2015/03/18/2344

110 First Disciplinary Board, Case No. 9/2014, March 12, 2016 (Arabic).

to a disciplinary board.[111] On July 28, 2014, the disciplinary board forced Abdallah and Yassin into retirement. In September 2014, the Supreme Judicial Council affirmed the decision based on the following charges: that they had installed bugging devices and surveillance cameras to secretly record meetings; that Abdallah's appointment as the Public Prosecutor had violated the Judicial Authority Law; and that they had been involved in political activities.[112]

Yet another prominent case was the sacking of a large number of judges for signing the July 24, 2013 "Bayan Raba'a," or Raba'a statement, which called for a return to 'constitutional legitimacy' in the wake of Morsi's removal by the military three weeks earlier. Immediately after the statement's promulgation, the Ministry of Justice began investigating the 75 judges who signed it for violating the Judicial Authority Law.[113] The President of the Cairo Court of Appeals assigned investigative judge Mohamed Sherin Fahmi, who confirmed the involvement of 56 judges. In November 2014, the Prosecution filed a case with a disciplinary board, accusing the judges of violating the Judicial Authority Law, supporting a terrorist organization (the Muslim Brotherhood), and destabilizing public order by taking part in the Raba'a sit-in and signing the statement.[114] A first disciplinary board issued a verdict in March 2015 forcing 31 judges to retire and acquitting the remaining 25. A final disciplinary board reversed the acquittal of one judge, Yasir Mohammed Ahmed Muhyiddin, forcing him into retirement, while confirming the acquittal of the other 24.[115]

In the case of prominent senior reformist judge Zakaria Abdel Aziz, the Ministry of Justice took the lead in bringing charges against him. In March 2014, Abdel Aziz, the former head of the Judges Club, was referred to a disciplinary board by a decision from the Minister of Justice alleging that Abdel Aziz had stormed the State Security headquarters in March 2011 following the ouster of Mubarak. The referral came after members of a pro-government group called the Legal Committee to Defend the Judiciary accused Abdel Aziz of "inciting demonstrators to storm the State Security headquarters in Cairo's northern district of Nasr City."[116] In March 2016, a disciplinary board forced Abdel Aziz into retirement, but did not provide any reason.[117] Abdel Aziz challenged the verdict, arguing that "he was among several prominent figures who attempted to convince protesters who seized documents from the State Security headquarters in Cairo to hand them over to the army."[118] The case went to the Supreme Disciplinary Board for a final decision, and in April 2016 the Board refused Abdel Aziz's appeal and issued a final verdict forcing him into retirement.[119]

In another case, in April 2015, Chief of the Cairo Court of Appeals Abdel Shafi Uthman appointed a judge to investigate two colleagues, Judges Hisham Raouf and Essam Abdel Gabbar, for their alleged contribution to an anti-torture draft law authored by a human rights organization. The investigation is ongoing.

These disciplinary proceedings can lack impartiality. In some cases, the Public

111 "Former Prosecutor General Referred to Disciplinary Council For Bugging Office," *Mada Masr*, February 11, 2014, http://www.madamasr.com/en/2014/02/11/news/u/former-prosecutor-general-referred-to-disciplinary-council-for-bugging-office/

112 Mahmoud al-Waqi', "*Ta'arraf a'laa asbab eqalat alnnayib ala'mm alssabiq Talaat Abdallh lil maeash*" [Learn the reasons for sending former Public Prosecutor Talaat Abdullah into retirement], *Al-Masry Al-Youm*, December 4, 2014, http://www.almasryalyoum.com/news/details/592828

113 Ahmed Aboulenein, "How Egypt's Crackdown on Dissent Ensnared Some of the Country's Top Judges," *Reuters*, October 18, 2016, http://www.reuters.com/investigates/special-report/egypt-judges/

114 Supreme Disciplinary Board, Case No. 4/2015, March 28, 2016.

115 *Ibid.*

116 "Former Head of Judges Club Charged With Storming State Security HQ in 2011," *The Cairo Post*, March 26, 2015, http://thecairopost.youm7.com/news/143507/news/former-head-of-judges-club-charged-with-storming-state-security-hq-in-2011

117 "Prominent Egyptian Reformist Judge Zakaria Abdel Aziz Forced into Retirement," *Ahram Online*, March 7, 2016, http://english.ahram.org.eg/NewsContent/1/64/190379/Egypt/Politics-/Prominent-Egyptian-reformist-judge-Zakaria-AbdelAz.aspx

