

# SEES, DISCRIMINATES AND TAKES SIDE JUSTICE IN EGYPT



## **Sees, discriminates and takes side...**

### **Justice in Egypt**

#### **Introduction**

- Is justice blind and does not discriminate between citizens?
- Can Egypt's justice be considered blind? Does it correspond to the symbol hanging on the Egyptian courts' facades, which is portrayed in a blindfolded lady carrying a set of scales that don't incline towards any of the conflict's parties? Or does it see, discriminate and take into consideration the social, caste-based, sexual and religious differences, as well as the individual's power and close relation to state apparatus, and hence decide and judge based on these differences?

This paper tries to answer the above-mentioned questions?

It views and compares some cases and incidents that took place during the recent period and how justice differently deals with them.

This paper is based on the provisions of the Egyptian Constitution along with the international agreements and covenants, signed and ratified by Egypt and that have become part of the Egyptian legislation in accordance with the Constitution.

#### **First: Equality and justice before the law, rights and duties:**

##### 1- The Egyptian Constitution 2014

Article 53: "Citizens are equal before the law, possess equal rights and public duties, and may not be discriminated against on the basis of religion, belief, sex, origin, race, color, language, disability, social class, political or geographical affiliation, or for any other reason. Discrimination and incitement to hate are crimes punishable by law. The state shall take all necessary measures to eliminate all forms of discrimination, and the law shall regulate the establishment of an independent commission for this purpose"

Article 94: "The rule of law is the basis of governance in the state. The state is subject to the law, while the independence, immunity and impartiality of the judiciary are essential guarantees for the protection of rights and freedoms".

##### 2- International agreements and conventions

###### A) Universal Declaration of Human Rights

Article 7 of the Universal Declaration of Human Rights stipulates that: "All are equal before the law and are entitled without any discrimination to equal protection of the law."

## B) International Covenant on Civil and Political Rights

Article 2 thereof states that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 14 also provided that "All persons shall be equal before the courts and tribunals".

Article 26, similarly, states that: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."

### **Second: Some public affairs cases and how justice decided on them in recent years:**

#### **Cases in 2017**

- Magdy Makeen's Case

In 2017, South Cairo Criminal Court released police officer Karim Magdy on bail, after he was accused of torturing Magdy Makin to death.

The case dates back to 2016, when Magdy Makeen was arrested by Karim Magdy, Al-Amiriya Police Station's assistant detective, along with 8 low-ranking police officers from the same police center. They tortured "Makeen" to death, and this is what the Public Prosecution officially accused them of. They also face charges of forging reports (the incident's minute) and deliberately harming their place of work "The Ministry of the Interior".

At the time, the Public Prosecutor received the forensic report which confirmed that Makeen had been tortured. The real reason for his death was found to be torture by standing on his back causing a nerve shock to the nerve connections in the spinal cord leading to blood clots in the lungs which resulted in his death.

However, the Criminal Court ordered, at that time, the release of all the defendants involved in the case, despite the existence of sufficient evidence and the presence of witnesses, and in spite of the forensic report's results.

And in December 2020, the Cairo Criminal Court sentenced all the police personnel accused of torturing Makeen to death to three years in prison, while it acquitted another policeman. Although the defendants had ultimately received a prison sentence, but we cannot neglect how the legal proceedings of their trial went; given the release order they received in the beginning in spite of having sufficient evidence, the length and duration of the trial, and the

minimum period of punishment (the minimum prison term) in the verdict handed down to them. (1)

- In the same year:
  - Human rights lawyer Ibrahim Metwally and the suffering of prolonged pretrial detention and rotation

He is an Egyptian lawyer and the founder of the Association of the Families of the Disappeared in Egypt which he established after the disappearance of his who went missing in 2013 and hasn't yet to appear.

On 10 September 2017, he was arrested at Cairo International Airport while taking a flight to Geneva (Switzerland), where he was due to attend the 113th session of the United Nations Working Group on Enforced Disappearances. Ibrahim had been missing for two days and detained at the National Security headquarters, where he was reportedly subjected to torture. He faced charges of "leading a terrorist group, spreading false news, and communicating with foreign entities", over which he was ordered detained at the notorious Tora Maximum-Security Prison 2.

Metwally is still languishing behind bars and is about to complete 4 years in detention!!

