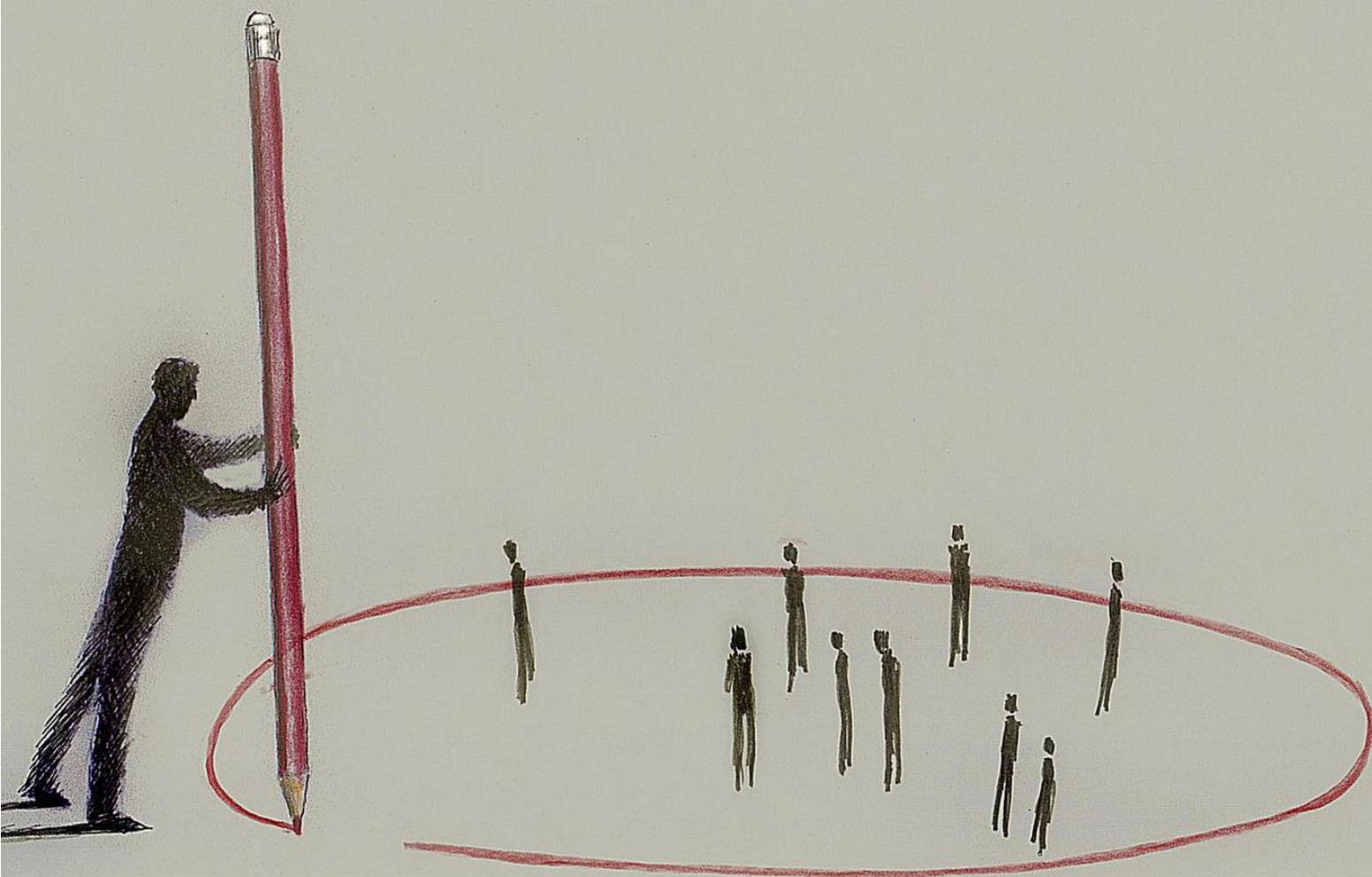


TERRORISM LAWS IN EGYPT AND THE "DIFFUSION OF REPRESSION"

A LEGAL AND HUMAN RIGHTS STUDY

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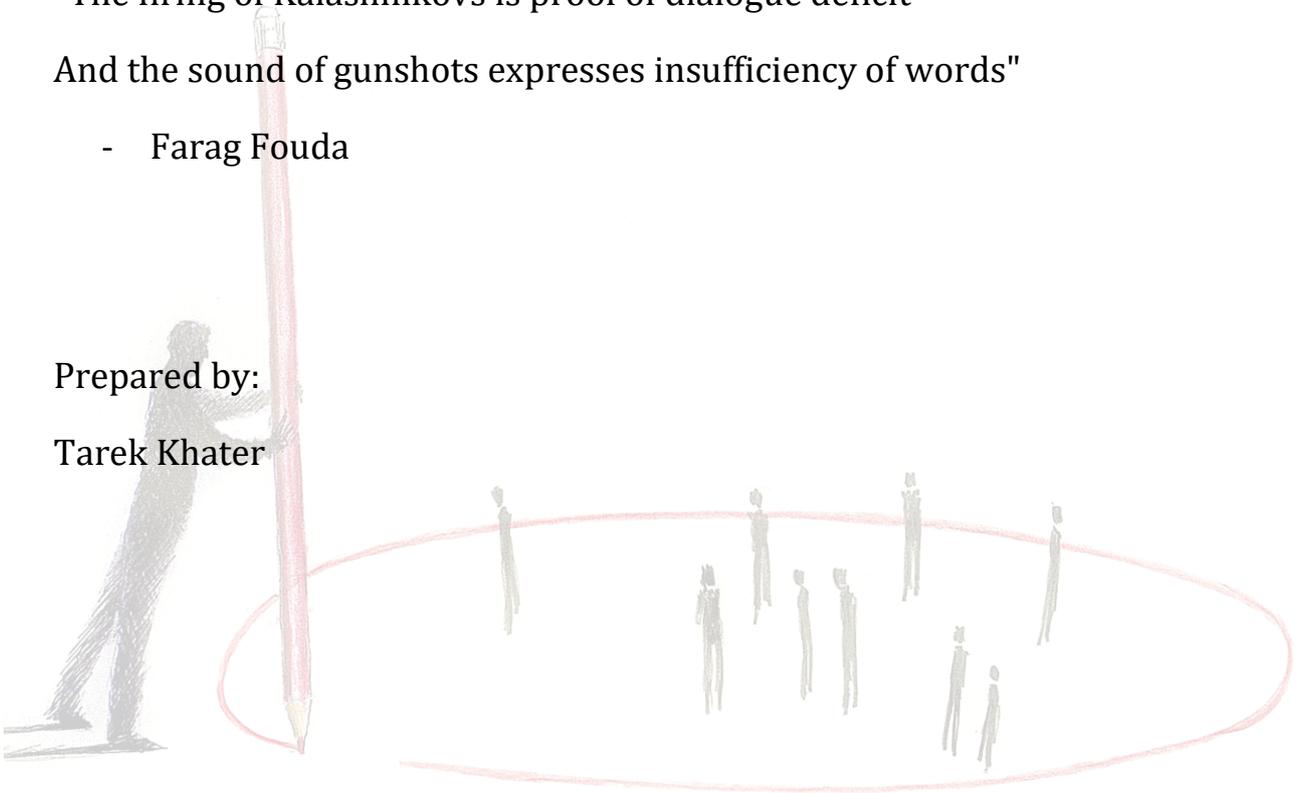
"The firing of Kalashnikovs is proof of dialogue deficit

And the sound of gunshots expresses insufficiency of words"

- Farag Fouda

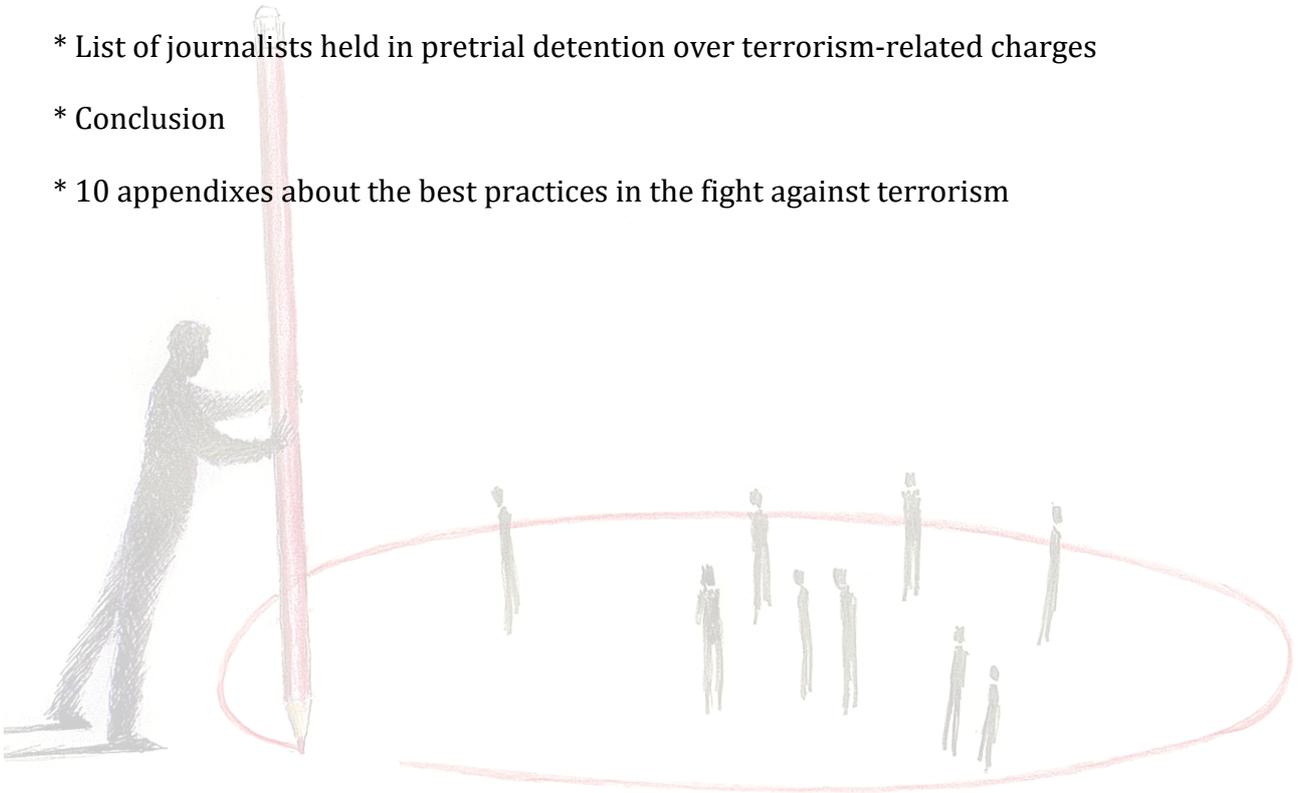
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Introduction

