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Key Words: Growing tendency to uphold death sentences violates right to life and right to due process.

Executive Summary:

1. In a swift break with traditional judicial practice, Egypt has begun applying the death sentence with worrying zeal. The number of death penalty sentences, mass trials, and executions have all risen exponentially since 2017. For example, the number of executions rose from 15 in 2014 to 22 in 2015 to 24 in 2016 and to 49 in 2017. This increasing recourse to death sentencing started with political cases, but has expanded to ordinary criminal cases.¹
2. This report will begin by setting out the national and international legal contexts for this disconcerting situation, examining Egypt’s violations of its negative obligation to respect the right to life as well as Egypt’s failure to implement its positive obligation of fair trial rights. It will then offer data demonstrating the worrying increase in capital punishment sentences and executions. The report will then address violations of fair trial and detainees rights that directly affect the application and execution of the death penalty. Finally, this report will present case studies that exemplify these violations and offer recommendations.

National legal framework:

3. Egypt’s Constitution makes provisions for protecting the right to life and fair trial rights (Arts. 55, 92, 93,). The nominal respect for human rights principles is also evident in articles 126 and 129 of the Penal Code, which criminalise torture. Egypt is also party to the International Covenant on Civil and Political Rights, which obliges the state to protect the right to life.
4. However, Egyptian civil legislation currently contains more than 100 crimes punishable by the death penalty.² These crimes range from anti-drug offenses to threats to state security, to charges related to counterterrorism. The Military Code alone provides for at least 41 crimes punishable by death.
5. Despite prevailing international trends to abolish the death penalty, Egypt in recent years has continued to pass legislation that expands the scope of capital punishment. In 2015,

¹ “Ordinary criminal cases” refers to drug crimes and homicide. The term is used to distinguish such cases from counter-terrorism cases, politically motivated prosecutions, and a wide array of other crimes the state perceives as threats. For more on this, please see “In the Name of the People,” EIPR, March 2019.

² “The Death Penalty in Egyptian Law,” EIPR, 2017, https://eipr.org/sites/default/files/reports/pdf/the_death_penalty_in_egyptian_law_final.pdf

the Counter-Terrorism Law added at least 15 punishable crimes by hanging.³ In January 2018, Parliament unanimously approved the death penalty for abducting and sexually assaulting a child.⁴ In March of that same year, the House of Representatives approved an amendment criminalising with capital punishment the possession, import, or manufacture of explosives if in pursuance of a terrorist purpose.⁵ The Egyptian legislature's ironclad belief in the death penalty as a solution to many problems is exemplified by a recent incident: following a train accident that led to a deadly fire in Cairo's central train terminal, a parliamentarian proposed a bill to increase the maximum penalty for criminally negligent manslaughter to death.⁶

6. This enthusiastic push to broaden the scope of capital punishment in Egypt contrasts with Egypt's vote on the death penalty resolution in the 36th session of the UN Human Rights Council, which was for a moratorium on the death penalty and a nationwide conversation on the issue. Additionally, Egypt made several voluntary pledges (177, 179, 184) at the last UPR cycle concerning due process and fair trial rights, especially during possible applications of the death penalty.⁷

Failure of negative obligation to protect the right to life and fair trial:

7. In addition to the legislative expansion of the death penalty, amendments to appeal procedures infringe on the state's negative obligations to protect the right to life and fair trial. 2017 changes to the Code of Criminal Procedure mandated that cases can only be tried once before the Criminal Court and only once before the Court of Cassation where the latter addresses the facts of the case instead of procedure.⁸ While ostensible in service of speeding litigation through the bloated and clogged judiciary system, shorter litigation and no possibility of retrial - particularly in cases punishable by the death sentence - can jeopardize the course of justice, fair trial guarantees, and the rights of the accused.

³ "Counterterrorism Law Erodes Basic Rights," Human Rights Watch, August 2015, <https://www.hrw.org/news/2015/08/19/egypt-counterterrorism-law-erodes-basic-rights>

⁴ Law No. 5 of 2018.

⁵ Law No. 21 of 2018.