He was ordered released on 22 October 2019 and was subjected to enforced disappearance once more, until on 5 November 2019 he was recycled/rotated (added to a new case) into Case No. 1470 of 2019 State Security, in which he was remanded for 10 months. Then, on 25 August 2020, the criminal court ordered his release before he went missing once more for 12 days at the National Security headquarters which rotated him for the third time into a new case (No. 786 of 2020 State Security) over the same accusations leveled in the previous cases. Ibrahim Metwally is still being held in jail until this moment.

#### **Comparison:**

- Police officers who are convicted of torture (to death) were sentenced to only three years in prison
- A lawyer who was kidnapped from the airport has almost completed his fourth year in pretrial detention.

#### **Cases in 2018**

- A police officer acquitted of the charge of killing a doctor in Ismailia governorate

In March 2018, the Ismailia Criminal Court acquitted officer Mohamed Ibrahim, who is convicted of killing a veterinarian in Ismailia, after the court accepted his appeal against the 8-year prison sentence handed down to him for murdering the doctor.

The case dates back to 2017 when the officer, along with a police force, broke into his pharmacy, arrested him, and took him to the police station where he died (in custody) hours before arriving at the hospital. Consequently, the Pharmacists Syndicate posted a video on its official Facebook page showing that the police officer arrested the veterinarian from the pharmacy and took him out while he was in good health at the time.

The officer was later arrested, interrogated and charged with: torturing to death, falsifying official documents (police records), using cruelty towards the victim, and insulting and slandering him. Afterwards, the forensic report proved there were signs of torture on the doctor's body. Despite all this evidence, the defendant's appeal was accepted and accordingly the court ordered his retrial and acquittal. (2)

- Acquitted two National Security officers of torturing and killing Matariya- based lawyer

In May 2018, the Cairo Criminal Court acquitted two National Security officers after they were accused of torturing a lawyer in El Matareya to death.

The case began in February 2015, when Sameh Ashour, the then-head of the Bar Association, assigned a syndicate member to go to the morgue to follow up on the procedures of the deceased lawyer "Karim Hamdi", and it was found that there were injuries on his body which were not included in the medical examination report. As a result, he filed a report (No. 3715 of 2015) to the Public Prosecutor stating that the lawyer was killed.

In the same month, the Public Prosecution ordered the detention of the two National Security officers on charges of torturing and deliberately killing lawyer Karim Hamdi within the Matariya Police Station, after he was arrested and accused of joining a terrorist group.

- In March, a month later, the defendants were released on bail!
- In December 2015, Cairo Criminal Court sentenced the defendants to 5 years in high-security prison

The forensic report proved that the lawyer had been subjected to torture, resulting in injuries to the right wing of the front bone of the neck and breaking of the ribs (from the second to the eighth rib) which caused a tearing in the lung and hemorrhage in the heart that led to internal bleeding and hemorrhage in the testicles that led to nervous shock. Then, in 2018, after the Court of Cassation accepted the appeal submitted by the defendants, they were retried and acquitted at the end. (3)

#### **Other cases of justice in the same year:**

- Abdel-Moneim Abo El-Fetouh, 70, is a former presidential candidate and the head of the "Strong Egypt" Party. He was arrested on 18 February 2018, a few days after

he appeared on Al-Arabi TV and BBC Arabic TV channel criticizing the Egyptian government. He was interrogated into Case No. 440 of 2018 State Security as the Public Prosecution accused him of joining a terrorist group and spreading false news. He is still being held in pretrial detention, and instead of releasing him to correct the mistake of his detention...

He was investigated on the second of February 2019 in connection with a new case (No. 1781 of 2019 State Security) in which the Prosecution charged him with: assuming a leadership of a terrorist group and committing a terrorist financing crime. He was ordered detained and the decision will be implemented as soon as he finishes the detention period of the first case.

- The arrest of Mohamed al-Qassas and his rotation more than once

Mohamed al-Qassas, the deputy head of the Strong Egypt Party, was arrested on 8 February 2018 after he attended a wedding party of one of his friends. The next day he appeared at the State Security Prosecution and was interrogated in connection with Case No. 977 of the 2017 in which he was charged him with: Colluding with the Brotherhood (MB) group in incitement against institutions and holding organizational meetings with members of the MB's armed movement to carry out operations in conjunction with the presidential elections.

