
Submission to the UN Human Rights Committee

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**El Hak Foundation for Freedom of
Expression and Human Rights**

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Egypt

El Hak Foundation for Freedom of Expression and Human Rights is an Egyptian human rights organization founded in 2008 and registered according to Egyptian law in 2012. The institution obtained consultative status in 2021

Egypt

**137th session (27 February to 24 March 2023) of the UN
Human Rights Committee**

EGYPT

LIST OF ISSUES AND LIST OF ISSUES PRIOR TO REPORTING

Please recycle 

Al Hak Foundation for Freedom of Expression and Human Rights presents the following information to the United Nations Human Rights Committee prior to the following review by the Committee at its 137th session. All sources for the data included in the memorandum are from the publications of Al Hak Foundation for Freedom of Expression and Human Rights.

I. State of emergency and counter-terrorism measures (Arts. 7, 9, 14)

The counter-terrorism Law was issued in its first form in the form of Decree-Law No. 94 of 2015, although it was amended by Law No. 11 of 2017, then it was amended again by Law No. 15 of 2020, then another decision was issued to amend No. 149 of 2021. On the other hand, the law was published in the Official Gazette, Issue No. 33 bis, on August 15, 2015. The Terrorist Entities Law was also issued in the same manner represented by the decree law, which is legislation issued through the executive authority represented in the person of the President of the Republic, who exercised his legislative jurisdiction in the absence of the Egyptian Parliament. According to Article 156 of the amended Egyptian constitution, this is subject to the oversight of the parliament, which stipulates the presentation and discussion of legislation issued in the form of decrees-laws within fifteen days of the convening of the new parliament to publish the laws in the Official Gazette within fifteen days from the date of their promulgation. Furthermore, amendments were introduced to Law No. 136 of 2014 regarding the protection of public and vital facilities, and the Penal Code, and this coincided with the announcement of the cancellation of the extension of the state of emergency in Egypt.

The law was marred by many negatives that would affect the rights protected by the International Covenant on Civil and Political Rights. Perhaps the most prominent of these points are the following:

- The extreme and unjustified expansion of criminalization and the use of general terms are subject to interpretation by the whims of those in charge of implementing the law. (Articles 1, 2)
- The law uses very broad and general terms that are difficult to define, such as (national unity - community interests - community safety - public order), and (supplying or financing data, information, materials, or others - every behavior committed with the intent to achieve, prepare for or incite a terrorist crime if it would harm communications - the national economy - informational, banking, and financial systems). (Articles 2, 3)

List of issues in relation to the fifth periodic report of Egypt

- The law misses the general rules in the legislation by equating the penalty for attempted crime with the complete crime and the punishment for incitement, whether or not the crime allegedly incited occurred.
- The law restricts the freedom of opinion and expression, the right to knowledge and circulation of information, and the right to peaceful assembly by criminalizing the law for acts that do not involve any criminal risk. For instance, promoting ideas or beliefs, although it does not advocate violence. Articles (28, 29, 35).
- The law wastes the right to liberty and personal security according to Article (40), it permitted the arrest of persons in a state of the flagrante delicto and without the issuance of a judicial arrest warrant and granted judicial police officers the powers to hear the statements of the person in custody and present them to the Public Prosecution, which grants them the right to continue the procedure of detention of persons for seven days and the order to search their homes.
- The law wasted the rules followed in punishment in terms of proportionality between the crime and the punishment prescribed for it, so the law came in a manner that equates the penalty for attempted crime with the penalty for a complete crime and the sentence for incitement to commit a terrorist crime is decided whether the crime occurred as a result of this incitement or not with the same penalty prescribed for the crime. (Article Six).
- Law No. 151 of 2021 amending the Public Facilities Protection Law granted more jurisdiction to the military judiciary in hearing cases committed while the armed forces and police are securing public and vital facilities, thus shifting jurisdiction to a permanent rather than exceptional status.
- The amendment of Law No. 96 of 2015 to combat terrorism, submitted by the government, contributed to legalizing and supplying the state of emergency, despite the decision to cancel it.

The recommendations:

- The Egyptian state should review the Anti-Terrorism Law and the Terrorist Entities Law.
- Specify definitions for the terms; national security, national unity, community interests, community safety, and public order.
- The law should balance combating terrorism and protecting human rights.
- The law must consider the proportionality between the crime and the punishment, so it is not permissible to equate the attempt with the complete act of the crime, and it is not permissible to equate the perpetrator and the instigator in terms of punishment.
- The law must consider the right of individuals to enjoy the freedom of expression and exchange of information.

- The law must establish specific and obvious controls about detention, arrest, and investigation, enable the accused to seek the assistance of a lawyer immediately upon arrest, and ensure that the arrested person is aware of the reasons for the arrest, arrest, and accusations against him.
- The need to adhere to referral to ordinary courts in which the accused appears before a civilian judge instead of expanding the jurisdiction of the military judge to consider cases before civilian defendants.