Effective anti-terrorism measures and the protection of human rights are not opposite goals, but rather integral and complementary to each other. Respect for human rights and fundamental freedoms is an essential element of any effective strategy to counter terrorism.

There is no doubt that the roots of terrorism and violence lie in the deteriorating social and economic conditions. Poverty, fear and misery have a negative and profound effect on the initial willingness of individuals to commit acts of violence and aggression against others; as they push people towards violence in a desperate attempt to change their life and circumstances, even if only partially.

The spread of terrorism after the expansion of its roots finds its favorable circumstances and fertile environment in stripping those accused of it of their humanity. These circumstances are represented in: the absence of the rule of law, human rights violations, discrimination, political exclusion, social and economic marginalization and lack of good governance.

In this context, legislation constitutes one of the most important means to counter terrorism.

In Egypt and since 1992, Egyptian lawmakers intervened to pass anti-terrorism laws which began to surface the legislative framework. The first of which was Law No. 97 of 1992 on Countering Terrorism and the last one was Law No. 14 of 2020 amending the Law Regulating Terrorist Entities and Terrorists.

Adopting the case of emergency and exigent circumstances, Egyptian lawmakers- like any other lawmakers in any country of the world- will remain constrained by all measures and prohibitions imposed by the Egyptian Constitution as the basic document that the state authorities should adhere to, besides Egypt's obligations under international laws especially human rights conventions and treaties.

In conjunction with such obligations, lawmakers have to take measures that would ensure respect for human rights and the rule of law for being the two basic pillars for combating terrorism. Otherwise, the emergency or exceptional circumstance (terrorism) will be turned into a realistic justification for narrowing the democratic sphere in the country and violating human rights.

So, do Egyptian lawmakers comply with the provisions of the constitution and take all the necessary measures to protect human rights in parallel with the series of legislative packages to counter terrorism?

This paper attempts to answer the above question by monitoring and reviewing all the laws promulgated in Egypt under the pretext of combating terrorism. It will also outline the extent to which these laws go in line with the constitutional rules and standards along with Egypt's obligations under international law, and finally we will provide some examples of how terrorism laws are being implemented in Egypt.

To answer this question, we will go deeper into the following sub-headings:

- The Constitutional framework for terrorism laws vs. human rights
- Egypt's obligations in combating terrorism under international law
- Terrorism laws in Egypt... Their origin and development
- How terrorism laws are being implemented in the country?
- Two lists of the names of citizens, public figures and journalists who are being held in detention over terrorism charges

First: The Constitutional Framework of Terrorism Laws and Human Rights

The Egyptian Constitution (1), in its preamble, asserts that every Egyptian citizen is entitled to live in this homeland in safety and security, and that freedom, human dignity, and social justice are a right of every citizen, which is in line with the Universal Declaration of Human Rights.

The articles of the Constitution detail the rights of citizens, as follows:

- The political system is based on respect for human rights and freedoms (Article 5)
- Work is a right, a duty, and an honor guaranteed by the state. (Article 12)
- The right to inherit property is guaranteed. Private property may not be sequestered except in cases specified by law, and by a court order. (Article 35)
- Dignity is a right for every person that may not be infringed upon. The state shall respect, guarantee and protect it. (Article 51)
- The law shall regulate the establishment and administration of professional syndicates on a democratic basis, guarantee their independence, and specify their resources and the way members are recorded and held accountable for their behavior while performing their professional activities, according to ethical codes of moral and professional conduct. (Article 77)
- Rights and freedoms of individual citizens may not be suspended or reduced. No law that regulates the exercise of rights and freedoms may restrict them in such a way as infringes upon their essence and foundation. (Article 92)
- The state is committed to the agreements, covenants, and international conventions of human rights that were ratified by Egypt. They have the force of law after publication in accordance with the specified circumstances. (Article 93)
- The accused is innocent until proven guilty in a fair court of law. (Article 96)
- The law shall regulate preventive detention, its duration, causes, and which cases are eligible for compensation. (Article 54).
- The state commits to fighting all types and forms of terrorism and tracking its sources of funding within a specific time frame in light of the threat it represents to the nation and citizens, with guarantees for public rights and freedoms. The law organizes the provisions and procedures of fighting terrorism, and fair compensation for the damages resulting from it and because of it. (Article 237)

Having clearly said that, the Egyptian constitution, issued in 2014, outlined many principles and rights and asserted that it is not permissible to issue any law that restricts or affects the origin and essence of citizens' rights and freedoms since they are non-derogable.

Through the aforementioned articles, we can highlight the following constitutional facts:

- 1- Countering terrorism, whether by carrying out measures or by law, must guarantee public rights and freedoms and take place in a specified period of time.
- 2- Every defendant must enjoy the presumption of innocence, and hence all the authorities involved in a criminal litigation- whether they are investigating authorities or judges- are obliged to implement the requirements of this presumption; since innocence is equivalent to liberty and affirms the general principle that a defendant's freedom is integrated with human dignity.
- 3- Human dignity, rights and freedoms shall not be infringed upon under any reason.
- 4- Professional unions are independent and their members' affairs are only subject to the syndicates' laws and ethical codes of moral and professional conduct.
- 5- Work is a right, a duty, and an honor and it is not permissible to forcibly prevent anyone from doing it.
- 6- The state, with all its powers and authorities, is obligated to respect human rights and all international conventions ratified by Egypt.
- 7- Citizens' private property shall be guaranteed and may not be sequestered except by a court order.
- 8- Pretrial detention should be for a definite period of time and is based on probative evidence. Defendants should also be compensated for the damages resulting from it, in cases where evidence is not sufficient.

Second: Egypt's Obligations under International Law while Facing Extraordinary Circumstances and the Fight against Terrorism:

We cannot objectively speak about a legislation that is compatible with human rights, such as the Terrorism Law and its amendments, without considering the obligations imposed on the Egyptian state in accordance with the provisions of the international law.

In this context, we have to refer to Article 93 of the 2014 Constitution and the previous constitutions thereof. This article utterly provides that the State shall be bound by the international human rights agreements, covenants and conventions ratified by Egypt, and which shall have the force of law after publication in accordance with the prescribed conditions.

On the international level, terrorism and its atrocities that may violate human rights are tackled by international law which emphasizes that human rights and freedoms must be respected during the period of the fight against terrorism.

In international law (2), terrorism is similar to a state of necessity or an exceptional situation that represents an imminent threat to the life of the country, its people and its capabilities.

The international law obligates the governments that use the state of necessity as a pretext to impose terrorism laws with a series of restrictions to ensure that human rights are guaranteed while carrying out the measures they deem necessary to address this state of

necessity. (3)

"Terrorists are accountable to no one. We, on the other hand, must never lose sight of our accountability to citizens all around the world. In our struggle against terrorism, we must never compromise human rights. When we do so, we facilitate achievement of one of the terrorist's objectives. By ceding the moral high ground we provoke tension, hatred and mistrust of Governments among precisely those parts of the population where terrorists find recruits. I urge Member States to create a special rapporteur who would report to the Commission on Human Rights on the compatibility of counter-terrorism measures with international human rights laws." (4)

The international law puts some conditions and many procedural and substantive restrictions on the state, in case it relinquishes some of its international obligations towards human rights and freedoms (5). Such restrictions include:

1- Exceptional measures must be time-bound

The exceptional measures, procedures or law must be carried out for a temporary and specific period of time. The International Commission of Jurists (ICJ) states that the maximum period of the validity of such measures should not exceed six months.

This means that:

- The state of emergency or the exceptional measures must be immediately terminated once the exceptional circumstance comes to an end; i.e. once the authorities are able to control the circumstance, whichever comes first.
- It is obligatory to return to implement the ordinary laws and lift all the restrictions imposed on citizens' rights and freedoms and any exceptional laws once the exceptional circumstance comes to an end.
- The state is obligated to review and tackle the permissible effects that have been inflicted on the rights and freedoms of citizens and carry out the necessary corrective measures to eliminate such effects without delay.

2- Exceptional measures must be necessary and proportionate

This means that:

- The measures carried out by the state under the pretext of confronting an exceptional circumstance must be essential and proportional to the severity of the crisis or the danger the country is facing.
- The exceptional measures should be carried out on a temporary basis according to the exceptional circumstance.
- The exceptional measures must provide a minimum level of anti-arbitrary protection measures as a temporary alternative to the safeguards that are suspended upon such exceptional measures.