The Prosecution also accused him of spreading false news on the country's political and economic situation with the aim of disturbing the general peace, within the framework of the terrorist Muslim Brotherhood group's objectives, and propagating the group's goals which include undermining trust in the Egyptian state and its institutions.

- The arrest and rotation of Dr. Walid Shawky, lawyer Sayed Al-Bana and blogger Ayman Abdel-Moati

In October 2018, Dr. Walid Shawky, former coordinator of the April 6 Youth Movement, was arrested from inside his clinic, together with Ayman Abdel-Moati, editor at Dar Al-Maraya publishing house who was arrested from his home. They both were interrogated in connection with Case 621 of 2018 on charges of joining a terrorist group and spreading false news using a private electronic account. They were kept in remand detention until August 2020, when they were ordered released by the criminal court as (a terrorism circuit). However, they were forcibly disappeared until September 2020, when Al-Bana and Abdel-Moati appeared before the State Security Prosecution on 6 October 2020 for investigation, whereas Shawki remained under enforced disappearance until he appeared on 6 October 2020 when he interrogated pending Case 880 of 2020, in which he faces charges of joining a terrorist group, spreading false news and gathering. Although receiving a release order, Abdel-Moati and Shawki were not actually freed; they are still in pretrial detention. As for

human rights lawyer Sayed Al-Banna, he has finally been freed after spending more than 3 years in pretrial detention.

### **Comparison:**

- Accusations of beating and torture are in full view of Egyptians. But because the defendants are police officers, they are acquitted, as if preventive detention and preliminary rulings are made to silence public opinion and when such cases blow over or go forgotten, release orders are then issued, at the time others are kept in jail because of their opposing views. And since it would be invalid to bring them for trial over these views, they are punished for the exercise of their right to expression and criticism using prolonged pretrial detention and rotation (adding to new cases).

### **Cases in 2019:**

- Releasing the officer who assaulted Al-Mahalla-based lawyer under his job guarantee

In November 2019, the First Circuit's appeal judge at Al-Mahalla Court ordered the release of the officer who is accused of assaulting a lawyer (in the same governorate) under the guarantee of his job.

The case began in October 2019, when lawyer Ahmed Ramzy was arrested and assaulted because he was standing next to the police station in one of Al-Mahalla city's districts. At first, the accused officer, Abdel-Rahman Al-Shabrawi, went to him and asked him to leave, but the lawyer told him he was waiting for his family and as a result, they had a verbal altercation that ended in the officer beating the lawyer along with his family members. The lawyer was then detained in the police car where he was severely beaten along the way to the police station. When he got out of the car, one of his fellow lawyers saw "Ramzy" and at this point the incident took place. The officer who assaulted the lawyer was released from jail after only a month and a few days (4), despite there is an evidence witness (the lawyer's colleague) as well as footage of the police station's surveillance cameras that prove the incident.

The case was then left without news.

### **The other justice:**

- The arrest of human rights lawyer Mohamed al-Baqir from inside the State Security Prosecution and his rotation into a new case

Mohamed Al-Baqir was arrested on 29 September 2019 while he was at the State Security Prosecution's headquarters to attend an investigation session with Alaa Abel-Fattah after he was also arrested on September 28. Al-Baqir and his fellow lawyers were surprised at the

Chief Prosecutor telling him that he is included in the investigation report of Case 1356 of 2019 in which Abdel-Fattah is involved. Al-Baqir was then interrogated and turned in a glimpse of sight from a lawyer to an accused after he entered the Prosecution office as a lawyer!

A year after his arrest, on 31 August 2020, Mohamed al-Baqir and his lawyers, once again, were surprised at the decision to summon him once more for investigation pending a new case (No. 855 of 2020), where he is charged with "joining a terrorist group and holding meetings with members of the group from inside his prison and when leaving his jail to attend the detention renewal sessions". The Prosecution decided to hold him in detention for 15 days that will begin as soon as he finishes the detention period of the first case.