II. **The right to a fair trial and the death penalty (Arts. 2, 6, 9, 10, and 14)**

- Over the past ten years, pretrial detention has become one of the most prominent problems of justice in Egypt, particularly the absence of a specific definition of what it is and the expansion of its causes, justifications, and durations reserve. However, the Egyptian state has not taken any legislative measures to address obvious legislative shortcomings.
- Over the past year, the Egyptian state has activated the role of the Presidential Pardon Committee, which has worked on examining many cases and helped issue a presidential pardon for some human rights activists and politicians.
- The past two years witnessed the issuance of decisions to release many political and human rights activists who were in pretrial detention for a period exceeding two years for some. On the other hand, the state continues its random and extensive arrest campaigns, coinciding with the events of September 20 and the anniversary of the events associated with the January 2011 revolution, in addition to arresting those who were previously released, including Sherif El-Rouby.

The recommendation:

- Review all pending cases before the terrorism departments or the State Security and Emergency Prosecution, and work to release those who have been held in precautionary detention for more than a year without being referred to trial for a year.
- Amending the Criminal Procedure Code and the Counter-Terrorism Law regarding periods of pretrial detention, as the period of pretrial detention in ordinary criminal cases does not exceed 6 months and in terrorism cases 24 months.
- Amending the Criminal Procedure Code and the Counter-Terrorism Law and stipulating that if the accused is released after the maximum period of pre-trial detention has expired, it is not permissible to re-incarcerate him for actions that took place before his release.

III. The death penalty

The Egyptian legislator expanded exaggeratedly to crimes punishable by death and did not limit them to the criterion of “the most serious crimes”, which was stipulated in the second paragraph of Article VI of the International Covenant on Civil and Political Rights, and which the Committee on Human Rights interpreted to mean that the death penalty should only be applied The crime of murder or premeditated murder, which is not consistent with international standards regarding the death penalty. This is evident in the following:

- **First:** The Egyptian legislator used loose expressions with connotations that do not have objective criteria and there is no agreement on defining their meaning, and they are not suitable in the field of criminalization and punishment imposed on a person who committed a specific act (1), and this is evident in Article (77) Penalties that used the safety term the country without specifying what is meant by the safety of the country, and Article (83) as penalties. The legislator also used the term “the safety of the country and its territorial integrity” according to Article (78), the penalties for using the legislature terms are broad and allow expanding the circle of criminalization, which is “destabilizing the sincerity of the armed forces, and weakening their spirit and the spirit of the people.” morals” and Article (77) penalties for “prejudice to the country’s independence, unity or territorial integrity”.
- **Second:** In addition to the fact that the Egyptian legislator punishes the death penalty for crimes that are not sufficiently serious following international standards, such as drug crimes, which the United Nations has interpreted as not meeting the minimum threshold for “the most serious crimes” Article (34/b) punishes with death any person who owned a drug and used it for a purpose other than the purpose authorized for its use, that is, the doctor licensed to possess the drug for use in the purposes of treatment if he disposed of this drug in any way, even if it was without the intention of trafficking (2), and Article (34/c) is punishable by death just to prepare A place for drug use, and this constitutes a violation of the second paragraph of Article VI of the International Covenant on Civil and Political Rights and the guarantees that guarantee the protection of the rights of those facing the death penalty and there is no evidence that the death penalty contributes more than any other punishment to the elimination of drug trafficking.

- The provisions of Articles (86, 89, 93, 102/b) as penalties did not stipulate that any assault on the life of individuals occurred or that there were deaths, whether policemen, civilians, or

others, but the law was satisfied with the possible result of the criminal act to impose the penalty, He made that result, even if it has not occurred, a reason for the death penalty, which is an underestimation of the lives of individuals to prevent possible and unrealized dangers. The same is what the Egyptian legislator followed in his approach to the Anti-Terrorism Law, and this is a clear and explicit violation of the most necessary guarantee that must be available to those facing the death penalty, which is "The need for a proportionality between the death penalty and the seriousness of the crime committed."

- **Third:** By examining the crimes for which the legislator has been punished by death under the Code of Military Law, we find that they do not meet the minimum threshold for "the most serious crimes" stipulated in Article (6/2) of the International Covenant on Civil and Political Rights. The legislator punishes failure to obey orders (Article 151) military sentences and for desertion or attempt to escape from service (Article 154) military penalties of death, which is inconsistent with international standards and Egypt's international obligations.

- It was also punished with death for crimes in which criminal behavior consists of several forms rather than a single image, as is evident in Article 130 of the Military Provisions, which punishes 12 criminal behavior with death, which constitutes a waste of the principle of legality of crimes and penalties stipulated in Article 66 of the Constitution.