3- Exceptional measures mustn't infringe upon fundamental rights and freedoms

The international law stipulates that there are a number of rights and freedoms that cannot be suspended or diminished even in exceptional cases such as the fight against terrorism.

This indicates how the international community and human conscience are aware of the importance of protecting human rights and freedoms amid the implementation of the exceptional state, and that guaranteeing human rights is part of protecting the state.

The circle of such fundamental and non-derogable rights and freedoms has been expanded until it reached 16 rights (after they were only 4), as listed out by the United Nations Human Rights Committee, and as included by the International Covenant on Civil and Political Rights as follows:

- The right to life (Article 6)
- The prohibition of acts of torture and inhuman or degrading punishments (Article 7)
- Laws may not be applied retroactively (Article 15)
- The prohibition of slavery, slave-trade and forced labor in all its forms (Article 8)
- The inadmissibility of imprisoning anyone on the ground of inability to fulfill a contractual obligation (Article 11)
- The right to recognition everywhere as a person before the law (Article 16)
- The right to freedom of thought, conscience and religion (Article 18)

In addition to that, the international law adopted a number of principles, conditions and descriptions that must be available in any anti-terrorism law or in case of imposing an exceptional state that may allow the state restrict or curb citizens' rights and freedoms. These principles involve:

4- The drafting of these exceptional laws must be accurate, non-discriminatory, non-retroactive, and consistent with the international law.

5- Laws that impose a criminal penalty must be drafted in a way that verifies and provides an alert warning of what is prohibited and that crimes and penalties are clearly defined.

6- In the context of combating terrorism (6), the accusation must be based on a reasonable suspicion as well as the existence of facts and information that would convince an objective observer that the person concerned may have committed a crime.

7- When "belonging to a terrorist group" becomes a criminal offense, specific guarantees should be applied:

- Considering an organization as terrorist must be based on factual evidence of its activities.
- Considering an organization as terrorist must be determined by an independent judicial body.
- To clearly define the term "terrorist".

8- Any person accused of terrorism must enjoy the presumption of innocence and its requirements. He must also be informed, in detail, with the nature of the charge attributed

to him and its reason; in order to provide information for the defense lawyer to be able to make his pleadings.

The international law establishes that these freedoms and rights should be coupled with:

- The inadmissibility to restrict the right of the accused to file an appeal challenging the lawfulness of his detention
- The necessity to have a fair trial and due process

Providing the accused the above-mentioned two rights is necessary for guaranteeing his fundamental right to life and physical integrity which the state shouldn't restrict even under exceptional cases.

The UN Working Group on Arbitrary Detention emphasized that "the presumption of innocence is violated when a person is held in connection with a criminal charge for a long period of time as a preventive detention without appropriate justification; because in this case detention turns into punishment rather than a precautionary measure and it also amounts to a conviction pre-empting the judicial ruling".

"The inappropriate conditions of detention may not only constitute inhuman treatment, but also negatively affect the right to a fair trial. Conditions of detention also affect equality between prosecution and defense, and when conditions of detention are inappropriate to the extent that they seriously weaken the pre-trial detainee, and thus weaken equality, a fair trial hence can no longer be guaranteed, even if it strictly follows the procedural fair trial guarantees". (7)

Third: Terrorism Laws in Egypt: Origin, development and arbitrariness

The term "terrorism" is very recent in terms of its emergence in Egyptian legislation, as it first appeared in 1992 when Law No. 97 of 1992 was issued under the theme "Anti-terrorism Law".

This law, before and after its promulgation, faced a severe backlash by the Egyptian civil society organizations and lawmakers, arguing that there is no need to pass it or include its provisions within the structure of the general criminal law.

Their general objections can be summarized as follows: -

- 1- The Egyptian general criminal law (Penal Code - Criminal Procedure Law) is sufficient with its provisions to confront violent crimes (terrorism) and there is no need to issue a new law. The adoption of unusual and exceptional laws that restrict the public rights and freedoms of citizens may overstep the limits of the already stuffed legislative structure.
- 2- The Emergency Law is still valid and activated, and as an exceptional law, it is sufficient- with the Penal Code- to confront terrorist crimes; as the first law provides for the imposition of exceptional procedures and measures whereas the second law

(Penal Code) defines the penalties for terrorism crimes.

- 3- Terrorism Law No. 97 of 1992 was not issued as a separate law whose validity depends on the exceptional case, but rather it was promulgated as an amendment to the Penal Code.
- 4- Terrorism Law No. 97 of 1992 involves loose and vaguely- worded phrases and terms that cannot be subject to legal control. Such terms can be interpreted in different ways and meanings based on the affiliations of the authorities or, to state it more accurately, the ruling regime.

Such a matter violates the principles of legislation. Both the Egyptian and international laws settle the principle that ambiguous laws may unacceptably grant the police and the judiciary the opportunity to adjudicate over issues according to their own subjective standards resulting in the proliferation of arbitrary measures and practices.

A) Law No. 97 of 1992 (The first Egyptian terrorism law) (8)

This law was passed as an amendment that is made to some laws including: The Penal Code, the Criminal Procedure Code, the law regulating: the confidentiality of bank accounts, weapons and ammunition, and the establishment of exceptional state security courts.

The amendment of the Penal Code (in the second chapter of the second book of the Penal Code) is divided into two parts:

Section I...

It includes the definition of terrorism, forms of terrorist crimes and the penalties prescribed for the criminal participation in these crimes. It also provides for the permissibility of issuing precautionary measures against those convicted of terrorist crimes. The law also restricts the judges' authority to grant defendants clemency upon Article 17.

Section II...

After adding amendments to the Criminal Procedure Code, the penalties for some of the pre-existing crimes (committed for a terrorist purpose) are further aggravated. The amendments also involve adding terrorist crimes to the core of Article (15) providing for the cases whose criminal proceedings cannot be suspended by the termination of the litigation period.

The amendments also include: the allocation of departments in the Supreme State Security Court to consider terrorist crimes, in violation of the rules of jurisdiction legally established by law, in addition to giving the competent courts the jurisdiction to try minors whose age is above 15 and are convicted of terrorist crimes.

Additionally, the amendments granted the Public Prosecution new powers over its prescribed ones:

- The investigative judge's powers
- The appellant misdemeanor courts convened in the counseling room for considering remand detention
- Lifting the necessity of the request stipulated in Article (9), whether it is related to investigation or filing a lawsuit in terrorist crimes.

The law also bolsters the powers granted to the officials charged of implementing the arrest warrants if they have sufficient evidence to accuse a person of committing a terrorist crime. They are then authorized to arrest the person, upon the Prosecution's permission, and detain him for 7 days while hearing his testimonies. After this period, the Public Prosecution can interrogate him within three days.

As for Law No. 205 of 1990 regarding the confidentiality of bank accounts, the amendment made to the last paragraph of Article 3 thereof includes: giving the Public Prosecutor or attorneys-general the authority to access bank accounts, deposits, treasuries and any transactions as long as they are related to any terrorist crime.

As for Law 394 of 1954 regulating the circulation of weapons and ammunition, the amendment includes: imposing harsher penalties for the possession of arms, while adding new kinds to the list of weapons and ammunition.

The Terrorism Law concluded its articles by canceling any provision that doesn't go in line with its provisions.

This is the way by which the first terrorism law was issued in Egypt..

This law is considered as an eternal punitive legislation, given its gross distortions and its loose and overly broad terms and generic phrases, which can be interpreted according to the whims and wishes of the security services.

Examples of such loose and broad terms may include: (Disruption of public order - endangering the safety and security of society - causing damage to the environment or communications - whoever promotes these purposes by saying or writing - whoever forms, joins, or runs an association, organization, body, or group whose goal is to achieve any of the above)

This law also grants absolute and unprecedented powers to the Public Prosecution at a degree that hasn't been witnessed by any contemporary legal system.

Some of these powers may include: (The accusation authority- the investigating authority- the investigating judge authority- the authority of appellant misdemeanor courts convened at the counseling room) as stipulated in Article 143 of the Criminal Procedure Code.

B) Law No. 94 of 2015 on Counterterrorism (9)

On 15 August 2015, following the assassination of former Public Prosecutor Hisham

Barakat, the President of the Republic issued Decree Law No. 94 of 2015 on Counterterrorism, in complete disregard of the objections raised to the law given its timeliness and loose articles.

It's noteworthy that preamble of this law didn't refer whatsoever to the Law No. 98 of 1992 on Counterterrorism, which can lead to a legislative ambivalence and allow selectivity for those who implement the law in violation of the principle of equality before the law.

General objections against the law can be summarized in the following lines:

- The extreme and unjustified expansion of criminalization using general and broad terms, which can be interpreted according to the whims and wishes of law enforcement officials.
- Undermining the general rules of law by making the penalty for attempted murder equal with that for full offence, in addition to imposing a punishment for incitement to crime whether this crime took place or not.
- The repeated criminalization of misdemeanor acts previously criminalized in the Penal Code in addition to imposing extreme harsh penalties for these crimes.
- Infringing upon freedoms of opinion and expression, the right to information and the right to peaceful assembly by the criminalization of acts that don't involve any criminal risk, such as promoting ideas or beliefs that don't entail any call for violence.
- Ensuring impunity for those in charge of implementing the law when using force even if it is fatal under the pretext of performing duty or self-defense, while exempting them from criminal responsibility.
- The law invented the term "holding" instead of "arresting", which allows for the random and systematic arrest of citizens, in a blatant circumvention of the guarantees established by the Constitution and the Code of Criminal Procedure.
- The law uses loose, generic and ambiguous terms that can hardly be defined, such as "national unity – interests of the community – safety of the community - public order", as well as "providing/financing data or information or other materials- every act committed with the aim of carrying out or preparing or inciting a terrorist crime if it would harm communications- the national economy – information, banking, and financial systems" (Articles 2 and 3 of the law)..