118 *Ibid.*

119 112 Khaled Ammar, "*Tadib almustashar zakariaa eabd aleaziz bialmaeash bsbb amin alddawlat*"[Disciplining judge Zakaria Abdel Aziz with retirement because of state security], *al-Wafd*, April 18, 2016, https://goo.gl/wToFCk

Prosecution delegated judges who were not considered neutral. For example, Judge Safa al-Deen Abaza was appointed to investigate Abdel Aziz, despite the fact that he had competed with Abdel Aziz for the leadership of the Judges Club. Abaza referred Abdel Aziz to a disciplinary board without even hearing his testimony. Abdel Aziz's defense explicitly rejected Abaza's appointment, describing it as "an act of political antagonism."[120]

In another example of bias, judges on the disciplinary board that issued the verdict in the Raba'a statement case had expressed their opinion in the matter before the board had even convened. Judge Ayman Abbas, the President of the Cairo Court of Appeals, had asked the Minister of Justice to refer the judges to a disciplinary board in the first place, casting doubt on his impartiality. The Supreme Disciplinary Board refused to record a request by the judges under investigation to recuse another judge serving on the disciplinary board, Ahmed Gamal al-Deen, even though the request had been submitted in the minutes of a board session. This contravenes the law that gives defendants the right to have their requests recorded in the minutes. In fact, judicial authorities are required to stop considering a case once a defense has submitted a request for a judge's recusal.[121] Furthermore, the disciplinary board barred 13 of the judges from traveling outside Egypt for life without questioning them and without providing any legal justification for the harsh decision.[122]

Notably, many other judges who have expressed political opinions in favor of the regime and expressed positions on cases before them have not faced any punishment. These judges were not brought before a disciplinary board, did not lose their authority to preside in court, and were not held accountable in any other way.[123]

For example, in a statement on Egyptian television in January 2016, then-Minister of Justice Ahmed al-Zend called for the killing of thousands of Muslim Brotherhood members, their supporters, and family members. He said that he would not rest until he had taken revenge on the Brotherhood in retaliation for attacks on the police and army and argued that 10,000 Brotherhood members should be killed for each soldier who had died.[124] Al-Zend did not face any consequences for making this statement. He was not accused of incitement, expressing political views, or any other charges.

Another example is Judge Mohamed Nagy Shehata, who is notorious for issuing hundreds of death sentences against Brotherhood members. Shehata has repeatedly expressed his staunch opposition, not only to the Brotherhood, but also to the January 25, 2011 uprising and many other opposition movements (including the April 6 movement and leftist and socialist movements).[125] Although such statements should be considered clear expressions of political views, Shehata has never been prosecuted—or even questioned.

FAILURE TO PROSECUTE AND CONVICT

The Egyptian criminal justice system typically shields government officials and supporters from accountability. When incriminating information is brought to the Public Prosecution, it seldom investigates. When it does investigate

120 Norhan Hasan, "*Tafasil 'ihalat almustashar Zakariaa Abdialaziz limajlis alttaʾdib fa liaittihamih bi-iqtihami "amn ad-dawla*" [Details of referring judge Zakaria Abdel Aziz to disciplinary board for allegedly storming into the State Security headquarters], *Youm7*, March 25, 2015, https://goo.gl/3DDWFc

121 Cairo Institute for Human Rights Studies, "A New Purging of the Judiciary: 32 Judges Forced into Retirement for Expressing Their Opinion," March 30, 2016, http://www.cihrs.org/?p=18415&lang=en

122 *Ibid*.

123 *Ibid*.

124 Shaimaa al-Hadidi, "*Kayf qadaa alnnizam almisri ealaa alʾaswat alʾiislahiat dakhil alqada*" [How did the Egyptian regime mute the voices of reform within the judiciary], *Noonpost*, March 30, 2016 https://goo.gl/k2fMTD

125 Huda Saʾad, "*Al-mustashar Nagi Shehata: saʾeed belaqab 'Qadi alʾiiedamat' wala taʾdhib fa alssojon*" [Judge Nagi Shehata: Happy with the title 'executions judge'; no torture in prisons] *El Watan*, December 12, 2015, http://www.elwatannews.com/news/details/855220

protected individuals, it leaves the task of verifying accusations to the police, who are known for corruption.[126] Trials usually result in exonerations or at most light sentences despite the severity of the crimes committed.