- Notable to mention that in 2022, the criminal courts issued 538 death sentences while upholding 39 penalties and implementing 30 sentences.

The recommendations:

- Narrowing gradually the crimes punishable by death and limiting them to the "most serious crimes" such as premeditated murder and not expanding them.
- The penalty is not imposed except based on a legal code, and it is not implemented except by a final judgment issued by a competent court, after exhausting all means of appeal, and with legal procedures that provide all the guarantees of a fair trial before the independent natural judiciary.
- The death penalty should not be mandatory because a mandatory penalty makes it impossible for a court to consider mitigating judicial circumstances.
- Upon annulment of the death sentence, allowing the court of cassation deals with the facts with the law in the implementation of the principle of litigation on two levels.
- There should be a sufficient period between the issuance of the death sentence and its execution to prepare for and complete the appeal and seek pardon or commutation of the sentence.
- Commitment to the National Human Rights Strategy issued in 2021 which stipulates a pledge to suspend and review the implementation of some death sentences.

IV. Freedom of expression and protection of privacy (Arts. 17 and 19)

On August 18, 2018, the Egyptian President ratified the Anti-Information Technology Crime Law (Cybercrime Law).

The Egyptian legislator chose not to set a specific definition of the crime of information technology.

The law faced several criticisms, which are as follows:

- The law violates international standards for the right to expression.
- The law violates United Nations resolutions on freedom of expression on the Internet.
- The law violates the constitutional legitimacy that guarantees freedom of expression.
- The law violates the right to privacy and the inviolability of correspondence and private communications.
- The law does not protect against discrimination and hate speech.
- The law places many obstacles to freedom of opinion and expression on the Internet, which constitutes a serious legal violation.
- The law used many loose, undefined concepts, for instance, family values and principles, public order, and national security.
- The law expands the criminalization to include persons who play no role in the criminal act and stringent penalties that reach aggravated imprisonment.
- The law granted non-judicial entities expansive powers to enable them to violate the privacy of citizens' information.

Violation of the right to privacy (Art.2)

The law obligated the service provider “telecommunications companies” to keep information about users for a period of 180 days, which is a very long period during which personal data can be tampered with, as the law specified it with information that enables people to be identified, the content of the information system, and communication traffic, and the communication traffic includes personal calls and messages And other correspondence, which is precisely the information that should be protected. Moreover, the article was not satisfied with specifying the data and rather left it unrestricted, as it includes (paragraph e) any other data specified by a decision of the Agency’s Board of Directors, in violation of the text of Article 17 of the International Covenant on Civil and Political Rights.

Unlawful restrictions on freedom of expression:

Article (25) punished by imprisonment for 6 months and a fine of 50 to 100 thousand pounds, or one of the two penalties. (Anyone who assaults (principles or family values in Egyptian society...) whereas the phrases of the text were loose and could bear multiple interpretations

Expanding the criminalization:

The law expands criminalization in Article (27), where the punishment includes two years imprisonment and a fine of 100 to 300 thousand pounds (for anyone who creates, manages, or uses a website, a private account, or one of the two penalties, to commit or facilitate a crime stipulated in the law). Of course, criminalization here includes all unspecified crimes.

Article (29) also expands the punishment department to include the person responsible for managing the site or the private account with imprisonment for one year and a fine from 20 to 200 thousand pounds.

Furthermore, the period becomes six months, and the fine from 10 to 100 thousand pounds in the case of negligence, and the expansion, in this case, is based on the assumption that could not be denied, which is the non-participation of the responsible for a site in the act, or his lack of knowledge, which are logical assumptions that can be proven. Consequently, it makes the expansion of criminalization arbitrary.

Appendix

Sources on The right to a fair trial and the death penalty (Arts. 2, 6, 9, 10, and 14)

1. Extended pretrial detention - <https://elhak.org/archives/3434>
2. The Foundation's Legal Bulletin - Follow-up to investigations and trials
<https://elhak.org/archives/category/newsletter>
3. Deprivation of liberty and its alternatives <https://elhak.org/archives/3731>

Sources on freedom of expression and the right to association and peaceful assembly (Arts. 6-7, 9, 19, 21-22, and 25-26)

1. Information Technology Crimes Law - <https://elhak.org/archives/4107>
2. NGOs Law - <https://elhak.org/archives/2594>
3. Publication Crimes in Egyptian Law - <https://elhak.org/archives/1043>
4. Negatives of the press and media regulation law - <https://elhak.org/archives/727>
5. Criminalizing filming or publishing data related to the criminal trials -
<https://elhak.org/archives/1794>
6. Cases of attacking the values of the Egyptian family - <https://elhak.org/archives/2080>