Such a matter contradicts the nature of criminal laws and gives those in charge of interpreting the law the opportunity to criminalize all forms of citizens' daily behavior... as well as every act that opposes the state authorities and their affiliations.

- The law undermines the rules and regulations of punishment in terms of the proportionality between the crime and the punishment prescribed for it. For example, it criminalizes the incitement to commit a terrorist crime (whether it took place or not) using the same penalty prescribed for the actual commitment of the same crime. (Article 6)

Aside from contradicting the rules of the penal code and what is approved by the Constitutional Court, this law encourages whoever incites others to commit a

terrorist crime to continue his incitement and complete the crime; since he has no safe haven if he decides to step back or undo the crime.

The law also punishes any person for his participation in a criminal act that aims at committing a terrorist crime whether it took place or not, which represents a clear contradiction to the ruling issued by the Constitutional Court challenging the constitutionality of Article 48 of the Penal Code, due to lack of *corpus delicti*.

Therefore, it is inconceivable that a crime can exist in the absence of *corpus delicti* or any evidence for the availability of causation between the materiality of the wrongful act and the results it caused. All manifestations of the expression of human will, and not the intentions, must be available so that the act can be criminalized, as long as it reflects an external and tangible behavior that is punishable by law, otherwise, it cannot be considered a crime. (10)

Under Article 30 of the law, anyone who participates in a criminal conspiracy to commit a terrorist crime is subject to a penalty that is harsher than that prescribed in case he commits a completed crime.

In a flagrant violation of freedom of opinion and expression and the right to information, Articles 28, 29, 35 of the law criminalize acts that do not involve any criminal risk, such as promoting ideas or beliefs that don't entail any call for violence.

In contradiction with the principle of personal responsibility for the crime (the person who commits the crime is solely responsible for it), this law states that the legal person shall be jointly liable for court-imposed fines or compensation.

The law also criminalizes the publication, broadcasting, or promotion of false news or statements on terrorist acts, in contravention of official statements issued by the Ministry of Defense.

Aside from its violation of the right to information, this law doesn't obligate the official authorities not to publish information on terrorist acts.

Article 8 of this law exempts law-enforcement personnel from criminal liability for the use of force in the performance of their duties and in defense of lives and property, even if this force leads to the killing of mere suspects, which consolidates impunity. It also gives law enforcement officials a green light to use lethal violence while guaranteeing they will not be held criminally accountable.

Article 54 of the law is notable for guaranteeing compensation for police and army personnel harmed as a result of a terrorist crime while disregarding the need to compensate all persons harmed, including civilians.

Also, the law invented the term "holding" in a clear circumvention of the Criminal Procedure Code and in a blatant violation of Article (54) of the Egyptian Constitution. Articles 40 of the

law allows for the detention of suspects for 24 hours without a warrant, and without being in case of flagrante delicto (when the suspect was caught in the act of committing the offense), and the period of detention can be extended to up to seven days, violating their right to due process. The law also establishes the authority of the police official to take the statement of the person in holding, present him with the report to the Public Prosecutor, and place him in legally designated holding areas. It also gives the competent authorities the right to extend the holding period to seven days and to obtain a search warrant for the domicile of the person in holding, without allowing him to contact his family or lawyer.

Upon this law, holding a suspect has become an alternative to his arrest, and the two terms have two different meanings according to Article 35 of the Code of Criminal Procedure.

Furthermore, the Law No. 94 of 2015 on Counterterrorism grants the president of the republic- in the absence of any parliamentary oversight- the authority to evacuate or isolate some areas in the country or impose a curfew therein upon oral orders.

The law also established special court circuits for the consideration of terrorism cases (Article 50), and gives the Public Prosecution, the investigation authority and the competent court to adjudicate over terrorism-related crimes (Article 51). This is in addition to banning the termination of criminal proceedings and the fall of punishment in the terrorism cases in case of the expiration of the litigation period (Article 52).

C) Law No. 15 of 2020 Amending the Anti-Terrorism Law

The law was issued in only four articles all of which aim at expanding the implications and the scope of the terms "funds" and "financing"....

The new amendment replaced these two terms with the term "fund" wherever it appeared in the anti-terrorism law.

So, what is meant by "funds"? Does that include physical and intangible assets, fixed or movable funds, including documents, digital or electronic forms or any other virtual assets that can be circulated?

The last amendment is represented in expanding the definition of the crime of "financing terrorism" by adding new other forms of the act of financing.

But the most remarkable observation is that the law continues in the footsteps of its predecessors in criminalizing the act of financing whether the terrorist act itself took place or not, in addition to criminalizing any other forms of assistance even if it is not directly related to the terrorist act, which constitutes a clear violation of the principles of criminalization and punishment.

D) Law No. 8 of 2015 Regulating Lists of Terrorist Entities and Terrorists

This law was issued to regulate a specific period of time; when the security services have a

suspicion that a certain entity or person is involved in a terrorist act until he receives a final ruling whether of conviction or of acquittal.

This means that all its provisions are time-bound and fall within the limits of extreme necessity.

However, we can find that the law involves serious effects owing to the security services' suspicion of any citizen or entity, which can exceed the seriousness of the effects of criminal rulings of conviction.

General objections to the law can be summarized in the following lines:

- 1- Using broad and loose terms in defining "terrorist entities and terrorists" so that the security forces could have the opportunity to prosecute peaceful opponents after bringing them under the law.
- 2- Undermining the right to peaceful assembly and forming associations as well as the right to freedom of expression and press freedoms.
- 3- Using arbitrary methods in designating those who are suspected of being terrorists, in the absence of serious judicial investigation, where defense requirements and fair trial standards are guaranteed.
- 4- The law violates Article (2) of the Law on the Exercise of Political Rights, which states that suspects shall not be deprived of the exercise of their political rights only if they receive a final verdict of conviction of any of the criminal crimes.
- 5- The law wastes the constitutional guarantees of the rights and freedoms of citizens and severely violates Egypt's international obligations.

The provisions of the Act:

The law involves 10 articles:

- Article (1) of the law defines terrorist entities and terrorists and the scope of funds belonging to the people designated as terrorists and how these funds or money can be frozen.

The article defines terrorist entities as "any association, organization, group, gang, cell or other grouping that, through any means, inside or outside the country, calls for the harming of individuals; the spreading of terror; or the endangering of the lives, freedoms, rights, or security of the people. This also applies to organizations that call for or involve themselves in harming the environment; natural materials; antiquities; the communication infrastructure; and land, air, or sea transportation, or harming or seizure of public or private funds, buildings, or properties; or diplomatic and consular missions, or call for disturbing public order or harming national unity or social peace or national security."

Under this article, a terrorist is defined as "any natural person who commits or attempts to commit or incites or threatens or plans, at home or abroad, for a terrorist crime, or contributes to such a crime in the framework of a joint criminal project."

As for money, it is defined as "all assets and property of any kind, whether material or moral, movable or immovable, including documents and monetary or business instruments and documents, and bonds".

- Article (2) defines what it calls "the terrorist entities list" granting the authorities the right to blacklist or label any entity or person as "terrorist", considering them as equal as those who are convicted of terrorism upon court orders.

- Articles (3), (4), (5), and (6) confine the designation of entities and individuals as terrorists to a request issued by the Public Prosecutor to any of the Cairo Criminal Court's circuits. The enlisting decision lasts for a period not exceeding three years. If the enlisting period ends and no final verdict is issued against the entity or natural person, the Public Prosecution will have to refer it again to the referred court circuit to consider extending the enlistment to another period. Concerned people can appeal against the enlistment decisions within sixty days from the date of publication of the verdict in front of the Criminal Chamber of the Court of Cassation, and the decision shall be published in the Official Gazette.

- Article (7) states that by force of law, the publication of the enlisting verdict, throughout its duration, will have the following effects for terrorist entities:

- Banning the terrorist entity and suspending its activities, freezing funds owned by the entity, or its members when they are used in the practice of terrorist activity, and prohibiting joining the entity, or promoting its activities or raising its slogans.

- Enlisting those designated as "terrorists" on travel ban and arrival anticipation lists, and preventing foreigners from entering the country, withdrawing or cancelling their passports, or preventing the issuance of a new passport, and losing the condition of good reputation necessary for holding public and parliamentary positions, in addition to freezing their own money and funds.

- Article (8) and (9) provides for the appointment of a manager to consider the frozen funds after issuing the enlisting decision, as well as allowing the concerned Egyptian judicial authorities and bodies to cooperate with their foreign counterparts; through the exchange of information and assistance, judicial delegation, extradition of persons and objects, and recovery of funds.

Having said that, this law came to undermine and curb the rights of citizens guaranteed by law and constitutional legislation as well as the international conventions ratified by Egypt. These rights include the right to freedom of peaceful assembly and to form voluntary associations, or the right to freedom of expression, not to mention the right to press freedoms.

Under this law, any entity, citizen, or journalist may be deemed terrorist once he is suspected by the security services in a certain case; and this is for merely publishing a press report or organizing a protest despite the fact that all of these acts are peaceful.

E) Law No. 14 of 2020 Amending the Law Regulating Terrorist Entities and Terrorists:

(11)

In spite of all the enormous powers and competences granted by previous terrorism laws to members of the security services and the public prosecution and the severe target of citizens' rights and freedoms and their peaceful civil organizations, lawmakers issued another law amending some provisions of the law regulating terrorist entities and terrorists.