- The arrest of human rights lawyer Mahinour El-Masry outside the Supreme State Security Prosecution headquarters and his rotation

Mahinour El-Masry was arrested on 22 September 2019 outside of the State Prosecution Office in Cairo, which she left after she attended the investigations with those who had been arrested in connection with the 20 September (2019) incidents. The next day, she appeared before the Prosecution and was interrogated over the Case No. 488 of 2019, in which she faces charges of: joining a terrorist group with knowledge of its purposes, deliberately spreading false news and statements, and using a private electronic account on Facebook with the aim of committing the crime referred to in the first case. The Public Prosecution decided to hold her in pretrial detention pending the investigations conducted in the case, and since then she has been remanded in custody (till the moment).

On 30 March, she was summoned again by the Prosecution and was interrogated over a new case, No. 855 of 2020, in which she was ordered detained for 15 days pending probe, and the decision will start after finishing the detention period of the first case.

### **Comparison**

- Abdul Rahman Al-Sharqawi had only spent less than two months in pretrial detention against the backdrop of the attack he carried out on the lawyer, despite the fact that there is much clear evidence on his conviction, as published by the mainstream newspapers including those that are close to the official bodies and authorities.
- On the other hand, there are lawyers who are arrested in the course of their work under no serious charges, and are still being held in remand detention as of the release of this report.

### **Cases in 2020**

- A police officer acquitted, another officer sentenced to one suspended year in prison over accusation of torturing a citizen to death in Qena governorate

Qena Criminal Court ordered the acquittal of a police officer and handed another officer a one-year suspended sentence after they were accused of torturing a citizen in December 2020.

The case dates back to July 2017, the Public Prosecution accused the head of Qift Police Center of the deputy head of investigation of torturing a citizen to death while forcing him to confess the names of his accomplices in a Tuk-tuk theft case. (5)

- **Ola El-Qaradawi completes 4 years in pretrial detention!**

In the same year when the officers were accused of insulting a citizen, in 2017, Ola El-Qaradawi , daughter of well-known preacher Youssef El-Qardawi was arrested and detained, along with her husband “Hossam Khalaf”. And since their arrest, they have been remanded in custody. And when the two-year maximum period ended, they were rotated (added) to other cases, over which they are still detained despite the passage of four years, without trial and without release! Just a retaliatory pretrial detention.

### **Cases in 2021**

#### **The other justice, only**

- Ali Haitham Kamel Abu Ali, son of tycoon Kamel Abu Ali, was sentenced to one year in prison with suspension of the implantation of the sentence.

In May 2021, the Red Sea Criminal Court handed Kamel Abu Ali’s son a one year suspended sentence and a fine of EGP 1 million; for driving a car in the opposite direction and crashing into a car carrying engineer Mai Iskandar Ishaq leading to her death and the injury of the car's driver.

After conducting a blood test for the accused, it was found that he was under the influence of drugs or intoxicants while driving his car at the time of the accident, and the accused himself admitted to consuming “hashish”.

The Public Prosecution charged him with: Obtaining cannabis (marijuana) with the intention of using, negligence, carelessness, lacked caution and failure to comply with laws and regulations which resulted in the killing of the victim (Mai Iskandar Ishaq), in case of driving a car under the influence of intoxication and cannabis drugs, deliberately driving in the opposite direction, and driving a car in a dangerous condition.

Despite the suspect’s confession in the Public Prosecution investigations of drug consumption and despite the abundant evidence that he had indeed committed the crimes

leveled against him, he was eventually sentenced to one year in prison with a suspended sentence. (6)

- Suspects in "Fairmont Case" released due to "insufficient evidence"

In May 2021, the Public Prosecution halted investigations into the Fairmont gang-rape case ordering the release of those detained; because it was unable to obtain the recorded video clip of the rape incident but it only has some pictures of the video footage, despite the fact that the video does exist as confirmed by many people. The case then was shelved due to insufficient evidence!

In April 2014, a gang rape crime took place in a room in the Fairmont Hotel located in downtown Cairo. The incident involves a group of sons of public figures, celebrities and businessmen, who were allegedly drugging a young woman, taking turns to rape her while unconscious, before writing their initials on her limp body, while they videotaped the incident to share it to their friends as a form of pride, ostentation, and display of power.

The incident is known as "The Fairmont Case" but it was resurfaced last year (2020) and went viral on social media after the circulation of the defendants' names online, which helped many of them flee Egypt, while the young woman decided at the time to pursue the legal course and filed an official report to the Public Prosecution after the National Council for Women urged her to do so. (7)

But, the other justice, once more, released the suspects for "insufficient evidence"!