⁶ "حادث قطار محطة مصر يطرح السؤال" Youm 7, February 2019, <https://www.youm7.com/story/2019/2/28/%D8%AD%D8%A7%D8%AF%D8%AB-%D9%82%D8%B7%D8%A7%D8%B1-%D9%85%D8%AD%D8%B7%D8%A9-%D9%85%D8%B5%D8%B1-%D9%8A%D8%B7%D8%B1%D8%AD-%D8%A7%D9%84%D8%B3%D8%A4%D8%A7%D9%84-%D9%87%D9%84-%D9%86%D8%AD%D8%AA%D8%A7%D8%AC-%D8%AA%D8%B9%D8%AF%D9%8A%D9%84%D8%A7-%D9%82%D8%A7%D9%86%D9%88%D9%86%D9%8A%D8%A7/4157109>

⁷ "Arab Republic of Egypt National Standing Committee for Reporting and Follow Up", Mid Term Report, 2014, https://www.upr-info.org/sites/default/files/document/egypt/session_20_-_october_2014/egyptmidtermreport.pdf

⁸ Presidential Decree No. 11 of 2017.

8. In fact, despite making all the requisite nods towards international human rights norms on paper, Egypt has a consistent track record of disproportionate sentencing, especially when it comes to the death penalty, as well as a history of violating due process, detainees rights, and fair trial rights. A brief selection of case studies highlighting these persistent issues will follow the recommendations section of this report.

Death penalty data:

9. The following data are minimum figures collated by EIPR through interviews with victims' families, published testimonies, and news reports from 2016 to 2018. No official count of death penalty sentences or executions is published by the government. The Mufti's office, which used to publish statistics, stopped in 2012.⁹

10. Executions:

2016 - 24 convicted individuals were executed

2017 - 49 convicted individuals were executed

2018 - 43 convicted individuals were executed in 23 cases including 6 military cases

11. Total referrals to Mufti (provisional death sentences):

2016 - 58 defendants in 8 cases (all political)

2017 - 45 defendants in 15 cases, including 1 military case

2018 - 350 defendants in 185 cases (183 criminal / 2 political)

12. Civilian courts:

2016 - Criminal courts: 28 defendants in 9 cases (3 criminal / 6 political)

Cassation court: 1 defendants in 1 cases

2017 - Criminal courts: 260 defendants in 81 cases (65 criminal / 16 political)

Cassation court: 32 defendants in 8 cases

2018 - Criminal courts: 543 defendants in 205 cases (182 criminal / 23 political)

Cassation court: 59 defendants in 16 cases

13. Military courts:

2016 - Criminal courts: 15 defendants in 2 cases (all political)

Supreme military court of appeal: 0 defendants in 0 cases

2017 - Criminal courts: 71 defendants in 4 cases (all political)

Supreme military court of appeal: 25 defendants in 3 cases

⁹ According to Penal Code Article 381, the court must refer the defendant's papers to the Grand Mufti before issuing a first instance death sentence. This same article specifies that the Mufti's response must reach the court within 10 days with either an approval or a recommendation to change the sentence. If a response is not received within 10 days, the court may issue a death sentence at its convenience.

2018 - Criminal courts: 52 defendants in 6 cases (all political)
 Supreme military court of appeal: 2 defendants in 2 cases

	2016	2017	2018
Total referrals to Mufti	58	45	350
Confirmed individuals executed	24	49	43
Criminal Court death sentences	28	260	543
Cassation Court death sentences	1	32	59
Military Court of First Instance death sentences	15	71	52
Military Court of Appeal death sentences	0	35	2

Table 1: individuals sentenced and executed to death

Abuse of fair trial and detention rights:

14. Analysis of the cases collected by EIPR reveals systematic patterns of abuse that directly affect the application and execution of the death penalty. Fair trial rights are routinely ignored or violated with the result that procedural irregularities abound. Practices of forced disappearances, no forensic examination, forced confessions through torture, no access to legal counsel, and broadcasting defendants’ confessions are commonplace.

15. At least 20 defendants sentenced to death were subject to forced disappearance. This practice is worryingly commonplace, despite constitutional guarantees and legislative protections against it.¹⁰ Additionally, the Public Prosecutor rarely investigates defendants’ reports of being forcibly disappeared. This in turn is reason to doubt their confessions, which are usually produced under highly irregular if not illegal circumstances, beginning with their forced disappearance.

16. Confessions are also the result of torture. At least 25 defendants retracted their confessions, reporting that they were extracted under torture. Monitoring by EIPR

¹⁰ 2014 Constitution, Article 54; Prison Regulation Code, Article 5. The period of disappearance is calculated by comparing the official date of arrest as stated by the warrant and telegrams sent by families of the disappeared to the Public Prosecutor.

suggested that torture was a systemic practice, especially during the investigation stage of a case. Requests by defendants for forensic examination after being subject to torture are routinely ignored or deferred by the Public Prosecutor to the prison hospital. In many cases, this causes a long time delay that complicates a forensic examination for signs of torture.