The general objections to this law can be summarized in the following lines:

- 1- The unjustified expansion in defining the scope of "terrorist entities" using the same broad and vague terminology that is subject to dozens of interpretations and implications, which opens the door for the security services to prosecute citizens according to the whims of those who implement the law.
- 2- Extending the enumeration of the consequences of inclusion on designated terrorist lists, in a way that affects the economic capabilities of the enlisted people and their families and undermines the independence of professional unions.
- 3- Transforming all state agencies and apparatuses into intelligence services by assigning them to inform foreign and external bodies of the names of the enlisted citizens, although the matter doesn't go beyond a mere suspicion. This will inevitably affect the dignity and the future of these citizens.

The Provisions of the Act:

The law was issued in four articles, the first of which includes the re-expansion of the definition of "terrorist entity" using the same ambiguous terms that eluded any legal control.

The law also redefines the scope of "funds" by adding any profits or benefits or any other sources of income or assets that the enlisted person might be using to obtain financing, products or services.

It also adds to the legal consequences of inclusion on designated terrorist lists: freezing or seizing the assets of terrorist individuals or entities and their members, along with any other bodies and entities that give assistance to. The amendment omits the part which necessitates that the funds must be used for terrorist purposes.

The amendments also add a bunch of series violations that may result from the inclusion on designated terrorist lists:

- To be deprived from applying for public posts or from being appointed to public office
- Suspension from work
- Banning any financial services for the listed person
- Banning the exercise of all civic or advocacy activities
- Suspending membership in professional unions, boards of directors of companies, associations, institutions, clubs and sports federations, or any other public service

bodies.

The law obligates the competent authorities inside Egypt to inform the competent foreign bodies of the names of the enlisted persons so that they can take the same measures to confront them.

This is how the amendments made to the laws regulating terrorist entities and terrorists may look like: a "civilian death" for citizens and activists as soon as they are suspected by the security services of committing a terrorist act...

Once suspected, thousands of citizens may lose their reputation and their behavior will be deemed despicable. They will be banned from participating in any voluntary or civil work, they will be dismissed from their jobs and their membership in their professional unions will be suspended.

All this constitutes a flagrant encroachment on the principles of trade union freedoms and labor rights, and an unprecedented waste of the presumption of innocence that every person should enjoy.

Fourth: How Terrorism Laws are implemented on the Ground

Speaking about the extent to which any law seems democratic remains non-sense, unless the law comes into effect, and as we previously mentioned, successive terrorism laws in Egypt have come into force since 1992.

So, what are the consequences of the security services and judicial authorities' interpretation and implementation of terrorism laws? And how this might affect, whether positively or negatively, the state of private and public rights and freedoms guaranteed by the Constitution and the international treaties and convention ratified by Egypt?

In the following lines, we will refer to a few examples of cases in which the accused persons have been charged with violating the terrorism laws' provisions, although they didn't commit, or incite to commit, any violent act. Rather, they have been prosecuted against the backdrop of practicing their rights to assembly or because of voicing their views and beliefs.

We will not review in this paper how the security and judicial authorities implemented terrorism laws since their promulgation in their country. But we will just focus on the last five years which quite reveal the real methodology adopted by both the security and judicial authorities in using these laws, and how this approach matches the legislative authorities' desire to make amendments to terrorism laws in order to broaden their powers while undermining human rights and freedoms of citizens.

Besides highlighting terrorism laws' implementation methods, we will also provide a list of some of the public figures and citizens who have been stigmatized as terrorists; because of a mere suspicion raised by the security services, represented in the National Security Sector affiliated to the Ministry of Interior, in the so-called "investigation record" in which the

security officer writes down his personal opinion coupled with some personal information (name, place of residence) about the suspect.

These police records are then submitted to the Supreme State Security Prosecution as the competent body authorized with considering and investigating terrorism-related laws.

Throughout the recent years, the Public Prosecution has ordered the arrest of many people including public figures, human rights defenders, and social media and trade union activists over terrorism charges, and after spending almost two years in prison, the security services alleged that these suspects committed new terrorist crimes while languishing behind bars!!

Accordingly, the Supreme State Security Prosecution ruled to hold them in detention once again, in what is called "recycling of defendants". (12)

In the meantime, the criminal courts designated for considering terrorism cases turned down the appeal submitted by these defendants and their lawyers demanding their release, or to bring them to trial that would decide on the validity of these suspicions by a final ruling and adjudicate over whether those suspects committed terrorist acts or not. (13)

The paper takes into account that none of those who are suspected of being terrorists have indeed committed, or incited to, any acts of violence, but on the contrary, they all have denounced violence and are known for their stances against terrorism and religious extremism.

Cases:

The Case No. 930 of 2019 State Security, aka "Hope Coalition":

A group of political activists- mostly affiliated to legitimate and legally authorized parties- organized a series of meetings to discuss the political situation and prepare to run in the parliamentary elections.

The security forces arrested most of them, including a number of businessmen, on charges of financing terrorism and belonging to a terrorist group. The Public Prosecution then ruled to hold them in pretrial detention pending probe. They have been held on remand for nearly a year since then.

Names of some of the defendants accused in the case:

Zyiad El-Eliemy, a lawyer and former MP

Hossam Moanis, a leading member of "Al-Karama" Party

Omar El-Shenity, an economist

Hassan Barbary, a labor activist

The Case No. 27899 of 2017 Zagazig Misdemeanor:

In mid 2017, the security forces arrested Gamal Abdel Hakim and Andrew Nassef, members of Bread and Freedom Party, from their homes at Sharqya governorates. The two faced some of terrorism-related charges such as "possessing leaflets and publications that promote the perpetration of terrorist crimes and attempting to overthrow the regime". Consequently, they were sentenced to five years in prison.

It is worth noting that the exhibits Gamal Abdel-Hakim was found in possession of during his arrest were: a collection of books by Karl Marx and some papers providing detailed explanation of the Bread and Freedom Party's programs and activities.

The Case No. 1781 of 2019 State Security:

Dr. Abdel Moneim Aboul Fotouh, head of the "Strong Egypt" Party, was arrested and charged with violating the terrorism law for "joining a terrorist group that was established contrary to the provisions of the law and whose purpose is to disrupt the Constitution and the law in addition to publishing false news about the country's political and economic conditions" against the backdrop of his views proclaimed in a TV interview in which he criticized the situation in Egypt.

Consequently, the Public Prosecution arrested Aboul Fotouh before ordering him to be held in pretrial detention. The politician had been detained for two years reaching the maximum limit for remand detention as prescribed by law. However, upon his completion of the two-year period, the security services faced him with new charges (despite the fact that he had been held in solitary confinement during this period). The new charges include: leading a terrorist group and providing its members with financial aid for the purpose of committing terrorist acts. Thereafter, Aboul Fotouh was ordered to be detained for new terms, which he is still serving without being brought to trial over any of the charges leveled against him, whether the old charges or the new ones.

The Case No. 741 of 2019 State Security:

Human rights lawyer Haytham Muhammadin was arrested more than once and has been held in pretrial detention over successive detention renewal orders issued by the Public Prosecution against the backdrop of committing terrorist crimes, including joining a terrorist group and colluding with it to achieve its goals. He has almost completed four years behind bars.

Among other defendants accused in this case, noticeably, is: Mostafa Maher, brother of the founder of the April 6 Youth Movement Ahmed Maher.

The Case No. 441 of 2018 State Security

Throughout the year of 2018, the security forces had arrested journalists Shorouk Amgad, Mostafa Al-Aasar, Hassan al-Banna and many others. They are charged with: spreading false news that would harm the country's national security and joining a terrorist group

established contrary to the provisions of the law. The State Security forces ruled to hold them all in pretrial detention pending probe.

They are still held in remand detention until now.

Case No. 13338 of 2019 State Security:

In the evening of 20 September, several protests broke out in Egypt's different governorates. Consequently, the security forces launched a large-scale arrest campaign that lasted for 10 days, during which thousands of citizens and activists were arrested, and were added to this case which included the largest number of defendants in the history of the Egyptian judicial system.

These thousands were charged with:

Abetting a terrorist group to achieve its goals, promoting its views, spreading false news, and joining a group that calls for unlicensed protests..

All of the defendants were detained in the Central Security Forces' headquarters which constitutes a violation of the law. Some of them were subjected to enforced disappearance for a couple of days, while others were physically assaulted.

Although some of them had already been released, there are a large number of defendants who are still being held in pretrial detention.

The Case No. 488 of 2019:

Following the mass protests erupted on 20 September 2019, the security forces started to reopen the case file No. 488 of 2019, which was resurfaced against the backdrop of the demonstrations that took place in the aftermath of the fatal train crash in Cairo's Ramses Railway Station. The security forces then arrested a large number of lawyers, activists and public figures pressing against them terrorism charges.