The "insufficiency of evidence" for rape suspects served as a justification for their release, but it is at the same time a reason for the continuation of the detention and rotation of other defendants, and this is because those defendants are not sons of celebrities but rather sons of the January 25 Revolution.

### **Summary:**

These are examples, or a sample of many different cases, in which justice practices double standards.

It is noticeable in these examples that crackdown is practiced only against "mostly innocent" defendants and opponents involved in opinion cases, although the accusations attributed to them are, in most cases, unsubstantiated "without evidence" and are nothing but mere words or opposing views, and, in some cases, they are merely convictions or beliefs in one's mind.

At time the defendants, who are accused of torture, ill-treatment, and even rape, are swiftly released or tried in a few years or months, opponents or those with different opinions remain for several years behind bars without trial or release.

What is required here is not equality in injustice, but equality in justice and equality before the law.

And as the Fairmont defendants were released due to insufficient evidence, the Public Prosecution should release those whomever it has no evidence against, or else bring them to trial. But leaving defendants for years in jail under the name of pretrial detention is a lame and one-sided justice.

**So, it is necessary to:**

- 1) Make legislative amendments to punish those who are responsible for detaining any accused for a period that exceeds the maximum limit of pretrial detention, and to affirm the political will to respect the law,
- 2) Commit to the articles and provisions of the Egyptian Constitution; apply the law, not to manipulate or tamper with it for the benefit of some, and to put an end to the retaliatory actions in what is called as "rotation" or "recycling" (adding defendants to new cases after receiving release orders".
- 3) Ensure the judicial system's commitment to the fair trial guarantees and due process stipulated in the Constitution and international covenants.
- 4) Ensure the Egyptian judiciary's commitment to the articles of the Constitution regarding the non-imposition of the anti-freedom penalties for publishing-related crimes, and the defense of freedom of expression and political criticism.
- 5) Ensure commitment to implementing the law on protecting whistleblowers and witnesses and protecting the confidentiality of their information.

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((Footnotes))

- 1- Al-Masry Al-Youm news report about the killing of Magdy Makeen, sate of publishing: 12/13/2020, last accessed on 31/5/2021

<https://www.almasryalyoum.com/news/details/2111450>

- 2- Akhbar Al-Youm news report, Published on: March 2018, last accessed on: May 2021.

<https://m.akhbarelyom.com/news/NewDetails/2635856/1/%D8%A8%D8%B1%D8%A7%D8%A1%D8%A9-D8%B6%D8%A7%D8%A8%D8%B7-D8%B4%D8%B1%D8%B7%D8%A9-D8%A%D8%A9-D8%B4%D8%B7%D8%A8%D8%B6%D8%B1%D8%A8D8%D8%A8%D8%D8%A8%D8%D8%A8%D8%D8%A8%D8%D8%A8%D8%D8%A8,%D8%A8%D8%A8D8,D8%A%D8%A8%Daughter,A%D8%A8>

D8%D8%A%D8%A%D8%A8, Daughter Eyebrow Hair 8A%D8%B7%D8%B1%Dave on Instagram  
%A8%A7%D8%B9%D8%A5%D8%B3%D8%A%D8%B9%D8%A%D8%A%DaughterDaughter

3- Al-Shorouk news report, Publication date: May 2018, last accessed on: May 2021.

<https://www.shorouknews.com/news/view.aspx?cdate=13052018&id=b9486747-f4c2-486b-bf90-d0ef93818fc1>

4- Al-Shorouk News report entitled "Police officer who assaulted a lawyer released",  
Publication date November 2019, last accessed on: May 2021

<https://www.shorouknews.com/news/view.aspx?cdate=18112019 &id=0ef71c5d-cfa2-46c7-a7ba-c987a431bb40>

5- A news report on "Al-Bawaba" news website, entitled "A police officer sentenced to one suspended year in prison over accusation of torturing a citizen to death",  
Publication date December 2020, last accessed on: May 2021

<https://www.albawabhnews.com/4212736>

6- A news report on "Al-Bawaba" news website, about referring Haitham Kamel Abu Ali to criminal case, Publication date: January 2021, last accessed on: May 2021

<https://www.albawabhnews.com/4254500>

7- A report on ANHRI "Fairmont rape investigations closed", last accessed on May 2021

<https://www.anhri.info/?p=23965>