17. During the investigation and trial stage of a case, it is also routine practice for a defendant to be denied access to legal counsel. This is again despite both constitutional and legislative guarantees of access to a lawyer.¹¹
18. As per EIPR's monitoring, the Ministry of Interior has filmed and published videos of at least 8 defendants confessing during the investigation stage of their case. By publishing these confessions – which are often extracted under torture – before the case goes to trial, the Ministry prejudices the investigation and instigates public opinion against the defendants. This manipulation of the legal system is despite constitutional guarantees of fair trial rights.¹²
19. In addition to patterns of abuse of fair trial rights, EIPR has found that conditions for defendants waiting to be sentenced and defendants on death row routinely violate detainees rights.¹³ Detainees are often held in solitary confinement in a 1.5mx2m cell without a toilet or adequate lighting or ventilation. They are permitted to leave their cell for 15 minutes per day. Prisoners on death row are often forced to wait years in these conditions, suffering the psychological anguish of waiting for a death sentence.
20. In addition, the state has begun executing death row prisoners without notifying their legal counsel or next of kin. This is despite legislative guarantees to the contrary.¹⁴ Prison Authorities now routinely deny family the right to visit their relatives before execution and without notifying their lawyers to attend the proceedings. Most recently, at least 15 people were executed in February 2019 without prior notification of next of kin or lawyers. Three people were executed on February 7, 2019 for the killing of the judge's son; three others in connection with the killing of Gen. Nabil Farag on February 13, 2019; and nine other people were executed on February 20, 2019, in connection with the assassination of the Public Prosecutor.

¹¹ 2014 Constitution, Article 54; Code of Criminal Procedure, Article 124.

¹² 2014 Constitution, Article 96.

¹³ "Time on Death Row-Degrading Treatment", EIPR, October 2018, <https://www.eipr.org/en/publications/time-death-row-degrading-treatment>

¹⁴ The Code of Criminal Procedure, Article 472.

Recommendations:

21. Institute a moratorium on the death penalty pending a nationwide societal debate on the issue, in accordance with Egypt's recommendation at the 36th UNHRC session.¹⁵
Therefore, we urge the government to respect its obligations, stop proposing additional statutory amendments that would make more people subject to the death penalty.
22. Publish official statistics on the death penalty sentences handed down and the number of people executed by the state. Re-publish and make available annual reports of Dar al-Ifta on the opinions of the Grand Mufti of the Republic on death cases starting from 2012.
23. Review the penal, terrorism, military, and drug laws to reduce the number of offences punishable by death. Amend the Law of Vital Facilities so that civilians accused of offences punishable by death shall not be tried or sentenced by any exceptional court or by military courts for any reason whatsoever.
24. Revise the Code of Criminal Procedure to bring it in line with constitutional provisions by closing the legal loopholes which violate the rights of the accused. For example, amend Article 124 of the Code of Criminal Procedure allowing the investigator to start the investigation without a lawyer. No defendant may be prosecuted without a lawyer for any reason, and defendants facing charges punishable by death must receive the services of an efficient lawyer and exercise their right to choose a lawyer.
25. Stop the Ministry of the Interior from publishing videos of the accused during interrogation. This constitutes a fundamental violation of the right to a fair trial and the presumption of innocence until proven otherwise. Additionally, judicial authorities may not exclusively rely only on defendant statements, extracted confessions, and police investigation reports for their judgements unless they are accompanied by indisputable evidence and proof.
26. Sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims to abolish the death penalty.¹⁶ Sign and ratify the

¹⁵ The 36th regular session of the Human Rights Council (HRC36), September 2017, https://ilga.org/downloads/HRC36_death_penalty_voting_resolution.pdf

¹⁶ "Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty", The Office of the High Commissioner for Human Rights (UN Human Rights), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>

27. Fulfil Egypt's obligations as a Party to the Convention Against Torture, including "tak[ing] effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." Therefore, the Egyptian government should start adopting a self-contained law that criminalizes torture.