All of them are still held on remand:

- Mahinour El-Masry, a human rights lawyer, who was arrested in front of the State Security Prosecution's headquarters.
- Amr Imam, a human rights lawyer who volunteered to defend those arrested in the September 20 Protests incidents.
- Dr. Hazem Hosny, Professor of Political Science at Cairo University.
- Journalists Esraa Abdel-Fattah, Solafa Magdy and his husband Hossam al-Sayyad
- Ibrahim Ezz El-Din, a human rights researcher, who had been under enforced disappearance for 6 months
- Shady Soror, director of satirical videos posted on social media websites

List (1) of journalists detained under terrorism laws: (14)

Case No.	Journalist's name
Case No. 569 of 2015	Ismail Al-Sayed Omar El-Iskandarani
Case No. 1898 of 2019 State Security	1- Al-Moataz Mohamed Shams El-Din, aka Moataz Wadnan 2- Mostafa Ragab Ahmed, aka Mostafa Al-Aasar
Case No. 441 of 2018 State Security	1- Adel Ahmed Sabry 2- Islam Gomaa 3- Muhammad Abu Zaid Kamel 4- Hassan Al-Banna Mubarak 5- Hossam El-Din Mostafa Ahmed Mostafa, aka Hossam Mostafa 6- Yousry Mostafa
Case No. 4459 of 2015	Aliaa Nasr El-Din Awad
Case No. 1365 of 2018 State Security	Muhammad Mesbah Gebriel
Case No. 316 of 2017 State Security Case No. 1360 of 2019 State Security	Badr Badr Mohamed Badr
Case No. 1152 of 2016 State Security Case No. 1365 of 2018 State Security	Mahmoud Mahmoud Gomaa
Case No. 621 of 2018 State Security Case No. 1956 of 2019 State Security	Shadi Hussein Abu Zaid
Case No. 930 of 20198 State Security	1- Hisham Fouad Mohamed Abdel Halim 2- Hossam Moanis Muhammad
Case No. 488 of 2019 State Security	1- Esraa Abdel-Fattah 2- Solafa Magdy 3- Hossam Al-Sayyad 4- Mohamed Salah 5- Ahmed Shaker 6- Khaled Dawood 7- Mostafa Al-Khatib

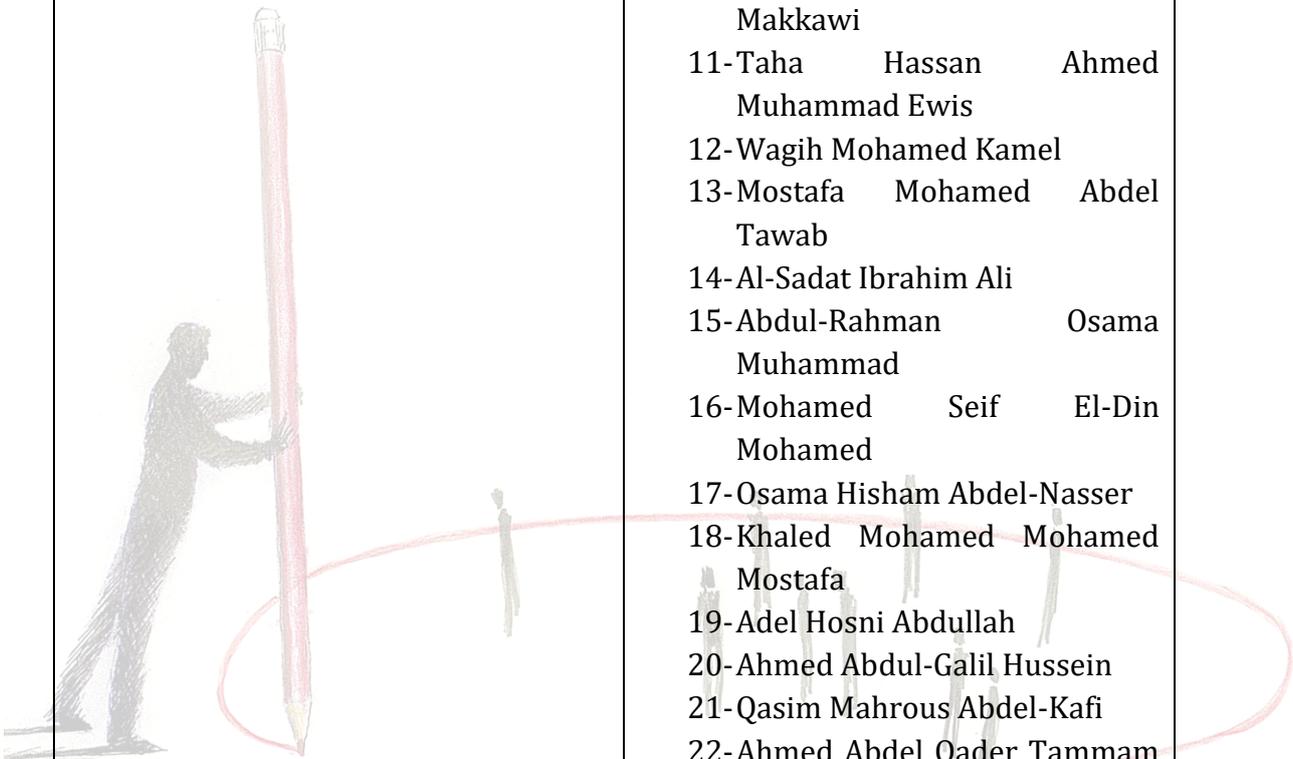
Case No. 1480 of 2019 State Security	Hassan al-Qabbani
Case No. 1356 of 2019 State Security	Mohamed Ibrahim Mohamed Radwan, aka Mohamed Oxygen
Case No. 1338 of 2019 State Security	Sayed Abdullah
Case No. 558 of 2020 State Security	1- Mostafa Saqr 2- Ahmed Allam 3- Atef Hassab-Allah Al-Sayed 4- Khaled Helmy Ghoneim
Case No. 586 of 2020 State Security	1- Haitham Hassan Mahjoub 2- Sameh Hanin
-----	Shaimaa Samy

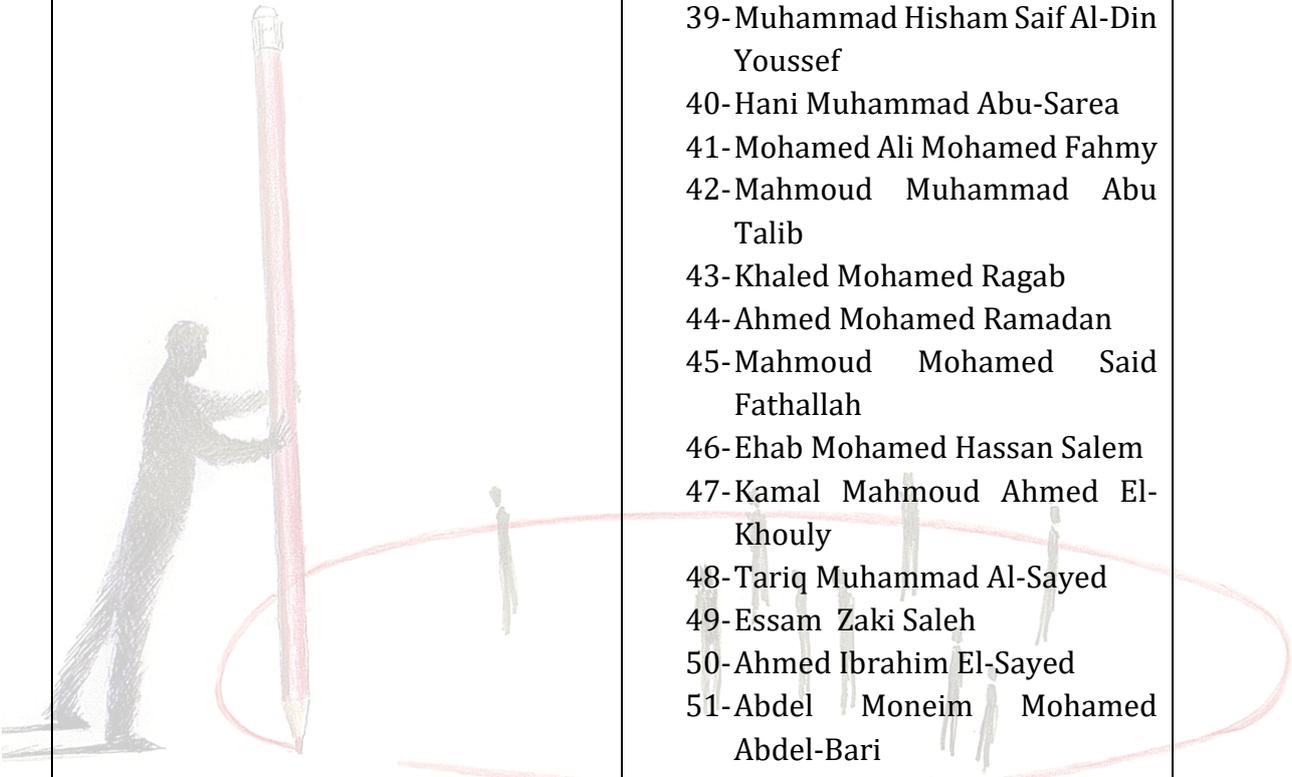
List (2) of public figures and citizens held in pretrial detention under terrorism laws:

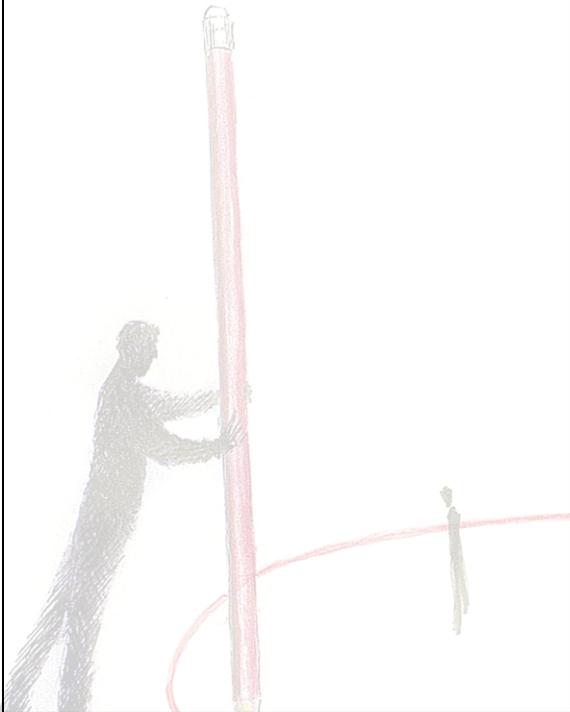
Case No.	Names of defendant	
Case No. 488 of 2019 State Security	1- Amr Mohamed Adel Imam 2- Mahinor Mohamed Abdel Salam 3- Hazem Hosni 4- Al-Badri Arafah Muhammad Abu Zaid 5- Imam Hassan Imam 6- Omar Khaled Abdel Tawab 7- Muhammad Fadi Ahmed 8- Abdel Nasser Ismail 9- Radwa Mohamed Farid 10- Ahmed Eid Muhammad 11- Muhammad Samir Sayed	1
Case No. 470 of 2019	Islam Fathi Salah	2
Case No. 631 of 2019 State Security	Mohamed Nasser Deif-Allah	3
Case No. 741 of 2019 State Security	1- Haitham Mohamadein 2- Rania Al-Gwaily 3- Amr Nohan	4