Certain laws protect high government officials and their private-sector partners from judicial reproach. President al-Sisi's March 2015 amendment to the Code of Criminal Procedure allowed the amicable settlement of disputes between the state and Mubarak-era officials suspected of corruption.[127] In December 2015, al-Sisi also amended the Law on Illicit Gains to allow those who have defrauded or embezzled private and public institutions to avoid criminal prosecution if they return illegally obtained funds.[128] One example of someone who has benefitted from these amendments is Mubarak-era tycoon Hussein Salem, who in August 2016 "reconciled" with the government after it reclaimed from him almost 5.5 billion Egyptian pounds in pilfered assets.[129]

The Public Prosecution also shields police officers from scrutiny and accountability. Prosecutors are required to seek approval from their superiors even before interviewing a police officer. If prosecutors are granted approval to investigate, they may avoid inquiring into the facts of the case with any diligence, resulting in gross violations of evidentiary standards. An obvious and egregious example has been the failure of the Public Prosecution to open any investigation into the massacre of hundreds of demonstrators when breaking up the Raba'a al-Adawiya sit-in in August 2013.

In the rare instances when officers are charged with crimes, the Public Prosecution often commits miscarriages of justice. Not a single policeman implicated in violence against demonstrators during the January 2011 uprising has been convicted of a crime, in part because of poorly constructed cases. Since 2011, few cases of police brutality have been referred to trial, and those convicted have usually seen their verdicts overturned on appeal due to prosecutorial ineptitude. For example, the 15-year prison sentence imposed by the Cairo Criminal Court on a police officer for the fatal shooting of activist Shaimaa al-Sabbagh during a peaceful protest in downtown Cairo in January 2015, a case that generated an unusual level of public outrage, was quickly overturned on appeal.[130] In part due to failures of the Public Prosecution, the Egyptian judicial system has issued verdicts of innocence to most of the symbols of Mubarak's regime, in what has been described as a "parade of exoneration for all." Former President Mubarak himself was acquitted of all embezzlement charges, and faces a second retrial to determine his guilt in the killing of protesters during the revolution. The former Minister of Interior, Habib al-Adly, was cleared of similar charges, including responsibility for the conduct of police forces under his direct command.

CONCLUSION

The Egyptian criminal justice system has been on a steep slope of decline in recent years. Essentially nothing remains of the judicial independence of which Egyptians were justifiably proud in previous decades. The judiciary, including the Office of the Public Prosecution, has destroyed its own credibility and independence by consistently inserting

126 Yezid Sayigh, "Missed Opportunity: The Politics of Police Reform in Egypt and Tunisia," http://carnegie-mec.org/2015/03/17/missed-opportunity-politics-of-police-reform-in-egypt-and-tunisia-pub-59391

127 "*Baed taedil almaddat 18 min qanun al'iijra'at aljinayiya «alttasalh» yuthir aljadal*" [After the amendment of Article 18 of the Code of Criminal Procedure «reconciliation» raises controversy], *Al-Ahram*, http://bit.ly/2dQqBxW

128 Ziad Bahaa-Eldin, "Egypt: Why Amend the Illicit Gains Law Now?" *Ahram Online*, December 25, 2015, http://english.ahram.org.eg/NewsContentP/4/177401/Opinion/Egypt-Why-amend-the-illicit-gains-law-now.aspx

129 Heba Afify, "Money Without Truth: Egypt's Reconciliation Deal With Mubarak-Era Tycoon," *Mada Masr*, August 3, 2016,

130 John Beck, "Anatomy of a Killing: How Shaimaa al-Sabbagh Was Shot Dead at a Cairo Protest," *Vice News*, February 24, 2015, https://news.vice.com/article/anatomy-of-a-killing-how-shaimaa-al-sabbagh-was-shot-dead-at-a-cairo-protest; "Egyptian Court Overturns Police Officer's Conviction For Killing Female Protester," *The Guardian*, February 14, 2016, https://www.theguardian.com/world/2016/feb/14/egyptian-court-overturns-police-officers-conviction-killing-female-protester

itself into political disputes in order to defend the regime and target its critics.

The numerous examples discussed in this paper – only a small segment of a much larger picture – demonstrate the Public Prosecution's many strategies for attacking opponents or critics of the government, through politicized verdicts in accordance with the wishes of the current regime. By being complicit in gross injustice, and by conspiring against the rights of Egypt's citizens, the judiciary is steadily eroding its own legitimacy and losing the confidence of the citizenry.

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