Case studies:

28. Case No. 22/2015/Tanta Military Felonies known in the media as the "Bombing Kafr El-Sheikh Stadium" case.
- a. On April 15, 2015, an explosion occurred at the Kafr El Sheikh stadium as some students of the military academy waited for the bus to college. On 1, February 2016, the military court in Alexandria referred the papers of seven defendants to the Mufti. On March 2, 2016 the Military Court in Alexandria sentenced seven defendants, including three in absentia, to death.¹⁸ This verdict was later upheld by the Supreme Military Court of Appeals on 19, June 2017.
 - b. After the Supreme Military Court of Appeals upheld the death sentences, a defendant in another case (Case No.832/2016/Supreme State Security, known in the media as the "Upper Egypt Province Case") told the court that he knew who perpetrated the stadium explosion, and that person was not among the seven defendants sentenced to death. According to article 441 of the Code of Criminal Procedure, the death sentences should have been halted and the case reconsidered. However, the defendants' petition for reconsideration was rejected without justification or explanation.
 - c. On January 2, 2018, four of the seven defendants were executed: Lotfi Ibrahim Ismail Khalil, Ahmed Abdel Moneim Salameh Ali Salama, Ahmad Abdel Hadi Mohammed Al-Sehemi, and Sameh Abdallah Mohammed Yousif.

¹⁷ "International Convention for the Protection of All Persons from Enforced Disappearance", The Office of the High Commissioner for Human Rights (UN Human Rights),
<https://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>

¹⁸ "إعدامات قضية إستاد كفر الشيخ العسكرية", EIPR, March 2016, <https://eipr.org/press/2016/03/%D8%A5%D8%B9%D8%AF%D8%A7%D9%85%D8%A7%D8%AA-%D9%82%D8%B6%D9%8A%D8%A9-%D8%A5%D8%B3%D8%AA%D8%A7%D8%AF-%D9%83%D9%81%D8%B1-%D8%A7%D9%84%D8%B4%D9%8A%D8%AE-%D8%A7%D9%84%D8%B9%D8%B3%D9%83%D8%B1%D9%8A%D8%A9-%D8%B8%D9%84%D9%85-%D9%85%D8%AD%D9%82%D9%82>

- d. Ahmed Abdel Hadi Mohammed Al-Sehemi said he endured electric shocks to his chest, testicles, and penis, while Lotfi Ibrahim Khalil and Ahmed Abdel-Moneim Salameh wrote letters describing the severe torture they suffered.¹⁹
29. Case no. 81/2016/High State Security Felonies known in the media as “Assassination of the Public Prosecutor” case.
- a. On June 29, 2015, a car explosion in the al-Nozha area of Cairo killed former public prosecutor Hisham Barakat, injuring his bodyguards and some citizens.
 - b. On March 6, 2016, the Ministry of the Interior published a video in which four defendants appeared giving confessions before the camera. They were Ahmad-al-Ahmadi, Ahmed Jamal Ahmed, Mohammed Ahmad al Sayyid and Abu al-Qasim Ahmed Ali.
 - c. The trial began in June 2016. On August 16, 2016, a news channel posted a video clip during a trial session in which three defendants on death row told the judge they were subjected to torture and inhuman degrading treatment.²⁰
 - d. On June 17, 2017, the Cairo Criminal Court referred the papers of 30 defendants to the Mufti before sentencing them to death. On November 25, 2018, the Court of Cassation upheld the Cairo Criminal Court decision to execute nine of the 28 accused.²¹ The nine defendants were executed on February 20, 2019.
30. Case no. 25248/2012/Alexandria Criminal Court known in the media as “Upper Egypt / Gypsy” case.
- a. On 3 August, 2012, a fight broke out between two extended families in a neighbourhood of Alexandria, killing three. The court charged 45 defendants with killing three citizens in a gunfight, destroying property with molotov cocktails, stealing, and possessing firearms without a license. On 14 April, 2018, the Alexandria Criminal Court referred the papers of 45 defendants to the Mufti before sentencing them to death on 13 June, 2018. The hearing was rescheduled to 8 August, 2018, when the Alexandria Criminal Court sentenced all 45

¹⁹ “In the Name of the People,” The EIPR Annual Report on the Death Penalty 2017, page 27, 28, 29., <https://eipr.org/en/publications/%E2%80%9C-name-people%E2%80%9D-death-penalty-egypt-2017>

²⁰ Aljazeera Mubasher, August 16, 2016, <https://www.youtube.com/watch?v=ZbtZ5u4MbfU>

²¹ “Final verdicts in the case of the assassination of the public prosecutor: Cassation Court upholds death sentences for the fourteenth time in one year, in cases marred by procedural irregularities and violations of defendants’ rights”, EIPR, November 2018, <https://eipr.org/en/press/2018/11/final-verdicts-case-assassination-public-prosecutor-cassation-court-upholds-death>

defendants. Only two defendants were present at the hearing, the rest were sentenced in absentia.

- b. Some of the 43 defendants in absentia filed a request for a retrial, canceling the Court of First Instance's previous judgement and forcing a re-trial for all 45 defendants except 3.