Case No. 930 of 2019 State Security

- | | | |
|-------------------------------------|---|---|
| Case No. 930 of 2019 State Security | <ol style="list-style-type: none"> 1- Taha Muhammad Ahmed Hussein 2- Muhammad Gaber Ali 3- Ahmed Al-Qadi 4- Ahmed Mahmoud Abdel-Fattah Mohamed 5- Youssef Mohamed Mohamed 6- Loia Sabra 7- Sherif Mohamed Saber Hussein 8- Ahmed Muwafi Khalaf-Allah 9- Bilal Said Muhammad Khattab 10- Abdunabi Syed Ahmed Makkawi 11- Taha Hassan Ahmed Muhammad Ewis 12- Wagih Mohamed Kamel 13- Mostafa Mohamed Abdel Tawab 14- Al-Sadat Ibrahim Ali 15- Abdul-Rahman Osama Muhammad 16- Mohamed Seif El-Din Mohamed 17- Osama Hisham Abdel-Nasser 18- Khaled Mohamed Mohamed Mostafa 19- Adel Hosni Abdullah 20- Ahmed Abdul-Galil Hussein 21- Qasim Mahrous Abdel-Kafi 22- Ahmed Abdel Qader Tammam Allam 23- Osama Abdel-Aal Muhammad 24- Khaled Ahmed Ahmed Abu Shadi 25- Mostafa Abdel-Moez Abdel-Sattar Ahmed 26- Fatima Ramadan 27- Hassan Mohamed Hassan Barbary 28- Ziyad Abdul-Hamid Zaki Al-Elemi 29- Tag al-Din Abdullah Abdul-Qadir | 5 |
|-------------------------------------|---|---|



	<p>30-Ahmed Mohamed Mohamed El-Sayed</p> <p>31-Adel Mohamed Soliman</p> <p>32-Sayed Mohamed Fahmy Abdel-Aziz</p> <p>33-Muhammad Eid Rizk Mostafa</p> <p>34-Mohamed Hussein Ahmed Metwally</p> <p>35-Abdullah Muhammad Fawzi</p> <p>36-Ibrahim Abdul Sattar Shaarawi</p> <p>37-Taqwa Abdel Nasser</p> <p>38-Osama Ali Salama</p> <p>39-Muhammad Hisham Saif Al-Din Youssef</p> <p>40-Hani Muhammad Abu-Sarea</p> <p>41-Mohamed Ali Mohamed Fahmy</p> <p>42-Mahmoud Muhammad Abu Talib</p> <p>43-Khaled Mohamed Ragab</p> <p>44-Ahmed Mohamed Ramadan</p> <p>45-Mahmoud Mohamed Said Fathallah</p> <p>46-Ehab Mohamed Hassan Salem</p> <p>47-Kamal Mahmoud Ahmed El-Khouly</p> <p>48-Tariq Muhammad Al-Sayed</p> <p>49-Essam Zaki Saleh</p> <p>50-Ahmed Ibrahim El-Sayed</p> <p>51-Abdel Moneim Mohamed Abdel-Bari</p> <p>52-Rami Al-Shahawi</p> <p>53-Yahya Sarhan Ali</p> <p>54-Haitham Mohamed El-Ezaby</p> <p>55-Muhammad Imam Hassan</p> <p>56-Ahmed Kamel Ali</p> <p>57-Abdul-Muttalib Muhammad Mustafa</p> <p>58-Mohamed Mostafa Abdel Aziz</p> <p>59-Mohamed Mohamed Youssef Hassan</p> <p>60-Magdy Abdel Razek Mohamed</p> <p>61-Abdo Abdel Wahid Hussein</p>	
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	<p>62-Al-Sayed Abdul Muttalib Muhammad 63-Ibrahim Yahya Moawad 64-Hisham Muhammad Muhammad Musa 65-Mostafa Ramadan Hammad 66-Mansour Abdel Moez Salah 67-Ahmed Muhammad Zaki 68-Mahmoud Muhammad Abdullah 69-Hossam Ali Mohamed Abdel-Rahman 70-Abdel Moneim Mohsen Said 71-Ali Muhammad Othman Saleh 72-Ibrahim Ahmed Abbas 73-Mostafa Mahmoud Mohamed Hussein 74-Mohamed Gamal El Din Zaki 75-Mohey Mohamed Saad 76-Abdul Rahman Gaber Sayed 77-Ahmed Mahmoud Abdel Razek 78-Abdul-Hamid Gomaa 79-Alaa Muhammad Abdul Nabi 80-Mohamed Mohamed Abdel Moneim Khalaf 81-Ahmed Amin Said 82-Rami Nabil Shaath</p>	
Case No. 1356 of 2019 State Security	<p>1- Muhammad al-Baqir 2- Alaa Ahmed Saif Al-Islam</p>	6
Case No. 1358 of 2019 State Security	<p>1- Muhammad Walid 2- Khalil Abdu-Hamid Khalil 3- Magdy Qarqar 4- Sahar Ali</p>	7
Case No. 1475 of 2019 State Security	<p>1- Mahmoud Mohamed Abdel-Fattah 2- Khalil Rizk Khalil 3- Haitham Abdel-Moneim Abdel-Raouf</p>	8

Case No. 277 of 2019 State Security	Yehia Hussein Abdel-Hady	9
Case No. 817 of 2018 State Security	Riman Muhammad Al-Hassani	10
Case No. 441 of 2018 State Security	1- Mohamed Mahmoud Ezzat 2- Abdul-Daem Abdullah	11
Case No. 621 of 2018 State Security	1- Sayed al-Banna 2- Walid Shawky 3- Ayman Abdel-Moaty	12
Case No. 844 of 2018 State Security	1- Mohamed El-Sayed Khamis 2- Mahmoud Eid	13
Case No. 1898 of 2019 State Security	1- Hassan Mustafa 2- Hussein al-Sabbak	14
Case No. 1781 of 2019 State Security	1- Muhammad Ibrahim Al-Qassas 2- Abdel Moneim Abu El Fotouh	15
Case No. 1470 of 2019 State Security	Ibrahim Metwally	16
Case No. 535 of 2020 State Security	Nermin Hussein	17
Case No. 558 of 2020 State Security	1- Mohsen Bahnasy 2- Ahmed Anwar Ramadan	18
Case No. 570 of 2020 State Security	1- Marwa Arafa 2- Mosa Muhammad Mudar	19
Case No. 586 of 2020 State Security	Al-Moataz Bel-Allah Abdul-Wahab	20

Fifth: Conclusion

It's clear from the above that the exceptional circumstances and their laws shall not be imposed except in cases where there is a threat to the state and the survival of the nation. The term "threat" here bears several meanings which can be interpreted in manifold ways. It can be interpreted from a political view as the "threat that endangers the ruling regime and the stability of the state" and hence, it can be used by undemocratic governments as a pretext to obstruct or undermine the rights and freedoms of citizens. Therefore, legal and international jurisprudence has settled on limiting the concept of the terms "threat", "danger" or the exceptional circumstance by not confining it to "such conditions that threaten democracy".

This is the essence of the legitimacy of imposing a state of emergency or passing exceptional criminal laws that affect human rights and freedoms.

"The basis is mainly revolves around the idea of preserving the security of the state and its survival of the nation whenever the status quo is democratic, but if the status quo in this country is undemocratic, or constitutes in itself a violation of international law and human rights, then resorting to declaring a state of emergency in order to protect or perpetuate the situation will deem illegitimate". (15)

In Egypt, if it would be justifiable to issue an exceptional law to confront terrorism in the 1990s, it is now unjustifiable. It is rather suspicious to adopt a number of exceptional laws after a popular uprising and a glorious revolution that raised the slogans of freedom, justice and human dignity in January 2011.

Instead of paying attention to the real causes, roots and factors that led to the proliferation of terrorism in Egypt, the state authorities have adopted an approach to expand the promulgation and implementation of exceptional laws, which continue to plague the state's legal elements and apparatuses and undermine citizens' rights and freedoms. All acts and views opposing the ruling regime and public policies have become now a target for prosecution by security services and judicial authorities; because they deemed such acts "terrorist" although they have nothing to do with violence. Citizens' ordinary daily or professional behavior has been considered as terrorist acts. All the people, without exception, whether journalists, critics, politicians, lawyers or human rights defenders have been either stigmatized as "terrorists" or added to one of the terrorist lists. Thousands of citizens in Egypt are still languishing in jail over a mere suspicion of terrorism without being brought to trial or receiving a court order.

That notwithstanding, the real terrorism is still rampant in the country claiming the lives of more innocent people and eroding the reputation of the country and its capabilities and future.

So, do they still not understand?

Appendix

Ten Areas of Best Practices in Countering Terrorism:

Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism: Ten areas of best practices in countering terrorism, as concrete models for wider adoption and implementation by Member States.

Practice 1

Model provisions on consistency of counter-terrorism law with human rights and refugee law, and humanitarian law:

All legislation relating to the combating of terrorism is subject to the following guarantees and procedures:

- 1- Proposals for new legislation or amendments to existing laws shall include a written statement bringing to the attention of the Legislature any provision in the proposal that appears to be inconsistent with the purposes and provisions of norms of international human rights and refugee law that are binding upon the State.
- 2- The Legislature shall, through a specialized body or otherwise, review and ensure that any law approved by it conforms to the norms of international human rights and refugee law that are binding upon the State.
- 3- The judiciary shall be entrusted with ensuring that laws do not breach norms of international human rights and refugee law that are binding upon the State. In discharging this duty, the courts shall apply the techniques available to them under the Constitution, such as:
 - Adopting an interpretation of the law that is consistent with the purposes and provisions of norms of international human rights and refugee law that are binding upon the State.
 - Declaring that part of the law is without legal effect
 - Declaring that the inconsistent law is to be of no force or effect, either with immediate effect or after a period of time that allows the Government to take remedial steps.
- 4- If the State is involved, as a party, in an ongoing armed conflict, the above provisions shall apply also to securing compliance with principles and provisions of international humanitarian law, without prejudice to the obligation to comply with international human rights and refugee law.

Practice 2

Model provision on consistency of counter-terrorism practices with human rights and refugee law, and humanitarian law:

In the application and exercise of all functions under the law relating to terrorism, it is unlawful for any person to act in any way that is incompatible with the purposes and provisions of international human rights and refugee law that are binding upon the State. In this regard:

1. The exercise of functions and powers shall be based on clear provisions of the law that exhaustively enumerate the powers in question.
2. The exercise of such functions and powers may never violate peremptory or non-derogable norms of international law, nor impair the essence of any human right.
3. Where the exercise of functions and powers involves a restriction upon a human right that is capable of limitation, any such restriction should be to the least intrusive means possible and shall:
 - (a) Be necessary in a democratic society to pursue a defined legitimate aim, as permitted by international law;
 - (b) Be proportionate to the benefit obtained in achieving the legitimate aim in question.
4. If the State is involved, as a party, in an ongoing armed conflict, the above provisions shall apply also to securing compliance with principles and provisions of international humanitarian law, without prejudice to the obligation to comply with international human rights and refugee law.

Practice 3

Model provisions on the principles of normalcy and specificity:

- To the broadest possible extent, measures against terrorism shall be taken by the civilian authorities entrusted with the functions related to the combating of crime, and in the exercise of their ordinary powers.
- Unless a state of emergency has been officially declared because terrorism genuinely threatens the life of the nation and requires the adoption of measures that cannot be undertaken through restrictions already permitted under international human rights law, terrorism does not trigger emergency powers.
- Where the law includes particular provisions that, for a compelling reason, are considered necessary in combating terrorism and entrust certain authorities with specific powers for that reason, the use of such powers for any purpose other than the combating of terrorism, as properly defined pursuant to practice 7, is prohibited.

Practice 4

Model provisions on the review of the operation of counter-terrorism law and practice

1. Where specific counter-terrorism powers have been created pursuant to practice 3 (3), they shall lapse 12 months after their entry into force, unless the Legislature reviews and renews them before that date.

2. The Executive shall appoint a person or body to act as independent reviewer of the application and operation of the law relating to terrorism. The person so appointed shall, at least every 12 months, carry out a review of the operation of the law relating to terrorism and report the findings of such review to the Executive and the Legislature. The report shall contain an opinion on:

(a) The implications of any proposed or recent amendments or additions to the law relating to terrorism, including an opinion on whether these are compatible with international human rights and refugee law that is binding upon the State, as well as, when applicable, principles and provisions of international humanitarian law;

(b) Whether the application in practice of the law relating to terrorism, during the period of review, has been compatible with international human rights and refugee law that is binding upon the State, as well as, when applicable, principles and provisions of international humanitarian law.

Practice 5

Model remedies provision:

Any person whose human rights have been violated in the exercise of counterterrorism powers or the application of counter-terrorism law has a right to a speedy, effective and enforceable remedy. Courts shall have the ultimate responsibility to ensure that this right is effective.

Practice 6

Model provisions on reparations and assistance to victims:

- Damage to natural or legal persons and their property resulting from an act of terrorism or acts committed in the name of countering terrorism shall be compensated through funds from the State budget, in accordance with international human rights law.

- Natural persons who have suffered physical or other damage, or who have suffered violations of their human rights as a result of an act of terrorism or acts committed in the name of countering terrorism shall be provided with additional legal, medical, psychological and other assistance required for their social rehabilitation through funds from the State budget.

Practice 7

Model definition of terrorism:

Terrorism means an action or attempted action where:

1. The action: (a) Constituted the intentional taking of hostages; or
 - (b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or
 - (c) Involved lethal or serious physical violence against one or more members of the general population or segments of it; and
2. The action is done or attempted with the intention of:
 - (a) Provoking a state of terror in the general public or a segment of it; or
 - (b) Compelling a Government or international organization to do or abstain from doing something;
3. The action corresponds to:
 - (a) The definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or
 - (b) All elements of a serious crime defined by national law.

Practice 8

Model offence of incitement to terrorism:

It is an offence to intentionally and unlawfully distribute, or otherwise make available, a message to the public with the intent to incite the commission of a terrorist offence, where such conduct, whether or not expressly advocating terrorist offences, causes a danger that one or more such offences may be committed.

Practice 9

Core elements of best practice in the listing of terrorist entities:

Irrespective of the continued existence of the practice of the Security Council to list individuals or entities as terrorist, the implementation of any sanctions against individuals or entities listed as terrorist shall comply with the following minimum safeguards:

- Sanctions against the individual or entity are based on reasonable grounds to believe that the individual or entity has knowingly carried out, participated in or facilitated a terrorist act (as properly defined pursuant to practice 7 above);
- The listed individual or entity is promptly informed of the listing and its factual grounds, the consequences of such listing, and the matters in items 3 to 6 below;

- The listed individual or entity has the right to apply for de-listing or non-implementation of the sanctions, and has a right to court review of the decision resulting from such application, with due process rights applying to such review including disclosure of the case against him, her or it, and such rules concerning the burden of proof that are commensurate with the severity of the sanctions;
- The listed individual or entity has the right to make a fresh application for delisting or lifting of sanctions in the event of a material change of circumstances or the emergence of new evidence relevant to the listing;
- The listing of an individual or entity, and the sanctions resulting from it, lapse automatically after 12 months, unless renewed through a determination that meets the requirements of items 1 to 3 above;
- Compensation is available for persons and entities wrongly affected, including third parties.

Practice 10

Core elements of best practice in arrest and interrogation of terrorist suspects:

- Any form of secret or unacknowledged detention is prohibited.
- Every person has the right to contact a lawyer of his or her choice from the moment of arrest or detention. The scope of such choice may be restricted for genuine reasons of national security.
- Any form of torture or other cruel, inhuman or degrading treatment or punishment is prohibited. Compliance with this prohibition shall be effectively monitored.
- Information obtained through torture or other cruel, inhuman or degrading treatment or punishment, anywhere in the world, shall not be used in any proceedings, and shall never be solicited or condoned.
- Anyone arrested as a terrorist suspect who would face a real risk of torture or other cruel, inhuman or degrading treatment or punishment shall enjoy the right of non-refoulement, and may not be extradited, expelled or otherwise formally or informally removed to a country or area if the foreseeable consequence of that measure is the person's exposure to such a risk.

Footnotes:

1- The Egyptian constitution was issued after a popular referendum with 38.6% turnout of the total number of 53 million citizens who have the right to vote. It was drafted by a

committee consists of 50 public figures and was published in the Official Gazette in January 2014 (Issue No. 3).

2- Article (4) of the International Covenant on Civil and Political Rights, which Egypt ratified in August 1967 upon a presidential decree No. 536 in 1981 and was published in the Official Gazette on 15 April 1982 (issue No. 15).

3- Minimum Rules for Human Rights in Exceptional Circumstances or Emergencies issued in 1984 under the theme (Paris Standards) by the International Law Complex (ILA).

4- Paragraph 49 of the report of the Secretary-General of the United Nations in 2005

<https://undocs.org/pdf?symbol=en/A/59/2005>

5- 'International Protection of Human Rights in Exceptional Conditions' Study by: Dr. Saeed Fahim Khalil, p. 96

6- Ibid. D / Saeed Fahim Khalil

7- The United Nations Working Group on Arbitrary Detention Symbol (6/2005 / 4CN. / E, paras. 70, 69).

8- Published in the Official Gazette on July 18, 1992 AD, issue "29"

9- Published in the Official Gazette on August 15, 2015 AD, (Issue No. 33)

10- Case No. 114 of 21 Constitutional Judicial.

11- Published in the Official Gazette on March 3, 2020 AD, issue 9 (A).

12- Report by ANHRI entitled "Recycling Detainees"

To check the report: <https://www.anhri.info/?p=14874&lang=en>

13- A report on the guarantees and rights of pre-trial detainees issued by the Arabic Network for Human Rights Information.

To check the full report: <https://www.anhri.info/?p=14979>

14- Prisoners of journalism in Egypt

To check: https://www.anhri.info/?post_type=journalist

15- A report submitted to the International Law Academy Conference held in Warsaw in 1988, study protecting human rights in exceptional circumstances